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SOPHISMS IN THE HISTORY OF LEGAL ARGUMENTATION

LOS SOFISMOS EN LA HISTORIA DE LA ARGUMENTACIÓN JURÍDICA

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Abstract

The article examines the history of the use of sophisms in legal argumentation, raises questions of the admissibility of the use of sophisms in jurisprudence, shows the errors of traditional for philosophy sophisms. The scientific analysis of sophisms made it possible to clearly describe a number of logical errors underlying sophisms. One of the common causes for sophisms in legal argumentation is the substitution of dilemmas: instead of constructing two complex dilemmas and reasoning as to which of them will be priority – the first or the second – opponents formulate two erroneous dilemmas that are in relation to contradictions to each other.

Keywords: Sophism, Legal argumentation, Dilemma, Logic.

Resumen

El artículo examina la historia del uso de sofismas en la argumentación jurídica, plantea cuestiones sobre la admisibilidad del uso de sofismas en la jurisprudencia, muestra los errores de los sofismas tradicionales para la filosofía. El análisis científico de los sofismas permitió describir claramente una serie de errores lógicos subyacentes a los sofismas. Una de las causas comunes de los sofismas en la argumentación jurídica es la sustitución de dilemas: en lugar de construir dos dilemas complejos y razonar sobre cuál de ellos será prioritario, el primero o el segundo, los oponentes formulan dos dilemas erróneos relacionados con las contradicciones el uno al otro.

Palabras Clave: sofisma, argumentación jurídica, dilema, lógica.

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1. INTRODUCCIÓN

Logic considers all reasoning from the point of view of their correctness (or incorrectness). The main task of the science is the analysis of correct reasoning; wrong reasoning is studied only from the point of view of the analysis of errors. Despite the fact that some philosophers, for example, A. Schopenhauer¹, do not put a clear boundary between correct and incorrect reasoning, because they consider it permissible to use incorrect methods, if these methods lead to the victory of truth, most modern scientists and lawyers argue the opposite. “A victory won with a poisoned weapon will not bring you pleasure, on the contrary, the memory of it will bake your soul with shame for a long time”, this is how A. Nikiforov² writes when he answers the question: “Is it permissible to use an incorrect method against oneself and respond with an incorrect method?” . “It is extremely difficult for a person who abhors a lack of clarity in thoughts to be a poet, a politician - in a word, a public person. ... The phrases with which one should address the crowd ... three-quarters are forbidden for him”, Paul Valéry wrote³. Legal argumentation presupposes not only the ability to collect information, analyze, put forward versions, but also observe a logically correct structure of reasoning. Unfortunately, the latter is not always observed, and sometimes it is deliberately violated.

2. UNDERSTANDING OF SOPHISTRY AND SOPHISMS IN THE HISTORY OF PHILOSOPHY

Historically, the terms “sophistry” and “sophism” have firmly acquired a negative meaning, but in the history of the development of logic and jurisprudence, this was not always the case. Moreover, even today the term “sophism” has, in addition to a negative meaning, another meaning: sophism is a form of posing problems inevitable at a certain stage in the development of theoretical thinking. “In a similar way, the word “sophist” itself means not only an “intellectual swindler”, but also a philosopher who first pondered the problems of language and logic”⁴.

¹ Schopenhauer, *Eristics or the Art of Winning Controversy*, (Sankt-Peterburg: 1900).

² Nikiforov, *Logics*. (Moskva: The whole world, 2001).

³ Valerie, *On Art*, (Moskva: Art, 1976): 204.

⁴ Ivin, *Logic for Journalists*, (Moskva: Aspect Press, 2002): 120.

A. Ivin states: “Everything in history repeats itself, appearing the first time as a tragedy, and the second time as a farce. Paraphrasing this aphorism, we can say that sophism, which for the first time raises a certain problem, is, in essence, the tragedy of an insufficiently mature and insufficiently knowledgeable mind trying to somehow understand what it is not yet able to express even in the form of a question. Sophism, veiling a well-known and, possibly, already solved problem, thereby repeating what has already been passed, is, of course, a farce”⁵. E. Lisanyuk believes that sophistry, as a deliberate misleading carried out by one agent in relation to another, is pseudo-argumentation. “Plato and Aristotle, who tried to delimit genuine knowledge and the search for the truth from the sphere of practical activity, exposed sophistry as an activity that substitutes the goal of cognition with commercial and other goals and the sophists – as its “inventors” and guides. Aristotle, criticizing the activities of some teachers of eloquence, saw the main drawback of sophistry in the fact that effective methods of reasoning can and in fact are used by them thoughtlessly, without realizing the key principles and goals of rational cognition: “Teaching students by them was quick, but inept, for they believed that it is possible to teach by transferring to students not the art itself, but what is received by art”. Plato was driven by several other reasons for the negative attitude towards sophistry and sophists. In the dialogue “The Sophist”, through the words of Socrates, the sophists are likened to the hunters for rich youths versed in words, and sophistry is likened to trading in reasoning and knowledge. The main goal of the sophists, according to Plato, is not so much profit, but misleading youth by spreading false knowledge, since “the sophist purifies the soul not for true, but for imaginary knowledge, creating ghostly likenesses of this knowledge, but not true reflections”⁶.

Since the times of Aristotle and Plato, E. Lisanyuk argues, the goals and functions of sophistry - the ancient version of what is called “black rhetoric” at the present stage, have changed little. Like modern philosophers exploring the features of legal dialogues, Aristotle believed that “a person becomes a sophist not by virtue of any special ability, but by virtue of the intention with which he uses his talent”⁷.

⁵ Ivin, *Logic for Journalists*, (Moskva: Aspect Press, 2002): 124.

⁶ Lisanyuk, *Logical-cognitive Theory of Argumentation*. Dissertation for the degree of Doctor of Philosophy, (Sankt-Peterburg: 2016): 103.

⁷ Aristotle, *Rhetoric*, (Moscow: Publishing house of Moscow University, 1978): 52.

Modern researchers of legal argumentation focus on the search for demarcation procedures for the legitimacy and illegitimacy of arguments in the proof. E. Lisanyuk offered as an example of such a distinction Aristotle's position on the differences between logic, dialectics, rhetoric and sophistry in terms of purpose, subject, method, form, rules and audience⁸.

Aristotle expounds the distinction between the concepts of “dialectics”, “eristics” and “sophistry” in the works “Topics” and “On sophistical refutations”. The father of logic assessed dialectics positively, but they gave exclusively negative characteristics to eristics and sophistry. The subject of research in all three branches of knowledge is syllogisms (reasoning). “These reasoning differed significantly from the scientific syllogisms that were the subject of analytic research. What made them different? First of all, the assumptions that make up such reasoning. In scientific syllogisms, assumptions were to be necessary provisions”⁹. True judgments are such necessary statements. In dialectics, eristics and sophistry, the assumptions of reasoning could have both a necessary and a plausible character; their truth was not established in advance. “However, the plausibility may vary. Sometimes it only seems to a person that this or that statement has a plausible character. It is these assertions that are used as assumptions in eristic inference. The eristic reasoning proceeds from the provisions that seem plausible, but in fact are not...”¹⁰. “Eristic and sophistic inference is, firstly, an imaginary inference about what dialectics does as an art of testing, even if the conclusion is true, for it is deceptive in relation to the cause. Secondly, these are such paralogisms that, not corresponding to the way of researching a given subject, seem to be built according to the rules of the corresponding art”¹¹. Thus, dialectical reasoning differs from eristic reasoning: by an imaginary character; the appearance of revealing the essence of the research subject; goals of the reasoning being undertaken.

⁸ Lisanyuk, «Round table review: "Reasoning and persuasion in modern social practices"», magazine RATSIO, 7 (2012): 160-168.

⁹ Khomenko, «Discourse of the eristic dispute», magazine RATSIO, num 6, (June 2011): 147-161.

¹⁰ Aristotle, *Topic, Works: In 4 volumes, Vol. 2*, (Moscow: Science publishing house, 1978): 349.

¹¹ Aristotle, *On Sophistic Refutations, Works: In 4 volumes, Vol. 2*, (Moscow: Science publishing house, 1978): 554-555.

If dialectics, according to Aristotle, is useful both for training and for oral conversations, and for philosophical knowledge, then eristics, in his opinion, pursues only one goal - victory in an argument in dishonest ways. Eristics differs from sophistry precisely in goal. For eristics, the goal is victory in an argument, for sophistry, the goal is “profit with the help of imaginary wisdom”¹². The arguments used by the erists and the sophists are the same, but the goal of their use is different. The eristic argument is for the sake of an imaginary victory, the sophistic argument is for the sake of imaginary wisdom.

In modern researches, the distinction between the sophistic and the eristic debate is often not made. Thus, D. Walton repeatedly in his works considers the eristic dialogue as sophistic, defining it as such type of dialogue that is conditioned by a high level of competition and competitiveness, where each participant tries to create the impression of the most intelligent and skillful debater. *Ad hominem* arguments, directed against the personality of the opponent, which, according to formal logic, are unacceptable, are not rejected and used in legal argumentation. *Ad hominem* arguments are common in political debate, litigation, family matters, and everyday life. D. Walton argues that, although these arguments are considered mostly erroneous, in a number of cases *ad hominem* arguments are quite justified¹³. D. Walton analyzes in detail the structure of these arguments and offers an effective way to classify and evaluate them. In general, D. Walton identifies six main types of dialogue on the basis of the initial situation of a dialogue, the individual aims of its participants, and the collective main goal of the dialogue. These are persuasion dialogue, negotiation dialogue, eristic dialogue, inquiry dialogue, deliberation dialogue and information-seeking dialogue. I. Khomenko proposes such terms as discourse, social discourse, norms of rationality, norms of consistency, norms of adequacy as criteria for dividing different types of disputes¹⁴.

¹² Aristotle, *On Sophistic Refutations*, Works: In 4 volumes, Vol. 2, (Moscow: Science publishing house, 1978): 555.

¹³ Walton, *Ad Hominem Arguments*, (Moscow: Institute of the Public Opinion Foundation, 2002).

¹⁴ Khomenko, «Discourse of the eristic dispute», magazine RATSIO, num 6, (June 2011): 155-156.

At the same time, in modern philological research, specific criteria are introduced to distinguish between eristics, sophistry and dialectics. Eristic speech interaction is considered as “a special speech genre that goes beyond the formal organization defined as a dispute, debate, etc. This genre largely depends on the combination of parameters of the speech situation and can manifest itself as a speech strategy due to the institutional framework of communication (court or parliamentary hearings, televised debates, etc.), or as speech tactics at a certain stage, both ordinary, casual and official and public, institutional communication”¹⁵.

Basing on rhetorical research I. Tamrazova believes that it is possible to divide *eristics*, as a method of knowing the truth through the comparison of opinions, into the ways of its implementation and the goals achieved by these methods¹⁶. As a result, there are the following types of eristics: dialectical eristics, sophistic eristics, heuristic eristics. I. Tamrazova identifies several fundamental consequences of dialectical eristics: 1) the truth does not exist *a priori*; 2) the truth follows from practice presented in the form of facts (argumentation), and this presentation has the author (subjective); 3) the truth is not always a common property, i.e. conventional wisdom is not always the truth.

“Therefore, in order to achieve the truth, one needs not only argumentation, which can be considered as the main property of correct (logical) dialectics and correctness of speech interaction, but also the possibility of refuting and denying the generally accepted opinion (norm). This is the difference between dialectics and eristics as a heuristic method of antiquity”¹⁷.

Thus, eristics is the art of arguing in such a way as to be always right “per fas et nefas”. Undoubtedly, the truth of a disputable issue is an objective indicator, but the rightness of those

¹⁵ Tamrazova, Functional-pagmatic Characteristics of Eristic Discourse (Based on the French and Russian Languages), Dissertation for the degree of candidate of philological sciences, (Pyatigorsk: 2009).

¹⁶ Ibid.

¹⁷ Tamrazova, Functional-pagmatic Characteristics of Eristic Discourse (Based on the French and Russian Languages), Dissertation for the degree of candidate of philological sciences, (Pyatigorsk: 2009).

arguing in the eyes of the audience is something completely different than an indicator of the objective truth, these things are not identical¹⁸. Eristic dialectics is entirely based on the truth of the disputants, visible to the audience. In an eristic dialectic, the participant in the dispute fights not for the truth, but for his thesis, and wants victory in the dispute even when he realizes that his judgment is false.

Returning to the search for demarcation procedures of legitimacy and illegitimacy of arguments in argumentation, in addition to the above division of dialectics, rhetoric and sophistry, E. Lisanyuk¹⁹ proposes to distinguish between legitimate speech social practices, such as eristics and peirastics (peirastics is the art of fitting for trial in oral speech, in dialogue, in order to teach the subject to adequately and promptly formulate his own dialogue moves, or in order to check how much he masters the art of conducting a conversation; it is assumed that no other goals other than those indicated the trial does not pursue), and illegitimate - rabulistics (rabulistics is the art of fitting for trial in dialogue with the intention to present the subject in a light that is unfavourable for it, sometimes in a derogatory one), sophistry and “black rhetoric” (black rhetoric, according to K. Bredemeier²⁰, is the manipulation of all the necessary rhetorical, dialectical, eristic and rabulistic techniques in order to direct the conversation in the desired direction and lead the opponent or the public to the conclusion and result desired for the manipulator; to distinguish in what context and under what issues your arguments do not mean anything or, on the contrary, are decisive. “The magic power of linguistic means lies in the ability to argue and debate, accentuate, promote and conduct a dispute so that the speaker always gains the upper hand, and, as Arthur Schopenhauer put it, “per fas et nefas” - by hook or by crook²¹). Thus, E. Lisanyuk refers sophistry to unacceptable methods of argumentation.

¹⁸ Harmash, Khalanska, Melnyk, Razumenko, Tyshchenko, “Nonverbal Means of Communication in Modern Literature: J. M. Coetzee’s Novel “The Master of Petersburg””, *Amazonia Investiga*, 8 (2019): 252-258.

¹⁹ Elena Lisanyuk, «Round table review: “Reasoning and persuasion in modern social practices”», *magazine RATSIO*, 7, (2012): 167.

²⁰ Bradmeier, *Black Rhetoric: The Power and Magic of the Word*, (Kyiv: Alpina Publisher, 2018): 87.

²¹ *Ibid.*

At the same time, we should pay attention to the fact that V. Sergeev believes that the classification proposed by E. Lisanyuk does not correspond to the cognitive principles of modeling argumentation and is similar to an anachronism, and V. Chueshov argues that the distinction between logic, dialectics, rhetoric and sophistry, and the distinction between legitimate and illegitimate ways of argumentation are made on different grounds, therefore, we should not link one classification with another, as suggested by E. Lisanyuk²².

In general, there is no doubt that all reasoning from a logical point of view is divided into correct and incorrect. Correct reasoning is reasoning built in compliance with all the laws and rules of logic. Incorrect reasoning is reasoning built in violation of logical laws and rules, as a result of which errors may appear (however, they may not appear).

Let us give examples of incorrectly constructed categorical syllogisms for figure 1 with violation of the second rule of figure 1 (the lesser premise must necessarily be an affirmative judgment) with true judgments in both premises.

1. Fraud is possible only with direct intent.
2. Negligence in the performance of official duties resulting in the death of a person is not a fraud.

Consequently, the negligent performance of official duties, which entailed the death of a person, is committed without direct intent.

In the given example, despite the fact that 2 rule 1st figure of the categorical syllogism is violated, and the conclusion is made in violation of the rules, nevertheless, the judgment obtained in the conclusion corresponds to reality, and is true in itself.

²² Lisanyuk, «Round table review: "Reasoning and persuasion in modern social practices"», magazine RATSIO, 7 (2012): 168.

Next example:

1. Fraud only happens with direct intent.

2. Robbery is not a fraud.

Consequently, the robbery has no direct intent.

In this example, the categorical syllogism is also built according to the 1st figure, has the same construction error, and the conclusion in this case is a false judgment.

Legal reasoning must avoid any misconception, whether the conclusion is true or false.

Logical errors are of two types: paralogisms and sophisms. The first are associated with unintentional violation of the rules, with ignorance of something, with inattention; the latter imply a deliberate violation of the rules and laws of logic.

Sophism (from Greek, skill, ability, cunning invention, trick, invention) is an incorrect reasoning, which, however, at first glance seems quite acceptable. Sophism is based on a deliberate violation of the rules of logic, which is its essential difference from paralogism, which contains an unconscious error, or does not have errors at all, but leads to a false conclusion. Thus, paralogisms are logical errors that are made in the process of reasoning unintentionally (due to ignorance). Paralogism also arises when there is an antinomy - two conflicting thoughts at the same time regarding the same subject.

Besides sophisms and paralogisms, there are also paradoxes. A paradox is a contradiction that has arisen between two positions that are proved with equal probability. A paradox is a contradiction that arises against the intuitively expected rules of reasoning. In contrast to paradox, sophism is a statement obtained as a result of reasoning that has the appearance of correct, but in reality is erroneous.

Sophisms are used with a purpose which is a deliberate deception of the interlocutor. We can argue that sophism is a special technique of intellectual fraud, an attempt to present a lie as truth and thereby mislead interlocutors or listeners. Hence, a “sophist”, in the modern sense of the term, is a person who is ready to defend his beliefs with the help of any, including unlawful, methods, regardless of whether they are true or not. Speaking about the imaginary persuasiveness of sophisms, the ancient Roman philosopher Seneca compared them with the art of magicians: we cannot say how their manipulations are performed, although we firmly know that everything is done not at all as it seems to us. F. Bacon compared those who resort to sophisms to a fox who winds well, and the one who reveals sophisms to a hound who knows how to unravel the tracks. That is why Aristotle calls sophism “a putative proof”, in which the validity of the conclusion seems to be correct and owes a purely subjective impression caused by a lack of logical or semantic analysis²³. A. Schopenhauer gives an analysis of sophistry in his work “Eristics” in which he develops and investigates special techniques and tricks, which he combines in the doctrine, which he called “eristic dialectics”. A. Schopenhauer examines not only the logical and linguistic reasons for sophisms (to which Aristotle also paid attention), but also reveals the psychological reasons. In practice, all three types - logical, grammatical (semiotic) and psychological factors - are closely related to each other.

The persuasiveness, at first glance, of numerous sophisms is usually associated with a well-disguised error: semiotic, logical or psychological.

The object of the research is the logical correctness of the construction of legal reasoning. The purpose of the work is to reveal and analyze logical errors that are used to create sophisms used in legal argumentation.

²³ Aristotle, *On Sophistic Refutations*, Works: In 4 volumes, Vol. 2, (Moscow: Science publishing house, 1978): 568.

3. **METHODOLOGY FOR HISTORICAL ANALYSIS**

The methodological basis of the research is a system of conceptual approaches, general scientific and special legal methods, as well as methods of scientific cognition. At the same time, the choice of conceptual approaches is primarily due to the interdisciplinary, complex nature of the study and the peculiarities of the selected problematic.

The research methodology of sophisms used in legal argumentation, in the context of historical views on the admissibility or inadmissibility of their application, presupposes the consistent application of general scientific, philosophical, philosophical-legal and logical methods of scientific analysis. In the scientific study of the essence of sophisms, the emphasis was on the logical methods of scientific analysis. The complementarity of logical, systemic-structural, comparative-legal methods allowed us to multifacetedly explore innovations in the use and overcoming of sophistic legal argumentation.

4. **STUDY OF LOGICAL ESSENCE OF SOPHISMS IN LEGAL ARGUMENTATION**

Logical analysis of sophism “Litigation of Protagoras with Euathlus”

Let us start with the well-known sophism of the ancient Greeks “Litigation of Protagoras with Euathlus”. A. Ivin even calls it a paradox²⁴, that is, a reasoning that leads to two opposite conclusions, for which it is impossible to find a logical solution. Let us recall the plot. Protagoras, an eminent sophist, opened a school in which he taught students the art of winning in disputes, and the attendance was for fee. As V. Asmus writes: in the serious speeches of the most talented and thoughtful of the sophists, there is a true confidence in the ability to teach others, in the ability to convey to students the basics of their skills and art. “In the images of the sophists, distorted by bias or tendentiousness, drawn by the hand of their political and ideological opponents, an attentive glance reveals the features of a serious and quite sincere inspiration in pedagogical activity.

²⁴ Ivin, *Logic for Journalists* (Moskva: Aspect Press, 2002): 202-203.

People like Protagoras, Gorgias, Prodicus, Hippias, not only knew a lot and were able to do a lot. They could not have acted if they had not been convinced that the art that constitutes their gift can be passed on to others through rational methods that can be learned”²⁵. We need this digression in order to remove from Protagoras possible charges of charlatanism.

The young man Euathlus comes to Protagoras and says that he wants to go to his school. The teacher doesn't mind accepting a new student, but Euathlus is confused by the high tuition fees. But my teaching is also high - the sophist counters. Of course, the young man agrees, but he has doubts about whether he, inexperienced in the art of arguing, will be able to master the science. Protagoras likes this argument of Euathlus, because he really believes that not everyone can master his art. The philosopher finds a way out: Protagoras invites Euathlus to make an agreement according to which the student will pay for instructing only if he can master the art. But what will be the criterion for mastering the material? Is it teacher's assessment? No. This criterion is assigned to the first appearance of the young man in court. If Euathlus wins his first lawsuit, then he is considered to have mastered the teachings and is obliged to pay Protagoras's tuition fee. If the young man loses the first trial, then it will be considered that the time spent at school was in vain for the student, and he has not mastered the science. They said that Euathlus was the best, most talented student of Protagoras. However, after graduation, Euathlus is in no hurry to appear in court. Protagoras comes to a former student and informs the latter that he is filing a lawsuit against him. “Now you will pay me anyway”, says Protagoras. “If you win the case in court, then you pay for our agreement, because you won the first case; if you lose, you will pay me by court order”. “Nothing of the sort,” Euathlus denied. “If I win the case in court, then I will not pay by the court's decision, but if I lose, then I will be exempted from paying according to our agreement with you, because I lost my first trial”. We do not know how the outstanding sophist solved the situation: the work of Protagoras “Litigation for Wages” has not reached us.

²⁵ Asmus, *Historical and Philosophical Studies*, (Moscow: Mysl Publishing House, 1984).

A number of logicians believe that the reason should be sought in violation of the law of identity, while others hint at equivocation - the use of the same concept in different meanings, which, in principle, does not exclude the violation of the first basic law of logic²⁶. According to G. Chelpanov, the mistake becomes clear if two questions are posed separately: 1) whether Euathlus should pay or not; and 2) whether the terms of the agreement are met or not²⁷. However, without Euathlus appearing in court, it remains open to decide whether he should pay or not, and if the terms of the agreement are not met, then again the issue of payment can be resolved in two ways. The court may look for a hidden intent from the defendant when concluding an agreement and, in this case, Euathlus is obliged to pay, since from the very beginning he planned to avoid paying tuition fee; and if there is no such intent, and there are good reasons why Euathlus does not take up the litigation (let's say, he has a high sense of responsibility and does not consider himself ready to conduct litigation), then he must not. As A. Ivin writes, the researchers "referred, in particular, to the fact that a court decision should have greater force than a private agreement between two persons. To this we can answer that if there was not the agreement, no matter how insignificant it may seem, there would be no court or its decision. After all, the court must make its decision on this issue and on its basis. They also referred to the general principle that any work, and hence the work of Protagoras, must be paid. But it is known that this principle has always had exceptions, especially in a slave society. In addition, it is simply not applicable to the specific situation of the dispute: after all, Protagoras, guaranteeing a high level of education, himself refused to accept payment in case of failure of his student in the first litigation"²⁸.

G. Leibniz, in his doctoral dissertation "Inaugural Disputation on Ambiguous Legal Cases", tried to prove that all cases, even the most complicated ones, like the litigation between Protagoras and Euathlus, should find the right solution based on common sense. According to G. Leibniz, the

²⁶ Nevelska-Hordieieva, Panova, Voitenko, Melikhova, "Classification of Violations of the First Basic Logic Principle: Judicial, Manipulative and Comic Effects", *Revista Inclusiones*, 8 (2021): 276-291.

²⁷ Chelpanov, *Textbook of Logic*, (Moscow: Editorial URSS, 2011): 32.

²⁸ Ivin, *Logic for Journalists* (Moskva: Aspect Press, 2002): 203-204.

court should refuse Protagoras due to the untimely filing of the claim, but retain, however, the right to demand payment of money from Euathlus later, namely, after the first trial, if the latter wins it. But, from A. Ivin's point of view, the decision of G. Leibniz only at first seems convincing, because, in essence, the outstanding lawyer proposes retroactively to replace the wording of the agreement and insists that the first trial with the participation of Euathlus, in which he appears as a defendant in Protagoras' claim, therefore, can decide nothing. The result of the trial, which will be used as a criterion: to pay or not to pay, will be the second trial of the young man. If there had been such a slip of the tongue in the initial agreement, the need for a trial would not have arisen at all, - A. Ivin asserts and insists on the impossibility of fulfilling together the agreement in its primary form and the court's decision, whatever the latter was: "the agreement, regardless of its completely innocent appearance, is internally contradictory, because Euathlus must pay for his studies, and at the same time not pay for it"²⁹.

However, we cannot agree that there is a paradox here; that the agreement itself is contradictory. A. Ivin reveals the factual error of this sophism, but not the logical one.

The reason for the logical error lies in the violation of the rules for constructing a lemmatic syllogism. We face two difficult dilemmas.

The first complicated constructive dilemma looks like this:

1. If the court determines that Euathlus must pay Protagoras tuition fee, he will pay by court order. Or, if the court determines that Euathlus does not have to pay, then he is exempted from paying for his studies at the Protagoras school by the court's verdict.

2. The court either decides that Euathlus is obligated to pay, or decides that he is not obligated to pay.

²⁹ Ivin, *Logic for Journalists*, (Moskva: Aspect Press, 2002): 204-204.

Conclusion: Euathlus either pays for his studies to Protagoras by the court verdict, or does not pay Protagoras by the court verdict.

In the form of a diagram, this conclusion can be written as follows:

1. If A then B, or if C then D.
2. A or C.

Conclusion: B or D.

1. If, by agreement with Protagoras, Euathlus wins the first case in court, then he must pay Protagoras for his studies, or if, by agreement with Protagoras, Euathlus loses the first case in court, then he must not pay Protagoras for his studies.

2. Euathlus either wins the first case in court, or loses the first case in court.

Conclusion: Euathlus either pays Protagoras under the agreement or does not pay Protagoras under the agreement.

In the form of a diagram, this conclusion can be written as follows:

1. If K then L, or if M then N.
2. K or M.

Conclusion: L or N.

How did Protagoras build his dilemma? With error:

1. If A then B, or if K then L.
2. A or K.

Conclusion: B or L.

How did Euathlus build his dilemma? Also with an error, but in contradiction with the previous erroneous dilemma of Protagoras, as if displaying it in a mirror.

1. If C then D, or if M then N.
2. Either C or M.

Conclusion: either D or N.

Thus, instead of constructing two difficult dilemmas and reasoning as to which of them will be the priority - the first or the second one, the cunning sophists simply construct two erroneous dilemmas that are in a relationship of contradiction to each other³⁰. The situation looks dead-end and insoluble only at first glance. The main purpose of Protagoras' claim should lie not in the issue of receiving money, but in the student's failure to comply with the terms of the agreement, according to which the latter must appear in court: Euathlus must take the case and conduct this case in court, because otherwise he violates one of the conditions of the agreement, namely - refuses to appear in court. And then, after Euathlus' speech at the trial, his agreement with the teacher Protagoras comes into force. If Euathlus refuses to appear in court, then the court may admit the need for Euathlus to pay for tuition at the Protagoras school without his speech, as such, because he refused one of the conditions of the agreement with the teacher. The essence of the logical error of sophism lies in the use of two mirrored, but incorrectly constructed, dilemmas, each of which consists of two parts of two different dilemmas.

Sophisms based on a change in the moral assessment of the situation

Other "mirrored" lemmatic arguments are built in a similar form, but without the error of the previous example. Sophisms, built on a change in the moral assessment of the situation, allow the use of a couple of complex constructive dilemmas in relation to contradictions to each other.

A well-known situation with Socrates: once a woman came to Socrates with her grief. She complained that her son intended to engage in political activities. I forbid him to even think about it, the woman said to Socrates, because if he engages in political activities he will either have to lie or tell the truth.

³⁰ Nevelska-Hordieieva, "Logical Errors in Deductive Reasoning", Scientific notes of the Vernadsky Tavrichesky National University. Science Magazine. Series "Philosophy. Culturology. Political science. Sociology". Vol. 24 (2012): 354-362.

1. If he lies, the gods will hate him, if he speaks the truth, people will hate him.
 2. He will either have to lie or tell the truth.
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Therefore, either gods or people will hate him.

Socrates answered the woman: you are not right. Your son must engage in political activities and he will either have to lie or tell the truth.

1. If he lies, then he will become a favourite of people, if he speaks the truth, then he will be a favourite of the gods.
 2. He will either have to lie or tell the truth.
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Therefore, he will be a favourite of either people, or a favourite of the gods.

Here we have a shift in emphasis from one value (loss of love, which is hatred) to another (to be loved either by the society of people or by the society of gods)³¹.

This example of conflicting dilemmas is quite common. For example, in the famous book by Jonathan Lynn and Anthony Jay “Yes, Prime Minister”, the authors show just a similar situation, where the hero formulated one dilemma in a negative light and decides which of the worst situations for himself to choose. At the same time, it is possible, as in the previous example, to build a positive dilemma and argue which of the best alternatives is preferable.

The minister is considering whether to sign a contract for the construction of an enterprise that will pollute the environment with metadioxin, which negatively affects the health of pregnant women, or to reject it. “Yes, the dilemma is not an easy one. If I block the propanol contract, *The*

³¹ Harmash, Khalanska, Nevelska-Hordieieva, Sidak, Yuryeva, “Losev and Russian Symbolists”, *Amazonia Investiga*, 86 (2019): 493-499.

Times and *the Daily Telegraph* will scream about my “political cowardice”, and if I give him the ‘go-ahead’, *the Daily Mirror* and *the Sun* will declare me the “killer of unborn babies”. Is there really no way out?”³² [8, p. 172]. The hero of the book focuses only on negative consequences for himself:

1. If the minister blocks the propanol contract, *the Times* and *the Daily Telegraph* will scream about his “political cowardice”, or if the minister signs the contract, *the Daily Mirror* and *The Sun* will declare him the “killer of unborn babies”.

2. The minister either signs the contract or does not sign it.

The minister will be accused of either political cowardice or of “killing unborn babies”.

However, it is possible to construct a second, contradicting the first, dilemma, but already with positive consequences from the situation under discussion. Second dilemma:

1. If the minister gives ‘the go-ahead’ to the propanol contract, *the Times* and *the Daily Telegraph* will write about the “political foresight” of the decision, or if the minister blocks the contract, *the Daily Mirror* and *The Sun* will declare him a fighter for health of the nation.

2. The minister either signs the contract or does not sign it.

Conclusion: the minister will be praised for either political foresight or concern for the health of the population.

In this example, as in the previous example with Socrates, the emphasis of the significance of the assessment is shifted from negative to positive: it is necessary to choose not from two negative outcomes of a situation, but from two positive outcomes of the same situation.

³² Lynn and Jay, *Yes Prime Minister* (London: Faber & Faber, 2010).

5. RESULTS AND DISCUSSION

In legal argumentation, as well as in journal articles, journalistic and discussion materials, the considered lemmatic error, unfortunately, is not uncommon. Here we can recall Leibniz's reflections on the causes of people's delusions, as well as on the reasons for erroneous judgments; they are four, according to the philosopher: 1) lack of evidence, 2) insufficient ability to use them, 3) lack of desire to use them, and 4) incorrect rules of probability. "Most of all the delusions of people, according to Leibniz, come from belief in authorities. Passions are also the source of many misconceptions. Here Leibniz quotes the words of the Roman poet Virgil: "Those in love create their own dreams to suit themselves". The fact that there are a lot of disagreements among people on various issues testifies, says Leibniz, to how often people are mistaken and deceived. After all, there is only one truth, and people have an infinite variety of views on the same subject", writes Makovelsky³³.

There are a number of other sophisms. The reasons for sophism can be: substitution of the main idea (thesis) of the proof; substituting the refutation of the thesis with the refutation of the argument; expansion or contraction of the thesis; loss of thesis; accepting false principles as true; pseudo-causal relationship; imposed consequence; vicious circle in proof; incorrect dichotomy; creating the appearance of proof; prediction of the basis; evasion of evidence, etc.

Thus, the technique of an incorrect dichotomy is that instead of a number of possible alternatives, only two are offered, as a rule, they are extreme ("either complete permissiveness or totalitarian tyranny"). When creating the appearance of proof, logical indicators are used not for purposes: "to mean", "therefore", "because", "proven", "justified"; as well as reliability indicators: "true", "obvious", "be sure".

³³ Makovelsky, History of logic, (Moskva: publishing house Science, 1967): 408.

There are manipulations based on the incorrect construction of a complex course of evidence in general:

I. Technique of *retitio principii*: introduction of the conclusion which needs to be proved, in the hidden kind in argument's premises. For example, if in proving the immorality of the unregistered residence of a man and a woman a person eloquently insists on its demoralizing influence, not caring to give an account of why civil marriage is an immoral act, then such considerations will include *petitio principii*. Or, for example, a citizen accuses a parish that instead of helping people, the priesthood establishes contacts with local authorities. But, in order to help those in need (i.e. to "be engaged in social work") it is necessary to interact with the authorities. Any attempt by the parish to do anything - for instance, feeding the homeless - will require immediate coordination with local authorities. Constructive cooperation with the authorities is necessary precisely for the care of ordinary citizens who are in hospitals, prisons, or without shelter on the streets.

The structure of the categorical syllogism, which corresponds to the above reasoning, is as follows:

1. The Church must help suffering people.
2. To help suffering people, it is necessary to establish contacts with the city authorities.

Thus, the church needs some contacts with the city authorities.

The manipulator, obtaining a conclusion in a categorical syllogism that the parish has established contacts with the city authorities, introduces in a hidden form in the proof as a basis: the priesthood establishes contacts with government officials at the local level, and further accuses the priesthood that instead of helping suffering people, it establishes contacts with the authorities.

The structure of this categorical syllogism is as follows:

1. The priesthood establishes contacts with government officials at the local level.
2. The priesthood does not help suffering people.

Therefore, assistance to suffering people is not related to establishing contacts with local authorities.

This is the essence of the technique *retitio principii*.

II. The technique of *ignoratio elenchi* is that having begun to prove some thesis, gradually in the course of the proof one passes to the proof of another position similar to the thesis.

For example, a lawyer begins to argue that his client did not commit the crime. In the process of proving, the lawyer goes on to prove that his client is a very good and highly moral person: he feeds birds and animals, raises two children who are excellent students at school, takes care of old neighbours. And if the client is such a good person, then he can not commit an illegal act.

III. The *non-sequitur* technique is the absence of an internal logical connection in the course of reasoning: any chaotic flow of thought is a special case of this error. Stupid arguments are incoherent nonsense that is uttered with a thoughtful look in order to stun the opponent. Lack of internal logical connection in the course of reasoning, complete nonsense – that is the essence of non-sequitur.

6. CONCLUSION

The analysis showed that in a number of sophisms there are violations of the rules of logical inference. Thus, errors in deductive reasoning lead to inadequate conclusions in legal argumentation.

To prevent manipulation of consciousness the strategies as follows can be used: to take the initiative in the conversation; not to allow a skilled interlocutor-manipulator to disturb the normal course of thought in his favour, to emphasize the logical errors of proof.

To effectively counter modern sophistry, one should, first, avoid psychological influence through critical thinking and reflection; second, to emphasize the logical means of discussion; third, to analyze the information by comparing the proposed facts which should be verified.

In legal argumentation, it is unacceptable to use sophisms that are built on violation of the rules of logical inference, since the truth of the judgment must be ensured by logically correct reasoning.

6. REFERENCES

- Aristotle. 1978. On Sophistic Refutations, Works: In 4 volumes, Vol. 2. Science publishing house. Moscow.
- Aristotle. 1978. Rhetoric. Publishing house of Moscow University. Moscow.
- Aristotle. 1978. Topic, Works: In 4 volumes, Vol. 2. Science publishing house. Moscow.
- Asmus, V. 1984. Historical and Philosophical Studies. Mysl Publishing House. Moscow.
- Bradmeier, C. 2018. Black Rhetoric: The Power and Magic of the Word. Alpina Publisher. Kyiv.

Chelpanov, G. 2011. Textbook of Logic. Editorial URSS. Moscow.

Harmash, L., Khalanska, N., Melnyk, S., Razumenko, I., Tyshchenko, T.
2019. Nonverbal means of communication in modern literature: J. M.
Coetzee's novel "the master of Petersburg", Amazonia Investiga, 8
(23): 252-258.

Harmash, L., Khalanska, N., Nevelska-Hordieieva, O., Sidak, L., and
Yuryeva, Z. 2019. A. Losev and Russian Symbolists, Amazonia
Investiga, 8 (24): 493-499.

Ivin, A. 2002. Logic for Journalists. Aspect Press. Moskva.

Khomenko, I. 2011. Discourse of the eristic dispute. magazine RATSIO, 6
(June 2011): 155-156.

Lisanyuk, E. 2016. Logical-cognitive Theory of Argumentation.
Dissertation for the degree of Doctor of Philosophy. Sankt-Peterburg.

Lisanyuk, E. 2012. Round table review: Reasoning and persuasion in
modern social practices, magazine RATSIO, 7 (July 2012): 160-168.

Lynn, J., Jay, A. 2010, Yes Prime Minister. Faber & Faber. London.

Makovelsky, A. 1967, History of logic. Publishing house Science. Moskva.

- Nevelska-Hordieieva, E., Panova, M., Voitenko, D., Melikhova, Y. 2021. Classification of Violations of the First Basic Logic Principle: Judicial, Manipulative and Comic Effects, *Revista Inclusiones*, 8 (1): 276-291.
- Nevelska-Hordieieva, O. 2012. Logical Errors in Deductive Reasoning, *Scientific notes of the Vernadsky Tavrichesky National University. Science Magazine. Series "Philosophy. Culturology. Political science. Sociology"*, 24 (65): 354-362.
- Nikiforov, A. 2001. *Logics. The whole world*. Moskva.
- Schopenhauer, A. 1900. *Eristics or the Art of Winning Controversy*. Sankt-Peterburg.
- Tamrazova, I. 2009. *Functional-pagmatic Characteristics of Eristic Discourse (Based on the French and Russian Languages)*, Dissertation for the degree of candidate of philological sciences. Pyatigorsk.
- Valerie, P. 1976. *On Art*. Art. Moskva.
- Walton, D. 2002. *Ad Hominem Arguments*. Institute of the Public Opinion Foundation. Moscow.