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COINCIDENCES AS AN ELEMENT OF THE SUBJECT MATTER OF STATE AND LAW THEORY

Abstract. ***Purpose.*** The aim of the article is to characterize chance as an integral part of the subject of the theory of state and law. ***Results.*** In the article, the author studies coincidences as an element of the subject matter of the State and law theory. The article analyses and generalises the approaches available in the legal literature to the definition of the subject matter of the State and law theory. The essence of coincidences, its correlation with necessity and regularity is revealed. The nature of State and legal coincidences has been characterised as an important element of the subject matter of the general theory of State and law. It is established that the State and law theory, like any science, has its own subject matter, because the latter determines the independence of science, its specific properties and place in the scientific knowledge of reality. At the same time, the subject matter of the State and law theory is made virtually by the entire system of legal sciences. The subject matter of State and law is formulated as the comprehension of a complex object, that is, State and law. The content of the subject matter is traditionally regarded as regularities of the advent, development and functioning of State and law. However, the development of State and law is affected not only by regularities but also by coincidences, due to which the formation and development of individual legal systems and State entities can be specified. ***Conclusions.*** It is substantiated that the subject matter of the State and law theory should be considered not only as the comprehension of regularities, but also coincidences of the advent, development and functioning of the State and law, their role in various civilisations and cultures. The State and legal coincidence is a random, unlikely connection of State and legal phenomena and processes, not caused by State and legal regularities and does not reflect their essence. In any event, the need for fundamental changes in approaches to the scope of subject-matter of the State and law are understood has not yet come to light. In this regard, to date not only the subject matter of this science and the corresponding discipline, but even its designation is not agreed. Meanwhile, it is crucial to rethink the subject matter and structure of the State and law theory due to not only internal but also external factors, the most important of which is development of inter-State integration processes in the field of science and education, is of crucial importance among them.

Key words: State and law theory, subject matter of State and law theory, regularity, coincidences, State and legal regularity, State and legal coincidences.

1. Introduction

General theoretical legal science and the corresponding academic discipline known to many generations of domestic lawyers as "General theory of the State and law"[1], undergoes a complex and contradictory period. On the one hand, the collapse of totalitarianism and, with it, its inherent methodological monism in the study of law and other legal phenomena, the formation of independence of Ukraine and the related objective changes in the politics, economy, social consciousness, the transformed system of values and fundamentals of worldview have opened wide possibilities for updating domestic jurisprudence, including its general theoretical part,

[1] The specific names of this discipline in Ukraine and in some other countries of the world are different, for example, "State and law theory", "law and State theory", "general theory of law", "general theoretical jurisprudence", etc.

overcoming the long-term isolation from European and world culture and legal theory, enrichment with accumulated international common legal heritage, such as inalienable human rights, the rule of law, civil society, etc. On the other hand, the transition from methodological monism to ideological and methodological pluralism, with all its positive features, has led to a complicated process of knowledge of legal phenomena, one of the consequences thereof is often an eclectic combination of heterogeneous worldviews – from Marxist to neo-liberal and neo-positivist, poorly compatible with each other (Koziubra, 2013, p. 17).

In addition, if the difficulties of democratic renewal after the collapse of the totalitarian regime, political instability, aggravated primarily by the military aggression of the northern neighbour, the loss of confidence in all branches of government and most public institutions, features of the national mentality, elements of its traditional political and ideological bias are considered, the Statements by some representatives of the general theoretical jurisprudence of the post-Soviet space about the crisis of modern theoretical legal consciousness will not be so exaggerated. However, it seems more correct to speak not so much about the crisis of domestic general theoretical law, but about the difficulties of its modernisation. The construction of a holistic, internally consistent system of general theoretical jurisprudence, its final liberation from previous dogmatic representations is evidently a matter of more than one generation of legal scholars. One of the priority directions in this direction should be the rethinking of the subject-matter field of general theoretical legal science and the corresponding academic discipline (Koziubra, Pohrebniak, Tseliev, & Matvieieva, 2015, p. 14).

Issues of the subject matter orientation of scientific research have a long history of worldview thinking. This process, initiated by the philosophers of antiquity, retains its relevance for modern science. The focus and methodological identity are determinants not only of the autonomy of science, but also of its place in the system of scientific knowledge. The fundamental meaning of general theoretical legal science for scientific knowledge of the State and law determines the importance of comprehension of its subject-matter, which is complex and poly-structured, while the ideas and provisions thereof determine the unity of legal science in general. In this regard, the study of coincidences becomes particularly relevant and practical as a component of the subject-matter of the State and law theory, which is the purpose of this article. Its successful implementation requires solution of the following tasks: first, to review the existing approaches (points of view) in the legal literature to the definition of the subject-matter of the State and law theory; second, to reveal the essence of coincidences, its correlation with necessity and regularity; third, the nature of State and legal coincidences has been characterised as an important element of the subject-matter of the general theory of State and law.

The subject matter of the State and law theory is a traditional issue that is dealt with in a comprehensive manner in both textbooks and manuals on the State and law theory. Therefore, it is not an exaggeration to say that this problem affects all specialists in the field of state theory and law to some extent (Serdiuk, 2013, p. 38). At the same time, the immediate theoretical and methodological basis for this scientific article has been the works by domestic legal theorists, such as: Y.V. Bilozorov, B.D. Bondarenko, D.O. Vovk, S.D. Husarieva, M.I. Koziubra, A.M. Kolodii, O.L. Kopylenko, O.Y. Kotsiubynska, Y.V. Kryvytskyi, S.L. Lysenkov. Y.M. Oborotov, P.M. Rabinovych, I.A. Serdiuk, O.F. Skakun, O.D. Tykhomyrov, M.V. Tsvik, in which separate aspects of coincidences in the field of State and law as theoretical and legal phenomenon are disclosed.

2. Establishment and development of the general State and law theory

The State and law theory is a fundamental scientific and academic discipline, the development and establishment of which has a long history. Understanding the subject-matter of the State and law theory is associated with specificities that reflect the different stages of the formation of this field of knowledge. During these stages, the question of the independence of this component of the legal science and the focus and scope of the State and legal phenomena examined by it has been repeatedly raised. When considering the State and law theory, it is important to clearly understand what kind of scientific discipline is studied, given the existing substantial differences in the understanding of the State and law theory in domestic and foreign jurisprudence. The specificities of a particular country and its legal system advent from one of the legal families, the State and law theory may not be classified as a separate field of knowledge or vice versa, recognised as an independent component of the legal science, science of sciences in the field of theoretical jurisprudence, which determines the relevance of scientific research of the subject-matter of general theoretical legal science at the present stage.

The existence of its own subject-matter, that is, those phenomena and processes of the real world, which are considered and studied by

a system of knowledge, is one of the necessary conditions for its classification into a class of independent sciences. No science can aspire to a comprehensive study of natural or social phenomena and processes, it only singles out certain of them, or even their individual aspects, the cognition of which is possible by its own means and methods. The subject-matter of science is not something frozen, once and for all given. It is constantly evolving, as the phenomena and processes involved in the orbit of scientific research are qualitatively changing. Therefore, every science, periodically, at some historical stages of development, needs to be re-examined, clarified, and sometimes substantially reinterpreted. General legal science is no exception in this respect. The fundamental changes that have taken place in the post-Soviet space over the past thirty years have had a significant impact on the phenomena themselves, which constitute the object of the study of general theoretical jurisprudence. This necessitates not only a higher level of knowledge of them, the study of new connections and properties of these phenomena, but also the revision of certain well-established approaches and perceptions (Koziubra, 2013, p. 19).

The general theory of State and law emerged as a result of the gradual and evolutionary development of legal science as its organic, important component and the influence of specific historical circumstances on legal science as a specific system of knowledge. Its advent is due to the needs of society, which formulate the corresponding social demand to legal science, and the latter finds adequate tools to meet it (Kotsiubynska, 2012, p. 9). The stages of formation of ideas about the subject-matter of general theoretical legal science include: the first period (30s – 50s of the XX century) is formal, when the formation of ideas about the subject-matter of general theoretical science in the absence of ideological pluralism, the presence of excessive politicisation of science, attribution to the focus of subject-matter of the State and law theory and the category of regularities without their comprehensive analysis; the second period (50s-90s of the XX century) is characterised by the expansion of the focus of subject-matter of the State and law theory, the substantiation that State and legal regularities are part of the subject-matter of general theoretical science and the formation of a classical approach to the definition of the subject-matter; the third period (from the XXI century) is pluralism of scientific ideas about the subject-matter of the theory of State and law (Bondarenko, 2019, p. 12).

Traditionally, the subject-matter of the State and law theory is determined only through a set of legal (State and legal, legal and State) regularities. For example, the subject-matter of the State and law theory is "general and specific regularities of the advent, functioning and development of the State and law..." (Lysenkov, Kolodii, Tykhomyrov, & Kovalskyi, 2005, 10; Lysenkov, 2006, p. 13); "general and specific regularities of the advent, development and functioning of the State and legal reality in society" (Husariev, Oliinyk, Sliusarenko, 2008, 14); "universal (general) specific regularities of the advent, structuring, functioning and development of legal and State phenomena" (Rabinovych, 2008, p. 211), etc. According to the encyclopaedic legal literature, the State and law theory is one of the basic legal sciences and general theoretical academic disciplines. The subject-matter of the State and law theory are the basic general regularities of the advent, development and functioning of State and legal phenomena (the essence of the State, form of the State, type of the State, functions of the State, mechanism of the State, essence of law, form of law, system of law, legal relations, subjective rights, offences, application of legal provisions, legal and regulatory mechanism). The main common regularities are fundamental and universal, as they are common to different States and their legal systems. Therefore, regularities of modern State development are: an increase in the volume of general social affairs carried out by the State; active participation in international organisations and inter-State associations; observance of the principles and provisions of international law; the focus on human rights; a new approach to the correlation between the State and the rule of law; a new correlation between the State and society, according to which the State makes an enabling environment ("rules of the game") for the development of civil society and does not directly interfere in its activities; resilience in changes and combinations of State institutions. The State and law theory studies not only the regularities, but also the results of their action by means of certain parties of legal reality, that is, indirect actions of regularities (for example, the inevitability of liability – a legal principle arising from a State regularity of legal liability means). Since coincidences accompany the development of different States and their legal systems, the consideration of regularities also takes into account coincidence, because without knowledge of coincidences (regarding small changes) it is difficult to correctly understand general regularities (Skakun, 2004, pp. 36-37).

At the same time, legal doctrine presents an approach thereof proponents expand the subject-matter of the State and law theory,

highlighting in its content different components. For example, according to O.L. Kopylenko, the subject-matter of the State and law theory is the State and law as specific social phenomena, the general regularities of their occurrence, purpose and functioning, their essence, types, forms, functions, structure and mechanism of action, relations among themselves and legal relations with other actors of public life, the main State and legal categories common to all branches of jurisprudence, as well as the features of the State-political and legal consciousness and legal culture (Zaichuk, 2008, 23). Similar perspectives are expressed by other domestic legal theorists, in particular O.Y. Kotsiubynska (Kotsiubynska, 2012, p. 7), O.I. Osaulenko (Osaulenko, 2007, p. 6) etc.

In turn, M.V. Tsvik and D.O. Vovk argue that the subject-matter of the general theory of State and law is the essence and the most common regularities of the advent, development, functioning of legal and State phenomena and processes, as well as the main basic concepts for the entire legal science. According to the given definition in the structure of the subject-matter of the State and law theory involve three components: 1) the essence of law and the State; 2) the more general regularities of the advent, development, functioning of law and the State; 3) the system of legal concepts (Tsvik, 2011, p. 19). It should be noted that according to Y.V. Kryvytskyi, the subject-matter of the State and law theory is essential properties, general and specific regularities of the advent, development and functioning of the State and law, as well as other related phenomena of social reality. The first element of the subject-matter, investigated by general theoretical science, is the essence of State and legal phenomena. It is the principal and most essential property that distinguishes these phenomena from related homogeneous phenomena and is conditioned by deep connections and trends in their development (e.g., State – from non-State authorities, law – from other types of social regulators). For the State, such a characteristic is the existence of political power in the country, covering the entire population, for the law, it is its establishment in detail, a measure of possible and necessary behaviour. Perceptions of the essence of the State and law provide for the deepening and concretisation of knowledge about the nature of legal phenomena and the reference for the identification and study of existing regularities in the State and legal field. Next, the consideration of the second component of the subject-matter of the State and law theory requires specifying that State and legal regularities are objective, necessary, general, stable relationships of interaction of State and legal phenomena between themselves and other social phenomena deriving from their nature, essence (Hida, 2011, pp. 22-24).

Without diminishing the significance of the regularities in the analysis of the subject-matter of the State and law theory, it is appropriate to focus on the approach of the author's team led by Y.M. Oborotov that in the State and legal processes coincidences are also possible, because the State and law as social phenomena and human creations are not deprived of elements of chaos, irrationality, imbalance. In the light of this judgment, the subject-matter of State and law theory includes: 1) the nature and social purpose of State and legal phenomena; 2) regularities and coincidences of the advent, functioning and development of the State and law; 3) the system of concepts and categories used in jurisprudence (law, State, their essence, functions, forms, provisions of law, legal relations, realisation of law, order, etc.); 4) legal principles, axioms, presumptions, fictions that have been developed and used by legal theory and practice; 5) theoretical models of law-making, law application and interpretation practice; 6) forecasts and practical recommendations for the improvement and development of law and the State (Oborotov, Krestovska, Kryzhanivskyi, & Matvieieva, 2012, p. 7).

The perspective on considering not only regularities but also coincidences as the subject-matter of the State and law theory is shared by other specialists in the field of general legal theory. In particular, I.A. Serdiuk argues that it seems appropriate, within the framework of a synergistic methodological approach, to consider one of the components of the subject-matter of the State and law theory coincidental connections of the State and legal phenomena, the study of which will contribute to the improvement of complex systems with non-linear development, capable of self-organisation and self-regulation. Such systems may include civil society, the national legal system, etc. Therefore, it is possible to propose such an approach to the definition of the subject-matter of study: the subject-matter of the State and law theory is general and specific regularities of the advent, development and functioning of the State and law, as well as unknown or unexplored coincidental relationships that affect significantly the advent, development and functioning of these phenomena (Serdiuk, 2013, p. 46). According to I.H. Bilas and A.I. Bilas, the subject-matter of the State and law theory can be defined as a system of basic concepts and categories of legal science, general and specific regularities, coincidences of advent, development and functioning of State and law,

as well as other related phenomena (Bilas, Bilas, 2015, p. 14).

Therefore, domestic legal scholars gradually come to the conclusion that reducing the functioning of the State and law only to legitimate processes does not correspond to the specificity of any social system, including legal system, the development of which is not only regular, but also accompanied with the occurrence and disappearance of certain trends and coincidences.

3. Correlation between categories and concepts

The most important in the context of legal science is to determine the relationship of the category "regularity" with the adjacent philosophical category "necessity", corresponding to the category "coincidence". In many cases, philosophical consideration of the concept of "regularity", such a concept is identified with the concept of "necessity" or mediates it. The dual category of the concept of "necessity" is the notion of "coincidence", reflecting a random connection between phenomena of reality and with certain reservations is the opposite of the regularities. In general, in philosophical science the categories of regularities and coincidences are reflected with the help of paired philosophical categories, such as necessity and coincidences, specific due to reflection of different types of connections in the objective world and its knowledge. Therefore, it is necessary to consider thoroughly the concepts of "necessity" and "coincidence". In philosophy, "necessity" is defined as a concept for characterizing the internal stable relation of objects, which is due to the history of development and the totality of present conditions of such objects' existence. The necessary is what under certain circumstances must be available or will have to be. Necessity determines the internal regularity in the relationships between phenomena. The necessity is what in any case should occur under certain conditions in some way. The necessity reflects the stable, essential interrelationship of phenomena, processes and objects of reality, which is determined by the previous history of their development (Bondarenko, 2020, p. 134). The necessity is also understood as a system of interrelationships and relationships that determines change, progress, development in a precisely defined direction with clearly defined results. In other words, the necessity is a special link that necessarily leads to a certain event. In the field of State and legal phenomena, necessity and regularity are not identical. This is because necessity may be subjective, as opposed to always objective regularity. In this context, they state the necessity to adopt one or another law, to take necessary legal policy measures, etc. If the law is implemented only when necessary, the regularity is realised through the possibility. Objective necessity can be perceived as an unavoidable scenario, independent of the will of individual actors, a special case of regularities.

The relationship between regularity and coincidences, which are related categories, is of importance for general theoretical legal science. Coincidence refers to a category that reflects the problematic or unnecessary occurrence or existence of certain events. The coincidental is what, under certain conditions may or may not be. The necessary-to-coincidental ratio suggests that coincidences is a form of necessity detection, while coincidence is instead a complement to it (Bondarenko, 2020, p. 135). Coincidence as a philosophical category describes the external prerequisites of phenomena; what may or may not happen, what will take place in a certain way; what may or may not be in such conditions. The concept of coincidence reflects aspects of reality arising mainly from external conditions, superficial unstable relationships, and incidental occurrences of circumstances. Coincidence is a set of interrelations and relationships in which the occurrence of a certain event may or may not occur. It should be noted that coincidence is a relationship in which the occurrence of an event does not flow from general development trends and cannot be foreseen in advance. In many cases, in scientific developments, regularity and coincidence are characterised as antonyms. The category "coincidental" refers not to what happens without a causal link, but unpredictably affects the development of a certain regularity, due to which the result of its action changes. This situation may be the result of the interaction of two different regularities. Understanding the relationship between necessity and coincidence depends on the more general framework within which they are considered. Phenomena and processes that may manifest themselves as necessary in some contexts may be coincidental in other contexts and in other respects. Therefore, when considering the regularities, necessities and coincidences in the system of State and legal phenomena the specifics of this field should be taken into account (Bondarenko, 2020, p. 137).

In turn, D.O. Vovk argues that in the course of the study of legal regularities or trends, coincidences in the development of legal phenomena can arise. The latter mean an unpredictable, atypical confluence of circumstances in the field of law and the State as a legal concept, which occurs with little probability and is not conditioned by their essence. The specificity of coincidence is that it is not universal and is

not usually repeated in similar situations. For example, coincidences are the existence of various "atypical" forms of government (elected monarchy, Libyan Jamahiriya and others), non-standard forms (sources) of law (for example, the directives of the President in the Republic of Belarus of an uncertain legal character), unusual attributes of the State (for example, four State languages in Switzerland), etc. The occurrence of these coincidences is not related to the essence of legal phenomena and is determined by non-legal factors (desires to preserve or concentrate political power, specificities of the social system, historical past, etc.). The legal science study coincidences due to the fact that legal regularities, tendencies and coincidences do not exist separately. Coincidences, if repeated, can become trends. At the same time, the latter are able to transform into regularities. For example, the trend towards granting the right to vote to women has gradually evolved into an international standard of human rights, that is, it has become a regularity. Opposing examples are possible. For example, slavery and the possibility of human trafficking transactions are a reality for most systems of ancient law. In Europe, however, because of the economic inefficiency of slave labour and Christian dogmas, slavery is gradually declining and can be seen as a trend and subsequently a coincidence (for example, slavery in the US or serfdom in the Russian Empire) (Vovk, 2017, p. 868).

On the contrary, O.M. Nosdrin argues that the very fact of the existence of coincidence in social processes as absolute non-conditionality, and therefore the unpredictability of the development of a particular process, requires solid proof. So far, there is no convincing evidence for this in science, but the facts confirming the relativity of the concept of "coincidences", on the contrary, take place. Those phenomena, relationships, processes, which science for any reason cannot explain, bring them under the regularity are often recognised as coincidental. In fact, the entire history of science is a constant movement by explaining various kinds of "coincidences" (Nozdrin, 2013, p. 9).

According to N.M. Krestovska and L.H. Matvieieva, coincidences are also possible in State and legal processes, as well as in public life in general. Coincidence is an event, the main cause thereof cannot be established by the means of modern science, because it is caused by a multitude of insignificant and short-term causes. In jurisprudence, coincidence is understood as an unpredictable and atypical confluence of circumstances between the State and law, which occurs with little probability and is not conditioned by the essence of law. It is necessary to consider coincidences because the State and law as social phenomena and human creations are not free from the elements of chaos. In this sense, the State and law theory, like all other social sciences, is a science that is more lawful than regular. True, in most cases, coincidences are studied by not so much the theory as the history of State and law (Krestovska, & Matvieieva, 2015, p. 20).

4. Conclusion

Therefore, the above analysis enables to assert that the State and law theory, as any science, has its own subject-matter. Specifically, the subject-matter describes the autonomy of science, its special characteristics, and its place in the field of the scientific knowledge of reality. At the same time, the subject-matter of the State and law theory is made virtually by the entire system of legal sciences. This is due to the fact that sectoral and other legal sciences study only certain fields, aspects of the State and law or the history of the State and legal life and cannot give a holistic and complete picture of the State and legal organisation of society. Given that the subject-matter of any science is the basis for understanding its essence, specificity and purpose, its clear definition should be one of the main tasks that a particular science should perform. The subject-matter of the State and law theory is a constantly refined dynamic category.

The subject-matter of State and law is formulated as the comprehension of a complex object, that is, the State and law. Traditionally the content of the subject-matter is considered as the regularities of the advent, development and functioning of the State and law. However, the development of the State and law is affected not only by regularities but also by coincidences, due to which the formation and development of individual legal systems and State entities can be specified. Therefore, the subject-matter of the State and law theory should be considered not only as the comprehension of regularities, but also coincidences of the advent, development and functioning of the State and law, their role in various civilisations and cultures. The State and legal coincidence is a random, unlikely connection of State and legal phenomena and processes, not caused by State and legal regularities and does not reflect their essence. At the same time, the regularity in any case does not have full authority over the State and legal phenomena and processes. It does not fully form them with all the nuances and specificities, because in the State and legal field, the coincidence is of importance, which is a paired category regarding the regularity. Usually due to their

interaction, the regularity forms common features, the basis and essence of a certain State and legal phenomenon and process, while specific and special, unique features form coincidence.

In any event, the need for fundamental changes in approaches to the scope of subject-matter of the State and law are understood has not yet come to light. In this regard, to date not only the subject-matter of this science and the relevant subject, but even its designation is not agreed. Meanwhile, it is crucial to rethink the subject-matter and structure of the State and law theory due to not only internal but also external factors, the most important of which is development of inter-State integration processes in the field of science and education is of crucial importance among them.

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ВИПАДКОВОСТІ ЯК СКЛАДОВИЙ ЕЛЕМЕНТ ПРЕДМЕТА ТЕОРІЇ ДЕРЖАВИ І ПРАВА

Анотація. Мета. Метою статті є характеристика випадковості як складового елемента предмета теорії держави і права. **Результати**. У статті автор досліджує випадковості як складовий елемент предмета теорії держави і права. Проаналізовано та узагальнено наявні в юридичній літературі підходи до визначення предмета теорії держави і права. Розкрито сутність випадковості, її співвідношення з необхідністю та закономірністю. Охарактеризовано природу державно-правових випадковостей як важливого компонента предмета загальної теорії держави і права. Встановлено, що теорія держави та права, як і кожна наука, має свій предмет, адже саме останній визначає самостійність науки, її специфічні властивості та місце у сфері наукового пізнання дійсності. Водночас предмет теорії держави та права створюється фактично всією системою юридичних наук. Предмет теорії держави і права формулюється як осягнення складного об'єкта, яким є держава та право. Стало вже традиційним змістом предмета розглядати закономірності виникнення, розвитку та функціонування держави та права. Разом із тим у розвитку держави і права вагому роль відіграють не лише закономірності, а й випадковості, крізь призму яких часто тільки й можливо проникнути у специфіку становлення і розвитку окремих правових систем і державних утворень. **Висновки.** Обґрунтовано, що предметом теорії держави і права слід розглядати осягнення не лише закономірностей, а й випадковостей виникнення, розвитку та функціонування держави і права, їх ролі в різних цивілізаціях і культурах. Державно-правова випадковість – це випадковий, малоймовірний зв'язок державно-правових явищ і процесів, що не зумовлений державно-правовими закономірностями та не відображає їх сутність. У будь-якому разі усвідомлення необхідності корінних змін у підходах до розуміння предметного поля теорії держави і права ще не настало. У зв'язку із цим наразі відсутня єдність поглядів не лише стосовно предмета цієї науки і відповідної навчальної дисципліни, а й навіть щодо її назви. Тим часом нагальна потреба в переосмисленні предмета й структури теорії держави і права все відчутніше зумовлюється не лише внутрішніми, а й зовнішніми чинниками, вирішальне значення серед яких належить розвитку міждержавних інтеграційних процесів у сфері науки та освіти.

Ключові слова: теорія держави і права, предмет теорії держави і права, закономірність, випадковість, державно-правова закономірність, державно-правова випадковість.

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