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IMPROVEMENT OF INTERPRETATION OF LEGAL NORMS AND CONTEMPORARY LAW ENFORCEMENT ACTIVITY

This article is devoted to the problem of improvement of interpretation of legal norms and law enforcement. The author revealed an interesting methodology of the hermeneutical analysis of legal texts. The article substantiates the possibility of creation of expert systems, which would be able to predict the potential ways of movement of the subject towards one or another aim in a particular regulatory framework.

Key words: legal interpretation, law enforcement activity, designing of legal situations, intuitive legal sense, new methods of cognition of reality.

Problem statement. The word «norm» originates from the Latin word «norma» in the sense of «guiding principle», «rule», «sample». In a broad sense a «norm» means a mandatory procedure, a mandatory rule, a binding model for copying, reproducing and imitating. In the latter case, the meaning of the word «norm» coincides with the meaning of the word «paradigm» (from the Greek word «paradeigma» — example, sample), which is used in linguistics, as well as in philosophy and sociology to refer to an exemplary theory or concept in case of solving tasks of a particular type.

The concept of legal norms is one of the most important categories in the theory of law. Any legal phenomenon is opened and revealed only in conjunction with the legal norms. A legal norm as a part of the system is characterized to some extent by the features inherent to the law. Therefore, it is possible to give a definition identical to the meaning of law in general [6, p. 78].

While considering a legal norm it can be found that it has a certain systematic-structural organization, because it consists of two interrelated components, such as: the first part of the norm defines the conditions, under which mutual obligations and claims between two parties appear, whereas the second part sets the obligations and claims themselves. These conventional rules consist of (1) determining the conditions of the rule application, and (2) setting the rule. Accordingly, each legal norm can be expressed in the following form: if → then. Wilhelmus Luijpen claimed that a man as a bearer of pre-reflective consciousness was originally characterized by the sense of justice, which was a basis of law [14, p. 161]. The implementation of this feeling (internal

existence) is the existence of law. E. Fechner tries to bring the establishment of ever-changing law from the subject who makes state-power decisions [2]. Werner Maihofer believes that a mind generates a norm of behavior (individual norm) in a particular life situation, designed for a specific role [15].

It is obvious that all these constructions are speculative. It is impossible to prove the normative sense of justice on the basis of a priori given subject, because priori knowledge «does not need» any proofs by definition. At the same time proponents of this conception also failed to connect a single life situation with a postulated universal initial beginning of the social being. Perhaps, in this regard, at the end of his life Edmund Husserl, who had established the school of phenomenology, understood that the subject itself was caused by the lifeworld (in the terminology of Martin Heidegger — Dasein, in which a man exists) [16, p. 17].

Alfred Schьtz and his followers point out that the social world consists of both objective and individual reality. Objective reality is presented by social institutions that provide the socialization of an individual and the reproduction in the form of social traditions. The world as an individual reality is a unique subjectivity of the individual and his ability to change (design) the social reality. This ensures the innovative reproduction of the society.

It should be noted that despite the fruitfulness of these provisions (which cover the status of the individual, the social institutions, the mechanism of the social reality changing, etc.), sociological & phenomenological school of law have not been formed and even no attempts to use these ideas in jurisprudence can be seen. Meanwhile, the main postulate of such a «inexisting» legal phenomenology might be the source of law theory (or the formation of law theory). The main attention should be focused on the development of a legal innovation and, moreover, on its acceptance by people (legitimation of innovations). Hence (from the analysis of the reproduction of social institutions by the representatives of sociological phenomenology) a general definition can be deduced: law is that people accepts as binding norms of behavior.

The heuristic value of this approach is obvious: it allows to explore important, traditional for the theory of law issues more deeply, and above all to look at the legal reality from a new (maybe, unexpected) angle. But it is possible to notice a substantial drawback of such an interpretation of law: whether everything adopted by people (especially under manipulability of public opinion by political consultants) can be considered as law? Is it possible to consider stable repeatability of public relations and perception of them as due as a criterion of law? At what «level» public bounds are? If according to Leon Petrazycki, «limits» of law are considered as a small group (it is quite common for the supporters of multiculturalism), should we recognize binding norms of the criminal community (mafia) as law? It seems that a generic notion of law should have a little bit more meaningful attribute, than legitimacy (recognition of anything by the population).

It is evident that the transcendental phenomenology of law lacks the concreteness of immanence, whereas the sociological phenomenology of law lacks

priori grounds, inherent to all legal phenomena. In our view, legal norms can claim to be legal only if they pass the historical selection.

A legal norm is a generally binding rule of conduct issued or authorized and protected by the state authority, expressing the will and interests of the people due to the material living conditions and being intended for the regulation of social relations. Any state-organized society can not do without the legal norms. But this is not the only phenomenon of law, and therefore its complete scientific definition requires clarification of the specific features (standards) peculiar to a legal norm [31, p. 365].

Analysis of researches and publications. Considerable attention to the development of the theory of justification of legal norms was paid by the scholars in the pre-revolutionary period (Nikolai Korkunov, Fedor Taranovsky, Gabriel Shershenevich etc). The theory was further developed in the works of Soviet scholars (Nikolay Aleksandrov, Mikhail Baitin, Peter Nedbaylo). The present stage of development of the legal norm doctrine requires not only further improvement, but also reconsideration of its important features and properties.

Paper purpose. Thus, the problem of justifying of legal norms, analyzed by the author, is perhaps the most complicated and at the same time the least developed topic of argumentation theory, logics and law. In this context the paper purpose is to study the process of interpretation of legal norms and contemporary law enforcement activity ant to give recommendations for its improvement.

Paper main body. Norms and values belong to the active use of language, which is directly related to human activity. There are two main schemes of the target justification of norms (values). The first one uses the concept of logical consequence, while the other one uses the concept of causality (causal link) [8, p. 289].

In general norms can be divided into the following groups: rules, including the rules of a game, grammar rules, rules of logics and mathematics, customs and rituals, etc.; norms that include state laws, decrees, directives, instructions, orders, etc.; technical or target norms, pointing out what should be done to achieve a certain goal (eg, «The house should be ventilated not to be stuffy»).

These groups of norms can be considered as basic. There are also a variety of norms, which occupy an intermediate position between the main groups. Several types of norms are of particular interest, such as: traditions and customs («You should respect the elders», «The Christmas tree is decorated for New Year's Eve», etc.); moral principles («Take care of your loved ones», «Do not be envious», etc.);

rules of ideal («A judge must be impartial», «Honesty is the best policy», etc.).

It is characteristic that despite their diversity and the problem of the authority of rules, norms of all types have the same structure. In the last 100 or so years the situation has changed. The concept of value, directly linked with human activities, was introduced in philosophy. Logic of norms and logic of values is forming gradually. The modern theory of argumentation or new

rhetoric began to form; it attempts to analyze the problem of objectivity of norms and values and describe the specific methods of justification, which are used in case of the active use of language.

Despite the progress made in research of justification of norms and values, issues related to the active use of language and giving an objective sense to them still remain unclear. Norms and values play a special role in human activity, in social sciences and humanities, and particularly in legal theory and practice. Norms and values are largely justified quite differently than descriptive statements. Values and norms as a particular type of values are essential elements of social and humanitarian theories. Moreover, certain values lie at the heart of social and humanitarian theoretical knowledge.

Social theory, and in particular the theory of law, analyzes society in the light of improving of conditions of human existence. Describing alternatives for further development of certain spheres of social life, or outlining a historical perspective for the whole society, social theory must criticize other possible ways. It cannot be achieved without value judgments. Human activity is not possible without norms and values. The sciences that study human society and that have an ultimate aim in streamlining and optimization of human activity, always set implicit or even explicit norms and standards and they are always based on certain values. The problem is not in elimination of norms and values that is basically impossible in these sciences, but in justification of objectivity of regulatory and valuation provisions.

The most important way is logical inference of one norm of the other norms. If any norm logically follows from the already established norms, it is justified and acceptable to the same extent as norms which are used as premises for its deriving.

Normative (deontic) logic deals with these issues. It should be reminded that it does not authorize logical transition from a purely descriptive (factual) parcel to normative conclusions. Norms can not be derived from the descriptions and descriptions can not be derived from norms.

Here is an example of logical description of a norm. It is assumed that someone unfamiliar with the existing customs in communication tends to deviate from the topic, speaks long, unclear and inconsistent. In order to convince him to change his style of communication, we can agree on a common «principle of cooperation» which requires making a verbal synthesis according to the adopted goals and the direction of the conversation. This principle includes, in particular, the maximum of relevance prohibiting to deviate from the topic, and the maximum of manner, requiring to speak clearly, concisely and consistently. Link to these maxims will be a rationale of the present obligation.

A complete statement of the relevant reasoning can be as follows. If you aspire to respect the principle of cooperation, you should not deviate from the topic in conversation and speak quite clearly, concisely and consistently. You must abide the principle of cooperation.

Therefore, you should not deviate from the topic of conversation, to say enough clear, concise and consistent. Both premises of this reasoning are norms, the conclusion is also a regulatory statement.

The simplest, but at the same time the most unreliable way of plausible justification of norms and values is incomplete inductive reasoning. Here is a general scheme:

S1 must be P.
S2 must be P.

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Sn must be P.
S1, S2,....., all are P.
All S must be P.

Here the first n parcels are norms (values), the latter parcel is a descriptive statement, the conclusion is a norm. Inductive reasoning is called «incomplete», as listed objects S1, S2,....., Sn do not exhaust the entire class of S objects. Example:

Suvorov must be steadfast and courageous.
Napoleon must be steadfast and courageous.
Kutuzov must be steadfast and courageous.
Suvorov, Kutuzov and Napoleon were generals.

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Each general must be steadfast and courageous.

The main conditions that allow improving legal norms are: accurate reflection of consistent patterns of development of the state and law in legal regulations; compliance with the requirements of morality and sense of justice; compliance with the requirements of systemic (non-contradictory) nature and other trends of the existing legal system while adopting new legal norms; taking into account general principles of regulation and management of social processes during lawmaking process.

Let us briefly summarize: a) legal norm can be defined as a coming from the state and protected by it generally binding rule of conduct, which entitles the participants of social relations and imposes legal obligations on them; b) legal norm is a general rule of conduct, i.e. a model, a standard of conduct for a man or a collective; c) legal norm is an abstract, generalized rule, the primary element of law as a system; d) legal norm is an injunction of the state authority; e) legal norm is a wide, multifaceted and, at the same time, specific due to its content phenomenon.

Legal norm is characterized by the unity, integrity, indivisibility. It is characterized by a certain structure, i.e. the specific layout of content, the link and the interrelation of its elements.

When analyzing the structure of the legal norm, it should be based on the philosophical understanding of the category. Structure is considered as a construction and an internal form of organization of the system, expressing the unity of the relationships between the elements as well as the trends of these relationships.

Traditionally it is deemed that the structure of the legal norm consists of three elements: hypothesis — an indication of the specific factual circumstances of life (events, people's actions, a set of actions), i.e. the factual elements which are to the provision come into effect; disposition — the «core» of the legal norm, i.e., an indication of the rule (rules) of conduct that should be abided by the subjects if they have been implicated in the conditions defined in the hypothesis; sanction — the type and the measure of the possible punishment, if the subjects do not comply with the requirements of the disposition, or encouragement for committing the recommended actions. Therefore, the purpose of sanctions is to encourage subjects to act in accordance with the requirements of legal norms.

The problem of the structure of the legal norm is one of controversial. Opinions of legal scholars are divided: one group of authors (Peter Nedbaylo, Victor Gorshenev et al.) believe that a legal norm consists of three elements, the other one (N. Tomashevsky, A. Cherdantsev) adheres to the bipartite system.

S. S. Alekseev offers with sufficient precision to distinguish logical rules and norms-regulations. If a logical norm contains three elements, then a norm-prescription can contain two parts, or the hypothesis and the dispositions or the hypothesis and the sanction.

In our opinion, the tripartite structure of the legal norm is an objective reality, an inherent attribute. However, attempts are made to further differentiate its elements. So, in the analysis of the prohibitions A. G. Bratko distinguishes not three, but four elements, since, in his opinion, the hypothesis has two elements: the hypothesis of the disposition (i.e., the hypothesis of the prohibition) and the hypothesis of the sanction. The result is such a structure of prohibiting norms: the condition of the prohibition is the prohibition, the condition of the sanction is the sanction.

Activity, aimed at adoption of statute and expressed in it legislator's will, is named interpretation. To provide methodologically transition from comprehension of the sense of law norm, explanation of its main point is the task of juridical hermeneutics. Such transition represents nothing else but a process of cognition, the result of which is finding the only right variant of interpretation of general enactments regarding concrete juridical situation.

The Romans understood the term «interpritatio» wider: it was used not only for interpretation of the law in the true sense of the word, but also for further development of the legislator's thought by means of analogy. Interpretation legally is final mental activity, for which famous rules are worked out. The set of these rules assumes the name of juridical hermeneutics. The lawyers of 18-th and beginning of 19-th centuries strived for building this hermeneutics as a special science. As Georg Friedrich Puchta noticed, for those who possess common sense, every science is hermeneutics; no abstract rules of hermeneutics could help in interpretation of law sense, if a person has no calling for it.

Corroborating legitimacy of treatment juridical norms as true or false propositions, V. M. Baranov endows them from the point of view of modal

logic with qualities of descriptive and prospective proposition that allows us to evaluate them. In our opinion, the validity of this interpretation is rather problematic. However, in terms of methodology, the problematical character of this interpretation is not a ban on it, but only indicates the status of this interpretation. Another thing, as in this case, is the truth or falsity of legal norms. Taking into consideration the above given, it is justified to assume that if the characteristic of legal norm as true or false is possible, then only in the context of modal or deontic logic and according to the rules of this logic. The thesis about the truth of the legal norms as their correspondence with social reality, of course, is not proved and the raising question itself remains insufficiently persuasive.

Legal norms are dual, descriptive-evaluative (descriptive-prescriptive) expressions. They contain a description of the areas of legal relations of life, and indirectly of those aspects of society, one manifestation of which is law. These principles prescribe the definition of the form of behavior; require the implementation of known values and ideals.

This contradictory unity of description and prescription is often broken and legal norms are given either descriptive or prescriptive interpretation. Controversy over the validity of these norms has been maintaining for a long time and now has not lost its sharpness.

Supporters of the extreme approach regard the legal norms as descriptions and are convinced that the concepts of truth and lies are attached to them in exactly the same or somewhat modified sense as the rest of the descriptions. An additional argument is often put forward: if the legal norms were not connected with the truth, no system of law could be justified and all such systems have proved to be equal.

This reference to the threat of relativism and subjectivism in law is clearly linked to the belief that objectivity, reasonableness, and thus scientific character are necessary to assume the truth, and statements that are not true or false, cannot be objective neither reasonable, nor scientific. This belief is a characteristic feature of the old-style theorizing gone in the past more than a century ago.

Supporters of the other, again, extreme approach, crossed out regulatory, projecting function of legal norms. The main is not their descriptive but prescriptive content, which excludes the supplement to these norms the concept of truth. At the same time to avoid relativism and be able to compare and evaluate the different legal systems, often instead of truth another concept is used. Its role is to be a sort of «substitute» of the truth in the field of law. In the capacity of these «surrogates» of truth the concepts of «efficiency», «relevance», «expediency», etc. have also been proposed.

None of these approaches to the truth of legal norms (principles) cannot be considered reasonable. Each of them is an attempt to break such contradictory descriptive-prescriptive unity as the norm of law (principle), and to oppose one side of it to the other.

The problem of justifying legal norms and principles is connected with the disclosure of their dual, the descriptive — prescriptive nature. Legal norms

and principles resemble a two-faced creature turned to reality with its regulatory face and to the values — with its true face. These norms and principles value the reality in terms of its compliance with the values, ideals, models and at the same time raise the question about the rootedness of this ideal in reality.

Thus, the problem is not to replace the good in the field of law by truth, and not to replace the good with something that would resemble the truth and connect, like it, law with reality. The task is to identify the relationship and mutual complement of truth and goodness, to establish their relationships and other legal categories [33, p. 207].

Realizing the legal norm, the individual learns it and for observance of this norm a strong-willed orientation is needed. The process of interpretation of legal norms is creative and, in fact, the law enforcer being a co-legislator creates a new norm, performing an act of summing up the general norm and the particular case.

However, the ABC of law, as A. A. Gaydamakin points out, sometimes does not keep up with the realities of the passage of time, and then blindly following this letter may lead to results similar to «strike in Italian».

«Sometimes the law from generation to generation
From grandfather to grandson goes;
And it was good, but than it turned
From benefaction into torment»

Furthermore, in the process of lawmaking frequent are errors, collisions. And then the spirit of the law, sense of justice come to the fore. And if this sense of justice with the spirit of law and natural law are in harmony, then the problem is solved and the law continues to be associated with justice. And if it is run by a man with a cynic sense of justice? Then it is better a robot… [3, p. 95]

In our opinion, the normative law as a whole is moving towards formalization and specification of its hypotheses and dispositions, and hence goes away from subjectivism and towards logic. Formal logic represents a huge opportunity for the development of testimony, extension versions, as evidenced by the development of expert systems of criminalistics, criminological and investigative purposes.

As to the opportunities of the formal projecting of legal situations, it is quite possible in the future to create expert systems that can calculate the trajectory of motion allowed to the actor to a particular goal in a given normative direction [28].

Unfortunately the logical tools of law can be used for various purposes, including the support of «a broad interpretation of the law», its free interpretation. We must learn how to express the spirit of the law in its letter. However, the creation of specialized systems for professionals with advanced, but not with an amorphous sense of justice is the question of the future.

Logical inference some norms of the other, already adopted, is an important way of theoretical justification of norms. Norm is a special case of the valuable relation between thought and reality. As such, they are a

special case of estimation. Legal norm — is a socially imposed and socially fixed estimation. The means, by which the evaluation becomes the norm, is the sanction, or «punishment» in the broadest sense, imposed by society on those who deviate from established their prescriptions. Legal norm — is rigidly fixed social assessments with well-defined sanctions. The idea that the norms are a particular case of assessments can be represented in different ways.

The idea particularly can be expressed in such a definition:

«Action A is binding» = «action A is positively valuable, and it is good that abstaining from this action entails punishment»

In this definition the norm «Action A is binding» is divided into two values: the positive value of the action and the positive value of punishment for the failure to comply with this action (abstaining from the action).

Norms as values, standardized through the sanctions, are a particular and rather narrow class of values. Firstly, the norms relate to human activities or things that are closely connected to the action, while the values may relate to any object. Secondly, the norms are directed in the future, while values can be applied both to the past and present, and to the phenomena that exist out of time at all.

The difference between the norms and other evaluations is associated with the sanction. Finally it has a social nature.

Logic of the norms comes from the idea that all norms, regardless of their specific content have the same structure.

Every norm has these parts or elements: content — an action which is the subject of the normative regulation; nature — obliging, authorizing or prohibiting norm; conditions of the application — the circumstances in which the action should or should not be committed; subject — a person or a group of persons to whom the norm is addressed.

Not all of these parts have an explicit expression in the regulatory statements. However, there is no norm without them.

Only three structural parts of the norm are usually taken into account in the logic of norms: the content, the nature and the conditions of the application. It is assumed that all the norms are addressed to the same subject, and belong to the same authority. It allows writing the norms in symbolic language without mentioning the subjects and the authorities of different norms. The analysis of the structure of norms given by the normative logic coincides basically with the ideas about the structure of norms that have long stood in the theory of law. In the legal interpretation any legal norm includes the disposition, the hypothesis and the sanction.

With regard to the legal norms the sanction is natural to be considered as a component of the norm. Although norms are an important element of social life, there is no clear and universal classification embracing norms of all kinds. There is no clear border between the norms and something that is included in norms. It suggests that the hopes for creating a natural classification of norms, like, for example, classification of plants or chemical elements, are unjustified.

Traditionally, law did not recognize other methods, besides formal normative (dogmatic) method. Therefore, it was thought that the jurisprudence is not obliged to take into account the volatility of social reality. It is known that people's conduct is connected to the existence of such social regulators, as the values and norms that are not always formally fixed, but, nevertheless, have quite a strong effect on the man and his behavior. Values and norms often exist independently from the behavior of individuals, although they constitute an integral part of a complex system of social reality. Changing of law and the evolution of society are mutually correlated. Legal norms can not be reduced to the preformation, the transformation of human nature. They vary according to the historical development of the social system. New legal theories appear only when society begins to change.

The concept of «norm» causes very different views, and the reproduction of the words does not guarantee the reproduction of meaning. Symptoms of changes in the perception of law can certainly be observed, they increase as the modern civil society is realized in a political revolution, industrialization and universal expansion [13].

An interesting characteristic of the three positions, reflecting these changes in «legal perception», was given by Niklas Luhmann. The first position concerns the opinion of Kant on «legal aspects of the problem of revolution». According to Luhmann, if we analyze Kant's views on this subject, we will see that they successfully contribute to the transformation of «the political monopoly into law basis and make possible not only to legitimate, but also to develop the legitimizing legal order». And further: «In the beginning obedience must be ensured, even regardless of the content of norms, and only then the power is able to limit itself. In this case there is rejection of single bonds of law and time, and the transition to the sequence of steps: first, the violence, then — law... It means that those who somehow affected by the revolution cannot longer rely on the legality of their expectations: it will forced to speculate on the success or the failure of the revolution. Action or omission — that is the question» [12].

The second position: the abovementioned problem is «to be normalized in the legal technology and dogma», where «legal solutions should always be compared with various resulting solutions.» Especially good-quality legal arguments are highlighted by intuition through focusing on results. It works not only for political arguments, but also for the characterization of dogmatic legal concepts, and for ordinary interpretation of legal norms. In Germany, this point of view was established in connection with theological, or functionality, methods of interpretation. Moreover, even such point of view was defended, according to which all the values, in the end, must be justified by their consequences. But here, «value» means that the future renders its decision on law and injustice, the future that we do not know and that we can only guess.

The third position concerns the sociological understanding of law. Moreover, the legal role of the social sciences is the most important topic of discussion in Germany. However, it lacks any possibility to find out the function

of norms and the sense of duty. Despite the huge number of works devoted to the consideration of the problem of sense, some of the important aspects of this problem, which are of fundamental importance, are not given sufficient attention. It is related, in particular, to the role of language in the expression and the formation of sense.

If according to Edmund Husserl (transcendental) consciousness of the subject plays the leading role in the creation of sense [5, p. 124], then, according to Ludwig Wittgenstein, the sense is generated not by the subject, but by certain socio-linguistic practice, which, however, should be done only by the subject. This is an extremely important observation: the subject is ineradicable from the sense, and at the same time the subject is «included» in the sense through the expression.

We can say that Husserl and Wittgenstein, moving in opposite ways, equally open the «subjective» dimension of sense. It allows concluding that the role of the expression and the role of the subject in the formation of sense is not accidental. It characterizes the «nature of the sense» and does not depend on any approach.

Senses can exist objectively regardless of the subject but they are always created by the subject and the language. There can not be the author outside the language and the subject. Thus, new sense has to go through the conscience of the subject and then embody in the speech to become the one it is. The sense appears as ideal objective formation. It is ideal as is unattainable for the conscience with the use of organs and senses and objective as the same sense can be revealed and understood by many subjects. At the same time the sense is the formation with which we deal directly in the process of knowledge.

From the standpoint of phenomenology the sense is constituted by the acts of conscience (acts of intention of the meaning). Revealing the machinery of constitution (i.e. the machinery of «formation of the sense») phenomenology determines ontological status of the sense: it exists as is constituted by the acts of intention of the meaning and exists only when is constituted. Moreover, this expression plays an essential part in constitution of the sense as not only communication but reasoning itself is carried out by means of expressions.

The fact that ontological status of the sense can be defined only through revealing the machinery of its formation is also demonstrated by K. Popper's conception. The sense gets its existence by means of its impersonation in the language. Thereby, only language owing to its opportunities procures entity of the sense for our thinking and further work of the thought and knowledge with various semantic formations.

Analysis of I. Kant's teaching on transcendental schematism of clear rational concepts [7, p. 67–310] with L. Wittgenstein's theory of logical form testifies that inner form (in Kant's teaching it is known as transcendental schema but Wittgenstein calls it a logical form) is an important conceptualizing and cognitive component. The inner form can act as peculiar symbolism which essence consists in spotting of fundamental principle, the law of gen-

eral mediation that determines the construction of the whole essence of the culture within the bounds of humanistic cognition. The inner form has huge opportunities as means of interpretation and can be considered as a special methodological procedure, scheme of interpretation directed towards finding and deciphering the essence [29, p. 11,15].

Law exists for us as a certain form that concerns the problem of intensity between the temporal and social dimensions and endures this intensity even under the circumstances of evolutionary growth of intricacy and complexity of the social structure. Form of law consists of the combination of two distinctions: modality of expectations «cognitive / normative» and «legal / illegal» [23, p. 124]. All the social applications of law function within this framework and intensify the subject sense.

Nowadays there is an objective necessity to improve legal interpretation of legal rules and law enforcement. Moreover, the optimization of these processes shall be based on the scientific data. However, it has recently become difficult to carry out research in the area of law [25, p. 125–128]. In turn, as Regelsberger remarks, not too many chapters can be found in the teaching of law where theory would lag behind the practice so far and knowledge would fall behind the skills as in the teaching on interpretation. In this case interpretation shares the fate of the human speech: a lot of people speak correctly without having any knowledge on laws of language. Difficulties are in the material, infinity of the aids and diversity of the application. Nowadays and in all preceding history there has not been any deficiency in attempts at giving the leading points of view mentioned here the nature of scientific principles. Special branch of theory of law was formed from them; however, dull and conventional attitude to the material did great harm to legal hermeneutics [26, p. 137–138].

Legal hermeneutics is the science on understanding and explaining the sense laid by the legislator into the text of legal act. A task of legal hermeneutics is to provide methodologically transition from understanding the sense of point of law to explaining of its essence. Such kind of transition is the process of cognition which results in finding the sole and correct version of interpretation of general precepts of law concerning concrete legal situation.

At the same time there are widely used such methods as linguistic, double and triple reflection (takes place when not only the text is interpreted but also its author and concretely historical situation) put into the context and other methods. Perspective of these methods is especially evident for making a new type of legal awareness as well as in such section of legal techniques as statutory interpretation [1, p. 40–47]. Today legal hermeneutics aspires to be independent within the boundaries of theory of law and state [30, p. 115–121].

The most interesting methodology of hermeneutic analysis of legal texts was worked out by the Italian philosopher and poet E. Betty. The philosopher was saying that there is the world of objective spirit, facts and human events, acts, gestures, thoughts and projects, traces and evidence of ideas, ideals and realizations. This entire world belongs to interpretation. Interpretation appears as the process the aim and identical result of which is comprehension.

The interpreter shall reproduce the real process of creation of the text by dint of reconstruction of the message and objectivization of intention of the author of the text.

Betty formulated four hermeneutic channels which are actively used in law:

1) canon of immanence of hermeneutic scale. In other words, reconstruction of the text must conform to the author's point of view. Interpreter does not have to bring anything from the outside; he has to look for the sense of the text, respecting dissimilarity and hermeneutic autonomy of the object;

2) canon of totality of hermeneutic consideration. Its essence is in the idea that unity of integer is explained through the unity of integer, but the sense of separate parts becomes clear through the unity of integer (hermeneutic circle);

3) canon of relevance of awareness. The interpreter cannot withdraw his subjectivity till the end. To reconstruct other people's thoughts, and works of the past, to return to genuine vital reality other's emotions it is necessary to correlate them with own «moral horizon»;

4) canon of the semantic adequacy of understanding represents a requirement to the author of the text. If the author and interpreter are congenial and are on the same level, they can comprehend each other. This is also the interpreter's ability to understand the purposes of the object of interpretation as his own in the literal sense of the word.

Hermeneutic method in law is to simplify the dialogue of legal cultures since legal concepts and categories (such as freedom, democracy, and liability) have different meaning in different legal systems. The usage of hermeneutic method is most productive in historical and legal research (not without reason E. Betty was the historian of law). At the same time you should not be waiting for hermeneutics to solve the problems it does not set itself and is not capable to solve: hermeneutics has a vocation to supplement but not to replace itself the existing methodology of law [9, p. 115–121].

General theory of awareness (hermeneutics) has accesses to almost all the stages and zones of legal regulation as they are mediated by the consciousness and comprehended by it when necessary. But this is a good reason for application of this science in general jurisprudence [22, p. 122–123].

Principles of hermeneutics can become an effective machinery of research, for example, reinterpretation, and distortion of the author's sense put into the one or another teaching. Interpretation of scientific texts, «understanding of awareness» is the «field» on which hermeneutics can do its best to show its productivity.

Thus, contemporary (neoclassical) methodology is widely used in jurisprudence with classical methodology [24, p. 83–87]. At the same time appropriation and usage of the knowledge of the other sciences take place by means of so-called juridization of the methods (cognitive means and methods) of other sciences and formation of new legal discipline at the intersection of law and interdisciplinary sciences.

Law on hermeneutics is reading: unity should be understood proceeding from the particular, but particular should be comprehended from the unity.

This rule was developed by ancient rhetoric, but hermeneutics transferred it from oratory to the art of comprehension at the early modern period. Here we face a problem of hermeneutic circle. If the process of understanding constantly moves from unity to a part and back to unity, the task of the partners in the legal dialogue is to widen the unity of clear sense by the concentric circles.

Activity directed to assimilation of law and expressed in it the will of the legislator is called construction — interpretation. Incidentally, Romans used the word «interpretation» which had wider sense: it tabbed not only the construction of statutes in its own sense but a further development of the cogitation of the legislator by using analogy. Certainly, statutory construction is a mental activity for which well-known rules were worked out. Total combination of these rules is called Legal Hermeneutics. The lawyers of the eighteenth and early nineteenth century desired for elevating the hermeneutics to the extent of the special science. As Puchta remarked, all the science is hermeneutics for the one who has common sense and any of the abstract rules of hermeneutics will not help to explain the sense of law if the person who illuminates it does not have any vocation to it developed by studying and practice. Windscheid on this matter observed exactly that «Legal Hermeneutics» is not a science which can be given but rather the art which should be studied.

Primarily, intercommunication of jurisprudence and hermeneutics is showed in interpretation of different forms and sources of law concerning the historical legal documents as well as legal acts valid at the up-to-date period. In our opinion, growing popularity of legal hermeneutics, primarily, is indebted to ontological approach to legal hermeneutics on the whole, H.-D. Gadamer and E. Betty who pointed out the community of historical, theological, philological and legal hermeneutics. The basis of this approach is formed by the fact that the gap between generality of law and concrete provision of law in the particular case can not be destroyed in its essence in view of abstractedness or banality of law. «The statute is general and that is why it can not be fair to each individual case» (H. Kehn). H.-G. Gadamer's approach to this problem by means of hermeneutic perspective gave rise to the whole tendency in contemporary philosophy of law. According to legal hermeneutics, the sense of law should be comprehended with consideration of every concrete situation. H.-G. Gadamer showed generality or universality of problem of awareness on a basis of extraction of one of the integrant moments of any use. From his point of view, for legal hermeneutics as well as for theological ones the strain existing between the given text (legal act or the good tidings), of one part, and the ones he gains as a result of its application in the concrete situation of interpretation (judgement or sermon), of the other part, is constitutive. It follows that to understand the text correctly in accordance with the claims he is pulling out we have to understand it in a new and different way in every given moment and in every concrete situation. In other words, awareness at this point becomes the application: it penetrates into the sense of one or another legal text and its application to the concrete case and does not represent two separate acts but the separate process.

Collision, conflict of interpretations between the legislator and implementer of law (an executing authority, a citizen) involves the legislator's initial concern to uniqueness of the text to his advantage. This is exactly what specific features of hermeneutics consist in.

We suppose that it is also necessary to connect hermeneutic method in understanding of law with existence of different legal cultures including national legal culture with personal view on the problem of human rights, legal state, separation of powers, local government etc. procuring real embodiment of ideas of freedom and justice conforming to our legal mentality and conditions of legal existence. Logic is to interpret irrational moments which are present in any legal culture [10, p. 175–176].

Any form of legal practice we would have not considered, they consist of combination of different interpretative estimations. In this comprehension law in its nature is completely hermeneutic phenomenon.

V. Lobovikov worked out a «discrete mathematical model of moral and legal aspect of human activity» [11, P. 259]. Mathematical structure modelling adequately the reasoning which is studied by formal logic and mathematical structure regulating adequately the behaviour which is studied by formal jurisprudence are essentially close (similar) mathematical structures. Having connected mathematical (natural law in its essence) method with formal logical (positivistic) methods it is possible to create mathematicized multipurpose system of natural law which he called the algebra of acts which can become a criterion for control of current legislation. Thus, it takes place the sophistication of concept of law and comprehension of its multidimensional phenomenon of human entity.

As the representative of «integral jurisprudence» D. Holl claims that the comprehension of law is not completed and it is possible to pick out a certain legal structure which does not include only principles of law but also the subjective legal experience of the participants of continuously changing reality [5, p. 741]. The representative of integrative jurisprudence makes a conclusion on necessity of including the value aspect determining the behaviour of a human into current legislation. The law shall express not simply real but fair, correct moral standards. Thesis «on humanity of law» which embodies the legal nature of a person can act as a distillation of this requirement.

The majority of authors engaged in hermeneutics were confined to repeating and commenting the rules of interpretation formed by Roman lawyers and remained in the Codex Justinianus having rarely done some amendments and additions. Very few people tried to study the process of interpretation but not as a whole, just in certain parts. It should be noted that the theory of interpretation of legal acts has the same meaning as logic or grammar. The theory of interpretation of laws is a methodological guide to realization of principle of management.

«If there are rules, Mill says, «which are subordinated to consciously and unconscientiously by each mind in each case when it concludes correctly, it is scarcely to prove that the man would rather follow these rules knowing them than not being acquainted with them...People had been discussing the proofs

and often correctly when logic was still not the science; otherwise it would have not become it. Just as they were fulfilling huge mechanical works not having understood the laws of mechanics. But there are bounds of the ones the mechanic can fulfil not knowing the laws of mechanics as well as the thinker can fulfil not knowing the basis of logic. Very few people with the help of extraordinary genius or acquired good mental techniques by chance could act not knowing the sources in the same or almost the same way as if they acted having adopted these sources. But the majority of people need to understand the theory of the one they are doing or follow the rules made for them by the people who understand theory [17, p. 12–13]».

The purpose of interpretation of laws is the revealing of true sense of legislative provision. Such kind of provision is the thought of legislator expressed in words.. Consequently, the art of interpretation of laws comes down to ability to understand the human speech. But everyone who deals with products of human mind invested into the form of the word has to possess this ability. It follows that the rules which are necessary for understanding another literary work shall be followed during the interpretation of laws. These rules are worked out by special branch of philology which is called hermeneutics and which deals with construction of theory of art to understand oral or writing speech. It stands to reason, that teaching on interpretation of laws is a special branch of this hermeneutics and that is why it is often called legal hermeneutics.

Thus, the material for working out the methods and rules of interpretation of laws should be primarily looked for in the data of philological hermeneutics. As the last one is depending in its conclusions on the number of sciences the subject of which is spiritual activity of a human especially his literary work, what the psychology, logic, grammar, stylistics, the history of language are etc., the lawyer not finding the necessary data for him in philological hermeneutics has to resort to above-mentioned sciences.

Further, the laws in force differ from the other literary works in some features. For example, they are intended for using in practice, form in their aggregate one liaison unit, and are issued in view of any practical purpose the achievement of which is desirable for the legislator, are based on some or other considerations of justice or purposefulness. These and other peculiarities of laws shall be taken into account and be used as material for modification of general hermeneutic rules and development of new ones.

At last, the legislator caring of his enactments to be understood correctly sets the rules and interpretations which are binding for the courts and citizens because they are the same as any other rules.

It is evident from the above-mentioned that material for construction of rules of statutory interpretation shall be adopted: 1) from philological hermeneutics and sciences it is based on; 2) from the analysis of characteristics of legislative regulations; 3) from provisions of law itself [32, P. 12].

Application of laws and other legal rules in practice is in enumeration of particular cases of life under the decisions which envisage them in general form. This enumeration has the form of syllogism in which the major premise

is a legislative regulation or a number of rules and minor one — factual circumstances of the given concrete case but the conclusion drawing from them with logical necessity gives an answer to the legal issue which has arisen and is to be solved.

Take for example that I. in consequence of fight with P. has damaged his street-clothes. The barrister who has been asked for advice by P. or the judge at whom he will make a claim against I. on compensation for damages will have to cope with civil laws and look for an article on the grounds of which it is possible to solve this case.

Having acted in such kind a way they will get the following syllogism.

The minor premise. I. has caused damages to P. by his acts to the amount of 250 UAH.

The major premise. In accordance with article 1166 of Civil Code of Ukraine, «Property damages caused by illegal decisions, actions and inactions to personal non-property rights of individuals or legal entities, and the damage caused to the property of individual or legal entity is made up for on all amounts by the person who caused the damage».

Conclusion. I. is obliged to pay P. 250 UAH.

As it is evident from this example, it is necessary to have two premises to build up a syllogism. But they are rarely given enough finished. They are usually to be obtained: the minor premise by means of legal analysis of factual circumstances of the given concrete case, the major one — by means of interpretation and logical development of legal rules.

At first, take a look at the way the minor premise is obtained.

Each concrete case springing up in life and demanding settlement under the legal rules consists of the major or minor amount of the elements. Some of these elements have legal significance as legal act connects the consequences with them: the other elements do not have the same importance being legally indifferent. Therefore, first of all, it is necessary to lay the case which is subject to solution into component parts and select the ones from them which have legal significance. The analysis of factual circumstances consists in it.

Take for example that P. asking the barrister for advice is telling him the following: «Yesterday at 10 PM having left the cinema and going to the restaurant to have supper we started arguing with him about the causes of the earthquakes and became so irritated that we started to be free with our fists and I. tore my suit jacket up by his left hand for which I paid 350 UAH to the tailor the other day. Is it possible to recover this amount from I.?»

First of all, in his story the barrister has to separate juridical elements from domestic ones which do not have legal significance to answer this question. Also, he has to determine the extent of damages P. suffered from and whether they were caused by a group or a person. Further, P. says that he was going from the cinema. It is also not important. If he had been going from the cinema or home, the legal essence of the case would not have changed. Similarly, the cause of the quarrel, infliction of damage by left but not the right hand, purchase of the suit jacket from the tailor but not somewhere else etc. Having eliminated all the domestic circumstances, the barrister would

fix upon the fact that I. has caused P. damages having torn the outerwear up. This is legal grain which lies in the story which has been told by P.; everything else is domestic husk which does not have any value in the lawyer's eyes. It is not hard to note that legal analysis is similar to medical diagnosis. Just as a doctor chooses from the number of painful symptoms the patient is complaining about only a few of essential ones and diagnoses a disease by them, the lawyer allots legal elements from domestic ones of the concrete case and constructs a legal incident from them.

After the concrete case which is to be solved has been analysed and thus the minor premise of syllogism has been got, the lawyer has to start looking for the major premise which conforms to it. The stage for searches shall be the favourable legislation which provisions are to be applied to this case. These searches can lead to either of two results. Sometimes the major premise is expressed directly in one or several provisions of law. It took place in the above-mentioned example where the issue on the compensation for damages caused by one person to the other one was solved directly by article 1166 of the Civil Code of Ukraine. It just remains to interpret the point of law in such kind of cases, i.e., to find out its real and exact sense. It is not rare when deliberate searches remain unsuccessful and there are no any provisions in the legislation which could be a finished premise. In such kind of cases the major premise shall be logically brought out from the existent rules. This method of gaining a major premise can be called a logical development of rules.

One operation of preliminary nature shall precede interpretation as well as logical development. Before the application of the found rule it is necessary to make sure that it is a genuine rule, i.e., has legal force, and ascertain its exact text. The criticism of the authenticity of the rules consists in it.

So, the application of laws in practice embraces four operations: 1) legal analysis of concrete cases which are to be solved; 2) criticism of authenticity of rules: 3) interpretation of rules; 4) logical development of them.

The first of these operations do not need a special research. To be able to distinguish legally material circumstances from purely domestic ones, it is necessary to be familiar with legal concepts but this acquaintance is gained by means of study of jurisprudence, i.e., legal education. There are no any special rules which are to be guided by while carrying out the legal analysis. There is only one general rule: «it is necessary to cast aside all the circumstances which do not have any significance from the perspective of current law».

It is ought to say the other thing concerning criticism, interpretation and logical development of regulations. These operations are incomparably complicated; they are to be carried out according to special rules, but it is possible to establish them by means of detailed research into the essence and distinctive features of each of the named operations.

Interpretation of rules of law includes two elements: elucidation — revelation of content (interpretation) of legal rules «for yourself» and explanation — unfolding of the content (interpretation) of legal rules «for the others». The interpretation is in special acts (they are known as interpretative).

Legal interpretation is a special cognition which is fulfilled with the purpose of practical realization of law.

The activity of the court and other law-application bodies on ascertaining the factual circumstances of the case also refers to special cognition in the area of law. Legal interpretation gains more important significance while application of law when it becomes a part of state-powerful activity of law enforcement bodies determining the necessary legal consequences during the solution of the legal case. Here the interpretation gains legally binding meaning and the element of explanation (interpretation) is not infrequently essential and it directly influences the legal regulation of public relations.

The role and the place of interpretation of law in life of society are connected with political regime and state of legitimacy. Under the totalitarian regime in the conditions of lawlessness the interpretation is often used in order to attach the arbitrary sense to the law in accordance with some or other political purposes and hence for random application of law.

The experience of hermeneutics gives us all reasons to believe that interpretation cannot be represented purely as logical and methodological procedure since it exists as diverse phenomenon on different levels of entity of the subject [27, p. 7–25].

In the opinion of F. Nietzsche, human reasoning always acts as «the interpretation according to a scheme we cannot get rid of» [18] and the value of the world turns out to be grounded in our interpretation. Criticizing positivism Nietzsche considers that there are no facts but only interpretations. We cannot ascertain any facts «in ourselves».

Nietzsche says that there is always an opportunity to offer new significances, «perspectives» and «methods» to lay the phenomena out by the particular measures. The world, as he claims, «does not have one sense but infinite senses».

In Panofsky's opinion, « the internal sense can be defined as uniting principle which is the basis and defines visible event, its type and intelligible significance and which even stipulates the form of internal event (Italics are mine — V. P.) [21, p. 5].

Panofsky's «perspective» is established exclusively by the subject similar to Kant's transcendental scheme or Cassirer's symbolic form. It reduces artistic phenomena to the strict, i.e., mathematically precise rule, but it makes this rule dependent from man, individual, ...since the manner of its acting is determined by arbitrarily chosen position of subjective point of view [19, p. 88]».

As Nietzsche indicates, the power considering the perspective is «the entity as the subject» [18, p. 298]. It should be noted that Panofsky is speaking about the «great transformation» from aggregate space to systematic, development of infinity category and desacralization of universe [20, p. 84–87].

Conclusions. Interpretation (legal hermeneutics) is as a culminating point, summit of legal activity. Legal interpretation is the activity which on the practical side is connected with completion of adjustment of vital relationships by law. Legal rules become ready for realization and practical effectuation as a result of interpretation.

Another thing is not the less important. Refined legal knowledge, experience, legal culture and legal art unite together and converge in unified focus in the interpretation. From this point of view, hermeneutics, i.e., the science and art of interpretation of legal terms and concepts is the kind of apex of legal skills, the culminating point of legal activity. That is why one of the most reliable indicators of high-grade work of professional lawyer is the level of professional training which lets him «immediately», fully and exactly interprets any laws and other legislative acts.

In essence, the activity which is quite often called the legal analysis consists in legal interpretation.

Legal interpretation represents itself in known sense as the process opposite the one which is fulfilled by the legislator while adoption of the statute. It is a sort of drawing an analogy with the excavation, archaeological developments — overburden operations when the layers of the ground are revealed layer by layer, not infrequently of the dead ground to reach the desired, sought-for object. The cogitation of the person who carries out interpretation (the interpreter) here goes from layer to layer of legal matter — from analysis of literal, linguistic text to analysis of legal dogma, legal features of rules of law and thereby to moral, social and other bases, backgrounds of prescriptions of law. All of these things are in order to establish actual content of legal determinations.

Legal interpretation reveals its high legal purpose and at the same time in the conditions of democracy, constitutional state, developed legal culture is not beyond the scope of legality. In the situation of totalitarian state, autocratic regime it is sometimes an expression of juridical casuistry, manipulation of law and legal categories and occasionally a direct violation of law in force under the pretext of interpretation and results in arbitrariness and lawlessness.

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ВДОСКОНАЛЕННЯ ЮРИДИЧНОГО ТЛУМАЧЕННЯ ПРАВОВИХ НОРМ І СУЧАСНОЇ ПРАВОЗАСТОСОВНОЇ ДІЯЛЬНОСТІ

Резюме

Аналізуються проблеми вдосконалення юридичного тлумачення правових норм і застосування законів. Розкрита методологія герменевтичного аналізу правових текстів. Обґрунтована можливість створення експертних систем, здатних прорахувати можливі траєкторії руху діючого суб'єкта до тієї чи іншої цілі у заданому нормативному напрямку. Визначено, що юридичне тлумачення — це діяльність, яка з практичного боку пов'язана із завершенням регулювання життєвих відносин законом. Юридичні норми в результаті тлумачення стають готовими до реалізації, до практичного здійснення.

Ключові слова: юридичне тлумачення, правозастосовна діяльність, моделювання правових ситуацій, інтуїтивне правове чуття, нові способи пізнання реальності.

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СОВЕРШЕНСТВОВАНИЕ ЮРИДИЧЕСКОГО ТОЛКОВАНИЯ ПРАВОВЫХ НОРМ И СОВРЕМЕННОЙ ПРАВОПРИМЕНИТЕЛЬНОЙ ДЕЯТЕЛЬНОСТИ

Резюме

Анализируются проблемы совершенствования юридического толкования правовых норм и применения законов. Раскрыта методология герменевтического анализа правовых текстов. Обоснована возможность создания экспертных систем, способных просчитать возможные траектории движения действующего субъекта к той или иной цели в заданном нормативном направлении. Определено, что юридическое толкование — это деятельность, которая с практической стороны связана с завершением регулирования жизненных отношений законом. Юридические нормы в результате толкования становятся готовыми для реализации, для практического осуществления.

Ключевые слова: юридическое толкование, правоприменительная деятельность, моделирование правовых ситуаций, интуитивное правовое чувство, новые способы познания реальности.