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PHILOSOPHICAL AND LEGAL FOUNDATION OF THE STUDY OF LEGAL INTERPRETATION TECHNIQUE

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Abstract: The article deals with the philosophical and legal foundations of legal interpretation technique. In particular it is pointed out that in spite of the fact that the legal interpretation is an integral procedure realized within the framework of law implementation (especially - law enforcement), at the same time it has its own meaning and due to this fact deserves a separate scientific attention. Legal interpretation is aimed not simply at clarification of the meaning of normative or other prescriptions, but at finding out the actual will of the legislator. It is pointed out that, contrary to the "classical" postulates of legal interpretation, the source material for interpretation is not only the texts of normative legal acts. It is clear that in the countries of the Anglo-Saxon legal family interpretation is aimed at clarification of general principles, legal trends, which are reflected in the judicial precedents on similar cases. However, in the countries of the Romano-Germanic legal family there is also a significant shift of reference points towards the analysis not only of the normative text, but also of judicial practice.

Keywords: philosophical foundations, interpretation of law, legal technique, the will of the legislator, legal regulations.

Introduction

Interpretation at the level of "basics of law" is a combination of two interdependent procedural components: understanding the meaning of the interpreted act "for oneself" and explaining the meaning of this act for others.

The evolution of the theoretical and legal doctrine of interpretation testifies to the presence in the history of the development of scientific thought of very lively discussions about the object of "clarification" and "clarification". The main discussion unfolded in the following semantic vein: when interpreting a rule of law, what does the interpreter strive to understand - the will of the rulemaker or the meaning of the normative prescription? G. F. Shershenevich (1903) noted that it is important for the interpreter to find out what is expressed in the rule of law, and not what the rulemaker wanted to express. The opposite position was defended by E. V. Vaskovsky (1913), who noted that the interpreter must find out the meaning of words and the expression that its creator gave to the interpreted

rule of law (p. 29).

At a later time, the designated scientific concepts were replaced by others - dynamic and statistical. Synthesizing these two scientific concepts, A. F. Cherdantsev (2002) rightly noted that it is important both to maintain stability and formal certainty of law, and to take into account the adaptation of law to life (p. 16).

Both procedural components - clarification and clarification - are called interpretation, but this is far from the only special term applied to interpretation. For example, it is often referred to as "legal hermeneutics". The need for interpretation, which arises every time in the process of law enforcement, is due to the abstract nature of the regulations, their status as "normative generalizations". It has become an axiom in jurisprudence that the rules of law are designed for repeated application, are not personalized, embrace many variations within a specific life situation (Baitin, 2005, pp. 207-208). At the same time, when formulating legal norms, the legislator proceeds from the need to operate with the most concise formulations. This leads to the objective need to "decipher" the regulations.

Carrying out cognitive activity, the interpreter passes from ignorance to knowledge and reproduces the true picture of the objective world.

When interpreting a normative act, the interpreter relies not only on the normative text, but also on his own legal knowledge, legal experience, and legal culture. Therefore, interpretive activity is the pinnacle of legal skill. It is gratifying that among theorists there are those who, in their scientific developments, specifically focus on the interpretative legal technique (Babaev et al., 2000, p. 82). Anticipating the formulation of the concept of "interpretative legal technique" by identifying its features, A. V. Parfenov (2015) notes its independence, complex structural nature, focus on obtaining reliable information about the content of the interpreted act, objectification in a specific result, determinism by the level of development of the legal doctrine and society as a whole (pp. 575-579).

We believe that interpretive activity as a kind of legal activity is an ordered set of intellectual and mental operations that provide clarification and clarification of the meaning of the interpreted act in order to identify the true will of the legislator, reflected in the interpreted norm. Legal interpretation activity includes textual, dogmatic and meta-legal analysis of law and is objectified in interpretive acts.

Methodology

Modern theoretical science is replete with approaches to quantitative and meaningful ways of interpretation. In the classical theoretical and legal interpretation, five main ways of interpretation are distinguished: grammatical, logical, special legal, systematic, historical. Each of these methods is predetermined both by the object of knowledge, which is normative prescriptions, and by its own unique specificity, due to the peculiarities of the applied field of knowledge (for example, philology, philosophy, logic, jurisprudence, history, etc.). According to the fair remark of L. S. Yavich (1961), interpretation is a process that is the opposite of rule-making: for example, if a rule-maker, creating a rule of law, moves from the historical, socio-economic and other conditions that determined its adoption to the text of a normative legal act (Yavich, 1961).

The grammatical way of interpretation is often referred to differently: "verbal", "linguistic", "philological", "textual", etc. However, the indicated variations regarding the name of the method do not affect its meaningful toolkit. It is based on the analysis of the signs of the written speech of the standard-setter. The grammatical analysis of the legal text precedes the legal interpretation activity in each case of legal interpretation. This is natural, taking into account the fact that a legal text is, first of all, a text expressed in a known system of alphanumeric coordinates.

In grammatical interpretation, the interpreter studies the "letter of the law", focusing on the grammatical, punctuation, syntactic, morphological and other features of the text under study. So, first of all, the grammatical form of the words used in the rule of law is clarified, including case, number, gender, type, person, etc. After – punctuation marks, allied and introductory words are subject to analysis. With the help of this method of interpretation, the interpreter finds out the semantic parameters of the legal norm, which in turn makes it possible to identify the will of the legislator, expressed in the specific content of the interpreted norm of law.

When using grammatical interpretation, the interpreter should be guided by the following

rules.

First: if in the text of a normative act the legislator directly indicates the meaning in which a certain concept should be understood, then such an indication should be followed. Here we are talking about the understanding of the terms in respect of which the legislator expressed an unambiguous position, indicating, for example: July 1998 No. 155-FZ "On internal sea waters, the territorial sea and the adjacent zone of the Russian Federation".

Second, if there is an act of official interpretation in relation to the concept being interpreted, then the interpreter should proceed from the meaning set forth in such an act. For example, paragraph 5 of the Decree of the Plenum of the Supreme Court of the Russian Federation dated October 18, 2012 No. 21 "On the application by courts of legislation on liability for violations in the field of environmental protection and nature management" notes: "Under other grave consequences in relation to article 246 of the Criminal Code of the Russian Federation, understand, in particular, such a deterioration in the quality of the environment and its components, the elimination of which requires a long time and large financial costs (for example, mass diseases or death of wildlife, including fish and other aquatic biological resources; destruction of conditions for their habitat and reproduction (loss of feeding grounds, spawning and wintering pits, disruption of migration routes, destruction of food base); destruction of flora objects, resulting in a significant reduction in the number (biomass) of these objects; land degradation)".

Third: when interpreting, it is necessary to clarify the literary meaning of the concepts under study, if the legislator has not directly indicated the need to perceive a particular concept in a different meaning. This means that the implementation of grammatical interpretation should be associated with the use of dictionaries and other similar literature.

Fourth: when interpreting the meaning of a legal term, one should take into account the meaning that the developers of the relevant draft gave it at the time of the issuance of the interpreted act. The dynamics of social development predetermines a rapid change in approaches to the understanding of certain concepts, phrases, expressions. However, despite this trend, the interpreter must be guided by the meaning originally laid down in the rule of law.

Fifth: if the meaning of a term differs in industry specifics, then the meaning of such a term proposed by the legislator is not relevant for other branches of legislation and such a meaning cannot be arbitrarily projected onto other branches (institutions) of law. Thus, such a projection is especially unsuccessful when it comes to comparing the meanings of identical terms used in private law and public law branches of legislation. Such failure is predetermined by the difference in the main methods, as well as the principles that determine the model of legal influence within the framework of individual branches of legislation. Thus, civil law experts dealing with the problems of guilt in civil law are very impressed with the criminal law theory of guilt, but its blind "transfer" from the public sphere to the private sphere is doomed to failure.

Sixth: if the concept being interpreted is foreign, that is, borrowed from foreign legal orders, then the primary meaning is that given to it in the native language. Russian legislation tends to receive some legal constructions from European legislation. This predetermines such a legal and technical way of presenting legal terms, which involves designating a concept with a Russian-language term, followed by an indication of its foreign name. For example, an escrow agreement, a financial lease agreement, etc.

Seventh: if there are technical terms in a legal act, then their interpretation should be handled by specialists from the relevant technical fields.

Eighth: in the event of a conflict between the etymological and semantic meaning of the concept being interpreted, priority should be given to the second. This is due to the fact that the semantic meaning of a concept reflects a timely understanding of the interpreted term, and since the legislator is forced to be guided by just such an understanding, it is the semantic meaning that is reflected in the text of the normative act.

The eighth rule can be demonstrated with another interesting example. Thus, civil law widely uses such legal terms as "individual" and "legal entity". At the same time, the generic concept of these terms is the word "face", the etymological meaning of which refers us to parts of the human body. However, this meaning has nothing to do with the semantic meaning of the studied legal terms that are used by the legislator.

The basis of the logical interpretation, as well

as the grammatical one, is the text, which sets out the interpreted rule of law. Logical interpretation involves the use of a wide arsenal of logical tools, including the laws and rules of formal logic. For example, such a logical-grammatical device as the transformation of a sentence is widely used. The result of applying this method of interpretation is the clarification of the logical organization of the analyzed norm.

Main Study

In the process of implementing the interpretive legal technique, certain logical techniques especially proved themselves on the positive side, which led to popularization. These methods include:

a) logical transformation: updated in the event of a discrepancy between the meaning of the normative establishment and its grammatical form of objectification. So, within the framework of a logical transformation, the interpreter gets the opportunity to restore all parts of the normative sentence; to deduce from it the consequences determined by logical connections; by means of deductive reasoning, deduce particular consequences from the general position; by inductive thinking from particular premises to formulate a general conclusion, etc (Kashanina, 2008);
b) inferences from definitions. Legal definitions, that is, normative prescriptions containing the definition of concepts for their further use in the appropriate meaning, are a convoluted judgment. So, by "expanding" this judgment, the interpreter receives information about the generic and specific features of the interpreted concept. This information, in turn, makes it possible to apply a wide instrumental arsenal of logic, including analyzing the detected features, finding out the actual scope of the concept, comparing the interpreted concept with related concepts, etc.;
c) conclusions by contradiction, excluding one of two opposing judgments;
d) bringing to the point of absurdity. This logical technique works as follows: a presumably false thesis is taken as the basis of reasoning, which is brought to the point of absurdity, which confirms its status of "falsity";
e) the law of the "excluded third": allows you to make sure that with two opposite inferences, one of them is true and there can be no "third" inference;
f) the law of "sufficient reason": allows you to verify the truth of the conclusion due to the discovered sufficient reason.

Systemic (or "systematic") interpretation is intended to clarify the relationship of the interpreted rule of law with other rules of the same act, the rules of other related acts, as well as with general normative prescriptions and legal principles. Such a mental operation makes it possible to take into account the place of the interpreted rule of law in a normative act, in the branch of legislation, in the legal system as a whole. It is worth emphasizing that a systemic interpretation is inevitable, which is predetermined by the systemic nature of law as a whole. Thus, the unification of norms into institutions, sub-sectors and industries is due to the same systemic nature, the presence of stable links between the norms of law that form normative regulation not in isolation, but only in interconnection with each other.

The systemic interpretation is updated in the context of the interpretation of the rule of law, which is of a referential or blanket nature. In this case, the appeal to other rules of law is an essential condition for understanding the meaning of the interpreted rules.

E. V. Vaskovsky (1997), discussing the rules for applying a systemic interpretation, noted that, first of all, the norms that are in a state of "closest connection" with the interpreted one should be analyzed, and then the norms that are in a logical connection with the interpreted one (p. 64).

Systemic interpretation is carried out on the basis of the following principles - guiding ideas that predetermine the appropriate type of interpretation:

1. the principle of interdependence of norms: the interpreted norms to be interpreted must be considered in a systemic unity;
2. the principle of consistency: requires the interpreter to consistently study legal regulations, following the logic of the legislator;
3. the principle of priority: involves taking into account the legal force of the interpreted acts, if there are several of them. The meaning of this principle is that priority in interpretation should be given to an act that has greater legal force. This is especially true in the case of detection of mutually exclusive regulatory pre-

scriptions, that is, the detection of conflicts between acts of different legal force;
4. the principle of completeness: implies taking into account the diversity of meanings of concepts and legal prescriptions used in interpreted or related acts;
5. the principle of considering the context: it is used in the interpretation of concepts, the meaning of which requires clarification of their contextual meaning.

Historical interpretation seems at first glance to be secondary, in demand "according to the situation." On the one hand, this is true: not in every legal interpretation there is a real need to refer to it. On the other hand, in those cases where the interpreter nevertheless resorts to such a method of interpretation, it may have a constitutive character. This is determined by the fact that the adoption of certain norms of law is due to a specific life situation, current economic, social and political agendas.

With regard to historical interpretation, it is worth noting the importance of analyzing the explanatory notes to the bill of the interpreted normative act. This is due to several reasons. Firstly, the explanatory note usually indicates specific historical reasons that prompted the legislator to develop an appropriate body of norms. Secondly, explanatory notes are written, as a rule, by specific rule-makers-authors of the relevant bill. Therefore, analyzing the explanatory note prepared by them, the interpreter actually finds out the will of the legislator "first hand".

The main methods used in the framework of historical interpretation include: studying the preamble of a normative act (if any), researching the history of the adoption of the relevant legal norms, comparing existing norms with those originally drafted, comparing existing norms with previously valid ones, but no longer in force.

The culmination of the interpretation is associated with a special legal interpretation, which is characterized by reliance on special legal knowledge, practical experience, and doctrinal views. In some cases, part of such knowledge can be found in the text of the interpreted normative act, for example, in its first articles containing legal definitive tools. However, this is clearly not enough to implement this type of interpretation: it is important, as S. S. Alekseev, his own "baggage" of legal knowledge, owned by the interpreter. We are talking about the formed ideas regarding the majority of legal structures, the main industry rights and obligations of the participants in the relevant relations, legal facts, legal liability, etc.

The special legal interpretation has not been sufficiently studied. It is believed that it is immanently connected with legal terms, legal constructions, etc. In the scientific literature, attention is drawn to the fact that in the field of legislative stylistics there is its own language of laws as a special style of speech (Lazareva & Sukhov, 2015).

Thus, the legal interpretation technique is concentrated mainly within the framework of the methods of interpretation, which include grammatical, logical, special legal, systematic, historical.

Any subject can be an interpreter. However, the results of the interpretation are strictly correlated with the legal status of the interpreter. According to this criterion, the interpretation can be presented in a dichotomous classification - official and unofficial. Within each of these types of interpretation, additional varieties are distinguished. Thus, the official interpretation is differentiated into normative and causal, while the unofficial interpretation is differentiated into doctrinal and special. The official interpretation is a mandatory indication of the only correct meaning of a legal norm and the best way to implement it. The obligatory nature of acts of official interpretation implies the need for both their study, reading, and application in the event of a situation described in the relevant act (Lazarev, 1972).

Turning to the normative interpretation, which is a kind of official interpretation, a number of remarks should be made. Firstly, the normative interpretation is characterized by a number of features: general obligatory, non-personalized, repeated application, etc. (Voplenko, 1976, p. 12). Secondly, the normative interpretation is differentiated into authentic and legal.

Authentic interpretation differs in that it comes from the body that adopted the relevant interpreted act. Consequently, with an authentic interpretation, the publishing body explains the meaning of the normative prescriptions formulated by it. Authentic interpretation is distinguished by the following properties: general obligation, creative orientation, closeness to law-

making, auxiliary character, hierarchical subordination.

A legal interpretation is an official interpretation that does not come from the authoring authority of the relevant normative guidance, but from another authority to which such authority has been delegated.

The second type of official interpretation, along with the normative one, is the casual interpretation. A feature of the casual interpretation is its strictly targeted nature: such an interpretation is designed for a single application in relation to specific individuals. Most often, causal interpretation is associated with the issuance of a law enforcement act.

In the dichotomous classification - official and unofficial - the unofficial interpretation occupies a secondary place, since it is not mandatory and does not have legal force. The scientific literature offers signs of this type of interpretation. Among them: a private subject (individuals, legal entities), the absence of coordination ties between these subjects, voluntary implementation, limited understanding of the interpreted norms, a free form of presentation, a focus on the implementation of educational, cognitive, orientation functions, etc. It is customary to differentiate unofficial interpretation into mundane, professional and doctrinal. So, the ordinary interpretation is distinguished by a non-professional subject, his lack of special legal knowledge, situational interpretation. Unlike the usual professional interpretation comes from persons with professional legal education and (or) professional legal experience. Such an interpretation is distinguished by rational content and strictly correlates with the level of legal culture of the interpreter. The result of professional interpretation can be objectified in written (electronic) form. Finally, the third kind of informal interpretation - doctrinal - is carried out by legal scholars, scientists and research centers. This interpretation is embodied in comments, monographs, dissertations, scientific articles, etc. Such an interpretation is distinguished by rational content and strictly correlates with the level of legal culture of the interpreter. The result of professional interpretation can be objectified in written (electronic) form. Finally, the third kind of informal interpretation - doctrinal - is carried out by legal scholars, scientists and research centers. This interpretation is embodied in comments, monographs, dissertations, scientific articles, etc. Such an interpretation is distinguished by rational content and strictly correlates with the level of legal culture of the interpreter. The result of professional interpretation can be objectified in written (electronic) form. Finally, the third kind of informal interpretation - doctrinal - is carried out by legal scholars, scientists and research centers. This interpretation is embodied in comments, monographs, dissertations, scientific articles, etc.

The result of the interpretation is a concretizing judgment about the interpreted rule of law, the functional purpose of which is to clarify its actual content. The results of interpretation are also determined by the type of interpretation chosen by the interpreter in terms of volume. Here we mean the ratio of the literal text of the interpreted norm of law and the actual content of the relevant norms. Thus, three types of interpretation according to the specified criterion are known: literal, disseminative, restrictive.

The greatest demand is for a literal interpretation, which makes it possible to understand the exact meaning of the literal expressions reflected in the interpreted rule of law. Not surprisingly, this kind of interpretation is also called "adequate". With regard to extensional interpretation, its result is a broader interpretation of legal prescriptions than the content of the literal meaning of the interpreted text. Restrictive interpretation, on the contrary, narrows the meaning of the interpreted rule of law, but only in order to clarify the real will of the legislator. Qualifying the pervasive and restrictive types of interpretation as "atypical" types of interpretation, N. N. Voplenko proposed the following rules for their application. These types of interpretation are not permissible in the following cases: in the case of a direct indication of this in a rule of law or an act of official clarification; in relation to exclusive rules of law providing for special conditions of legal regulation; regarding the sanctions of legal norms, etc (Voplenko, 1978, pp. 58-65).

One of the sharply debatable aspects of legal interpretation of legal technique is the question of its composition. The system of means of interpretive technique, according to A. V. Parfenov (2015), includes three subgroups: "general social (including language and its main units), special legal (including legal definitions, legal constructions, legal principles, legal presumptions, legal fictions, legal axioms, etc.) and technical (tangi-

ble information carriers - texts of regulations, monographs, dissertations, scientific articles, etc.) (p. 581). The proposed classification of legal and technical means of law interpretation technique requires additional argumentation. Its imperfection is due, as it seems to us, to the confusion of the concepts of "object" and "subject", "form" and "content". This calls into question the scientific value of such a classification, although the proposed by A. V. Parfenov's reasoning on this point certainly enriches the theoretical doctrine.

The applied potential of law interpretation activity increases significantly in case of objectification of the results of such activity. Therefore, in the context of this scientific research, attention should be focused on legal interpretative acts-documents. Such acts include acts of official interpretation, which are the final document of the corresponding type of interpretive activity. Obviously, when preparing such acts, the entire set of tools of legal interpretation of legal technique is updated.

Acts of official interpretation are characterized by the following features: state obligation, formality, hierarchy, clarifying orientation, etc (Miroshnikov, 2000, pp. 90-92). Revealing signs of interpretive acts, V. N. Kartashov (2005) noted the following: the generic sign of interpretive acts is a legal act, and the specific signs are authoritativeness, official character, procedural and procedural form of acceptance, conditionality by the competence of the issuing subject, the presence of both general and personal explanations (pp. 394-395). In addition to those listed by V. N. Kartashov (2005) signs, acts of official interpretation include the following characteristic features: consistency, activation of legal and other social consequences, a specific form of information expression, etc (Sharonov, 2004, pp. 37-48).

Determining the place of interpretive acts in the system of legal documents, V. K. Babaev and V. M. Baranov (1997) notice that these acts have a concretizing functional load. Following the indicated legal scholars, N. N. Voplenko (1976) emphasizes the auxiliary significance of acts of official interpretation, the content filling with organizational and auxiliary rules for understanding the current legislation, as well as the significance of the indicated acts for ensuring the effectiveness of law enforcement activities (p. 35).

Indeed, the underestimation of acts of official interpretation leads to defects in the law enforcement process.

Conclusion

The problems of legal interpretation of legal technique, which is used in acts of official interpretation, are poorly studied at the doctrinal level. The available scientific research in this regard is concentrated mainly on the features of the structuring of acts of official interpretation. However, this aspect of legal technique has not been sufficiently studied in reality. Despite the fact that all the legal and technical means, methods and rules discussed above are also relevant for acts of official interpretation, their specific legal and technical features should be especially emphasized. For example, acts of official interpretation are often provided with appendices, references, footnotes and other organizational and auxiliary material.

It is worth noting that one of the most common legal and technical techniques widely used in acts of official interpretation is a paraphrase, which allows you to express the meaning of interpreted legal prescriptions in other words, synonyms (Gubaeva, 1996).

The internal attributes of the act of official interpretation suggest structured text, dividing it into semantic parts. The external attributes of the specified act include an indication of the type of document (decree, definition, order, information letter, review, etc.), its specific name, designation of the author of the official interpretation, date of adoption and registration number. These details together form the "title" of the act of official interpretation.

Thus, the legal interpretation act is a means of objectifying the results of interpretive activity. The dichotomous division of interpretation into official and unofficial makes it possible to predict the "legal status" of a law-interpreting act. In this sense, acts of official interpretation are a kind of legal acts that have the following specific features: universally binding, formal certainty, hierarchy, explaining the functional purpose, auxiliary nature, etc. including appendices, references, footnotes), compliance with internal (including structuredness) and external ("title" of the act) attributes.

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