It is established that although the current legislation provides for certain ways of using doctrinal provisions and the results of doctrinal interpretation in law enforcement practice, but this process is not developed enough and needs further clarification.

Keywords: scientific-legal doctrine, legal interpretation, doctrinal interpretation, judicial doctrines, exceptional legal problem.

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VARIETY OF THEORETICAL APPROACHES TO LEGAL INTERPRETATION

Problem statement. Legal principles have a significant impact on all spheres of society. Reflecting the most general and universal legal requirements, the principles find their real embodiment in all types of legal practice. They acquire particular importance in the legal interpretation, ensuring its efficiency and quality. Without correct and uniform understanding and clarification of legal prescriptions, neither lawmaking, nor implementation, nor systematization of regulatory legal acts, nor optimal administration of justice, as well as prevention of legal conflicts, which is the most effective way to ensure rights and legitimate interests, are impossible [1, p. 177].

At the same time, there are many points of view of scientists on the nature and function of legal principles, their relationship with the principles of law, especially in the context of interpretive practice. The main ways to solve this problem are reflected in theoretical approaches to legal interpretation. It should be noted that in theoretical science there is no dogmatization of any one approach; we can say that in the conditions of post-non-classical science, different approaches to existing problems are developed, and within the paradigm of comparism, they are perceived on the basis of a pluralism of ideas.

Analysis of recent researches and publications. This topic was addressed by such scientists as N. N. Voplenko, E. Vrublevskiy, D. A. Gavrilov, T. V. Gubaeva, J. Carbonnier, V. N. Kartashov, V. V. Tarasova, A. F. Cherdantsev and others. It should be noted that in their works separate theoretical approaches to the problem of legal interpretation were considered, however, a number of controversial issues related to the substantiation of the definition of the phenomenon of «legal interpretation», interpretation of the structure, elements of this legal phenomenon remained insufficiently developed.

The purpose of the article is to determine the diversity of theoretical approaches to legal interpretation as a reflection of pluralism in modern legal science.

The main results of the research. In pre-revolutionary and modern science, there were and there are four most common approaches to the study of legal interpretation [2, pp. 70-82; 3, pp. 3-8]. The first approach

is that this problem is considered within the framework of legal hermeneutics through the categories «meaning», «understanding», «explanation», «text», «language», «interpretation», «hermeneutic circle», «tradition», and others.

Due to V. N. Kartashov, the value of this approach lies in the fact that the idea of understanding and explanation as a reconstructive process inherent in hermeneutics, during which, in order to correctly understand the purpose and meaning of the text, the interpreter reconstructs it and logically transforms it, allowing one to approach the problem of legal interpretation from a cybernetic and informational standpoint [4, p. 348].

The second approach is called formal dogmatic or static. Its essence is expressed in the fact that the subject of interpretation must strictly and rigorously follow the letter of the law, establish only the meaning of the normative legal act, which was enshrined in it by the law-making body at the time of the publication of the act. Therefore, normative legal acts cannot, through interpretation, adapt to the changing economic, social, political internal and external conditions of public life. This approach, according to E. Vrublevskiy, aims to ensure maximum stability, legal certainty and foreseeability of decisions of bodies applying the law. To achieve this goal, it is necessary to assume that the value of the norm is unchanged, since only such a value of the norm can ensure the implementation of the above stated goal.

The essence of the third, dynamic approach lies in the fact that the subject of legal interpretation adapts a normative legal act to those changes that occur in various social relations. The struggle between dynamic and static approaches in legal interpretation is reflected in the traditionally called objective and subjective theories of interpretation. According to the subjective theory, the purpose of legal interpretation is to establish the «will of the legislator», and according to the objective theory – to establish the «will of the law». These differences are far from formal, because behind each of them lies a certain attitude to legality, an appropriate approach to the interpretation and implementation of law. On the one hand, the need to take into account the stability and formal certainty of law, and on the other, the adaptability of law to real life, to provide significant freedom of the interpreter, to endow the latter, in fact, with lawmaking powers.

A. F. Cherdantsev points out that in relation to this problem it is difficult to unequivocally decide which of the two presented tendencies is good and which is bad. He stresses that «dynamic» trends in practice and interpretation theory do not contribute to the stability of the rule of law. From the point of view of the principles of the rule of law in the presence of modern legislation, dynamic tendencies must certainly be rejected [2, pp. 81-82].

At the same time, on this aspect of the problem, in our opinion, A.F. Cherdantsev admits a certain contradiction. For example, he notes that one cannot justify a deviation from the exact application of the norms of law by references to a rapidly changing situation, to the inability of a normative legal act to promptly follow a rapidly developing life, since the legislator himself, when issuing this act, takes into account the possibility of future changes in social life, its diversity and dynamism, and here the scientist points out that one should not lose sight of certain «elements of dynamism of interpretation that are in the sphere of legality». Thus, the content of an interpreted legal act may change indirectly, when other, logically related normative acts are changed. In addition, the dynamics of the content of normative legal acts can be expressed, in his opinion, also in the use of evaluative terms, the meaning of which is quite variable, depending on the evaluation criteria arising from a specific historical situation.

J. Carbonnier, relying on theoretical and historical sources, showed that the evolutionary method is most often used in the period of social crises and reforms, when the laws of the reformist plan are interpreted broadly, and the conservative ones – restrictively. This method «first came to the fore, then retreated, but always had the same meaning: the interpreter must adapt the law to social changes» [5, p. 311].

The fourth, the so-called activity approach, is that interpretation is considered as a special kind of legal activity aimed at understanding and clarifying the content of legal texts [6, p. 50]. However, one should agree with V. N. Kartashov is that the activity approach as applied to legal interpretation has not been effectively implemented by any of the scientists in their studies. Therefore, the position of those legal scholars who, using the activity approach, consider legal interpretation as a kind of social and legal practice, is more preferable, which allows them to study this problem more deeply and comprehensively, to clearly reveal the concept, structure, content, forms, functions, principles, mechanisms of objective and subjective determination of interpretive practice, as well as other topical issues of important methodological, theoretical, applied and didactic significance. Scientists understand interpretive practice as a special kind of legal activity to establish the content and form of a legal phenomenon, taken in unity with the accumulated interpretive experience [4, pp. 347-414; 7].

This idea of interpretation gave us the opportunity to show how legal principles ensure high quality and efficiency of interpretive activity in the legal system of society, as well as to find out the forms of their expression and consolidation in personal and externally objectified legal experience.

The above approaches to legal interpretation are traditional for legal science. At the same time, the methodological foundations of the study of interpretive practice should be presented much broader and more diverse. When studying it, a comprehensive, integrative approach is required, including logical, linguistic, philosophical, sociological, psychological, axiological, ethical, legal and other substantiation of interpretive practice.

The logical approach makes it possible to establish the content and scope of the concepts «interpretive practice», «legal official interpretation», «subject of interpretive practice», «act of official legal interpretation», «principle of interpretive practice», etc.; formulate their definitions, highlight essential features, classify, for example, the principles of legal interpretation. In this case, logical laws and forms, techniques and rules should be widely used to avoid logical errors and contradictions in theory and practice.

The essence of the linguistic approach was very briefly and aphoristically expressed by the ancient Roman lawyers: «Knowledge of words is the soul of the law». The legal literature correctly notes that the linguistic forms through which legal prescriptions are set forth are at the same time tools of interpretation. Linguistic methodology is aimed not only at the external, but also at the internal form of expression of a word – at the origin of legal terms and concepts, which in many cases help to understand the meaning, content and forms of one or another legal prescription, as they clearly demonstrate the evolution of legal ideas and values, defining legal regulation.

T. V. Gubaeva writes that «in-depth knowledge of the properties of a word helps to comprehend the logic of legal thinking, to thoroughly understand the systemic structure of law and the mechanisms of its impact on the consciousness and behaviour of people, as well as to perfect the skills of interpreting legal norms and the ability to operate with various legal constructions and categories on practice. All this forms the basis of legal professionalism and the most important part of the methodology of jurisprudence» [8, p.13].

The interpretation of legal texts is undoubtedly the most important part of legal linguistics and technology, which are the subjects of independent scientific research [9]. Philologists, specialists in general linguistics and sociolinguistics very often pay attention to the fact that it is possible to correlate the «frozen» texts of normative legal acts with the constantly changing social reality while maintaining the viability and stability of the legal system of society only through changes in the interpretation of these texts by the court and substantiating them in a court decision of the grounds for preference and choice of one type of interpretation or another. That is, in fact, they substantiate the priority in the interpretation of the «spirit of the law» over the «letter of the law», the need in all cases to proceed from the dynamic theory of interpretation of legal texts.

The philosophical approach allows us to consider interpretive practice from the most general, fundamental, worldview positions using the laws of unity and struggle of opposites, the transition of quantitative changes to qualitative ones, denial of negation, categories of dialectics. Studying the mechanism of determination of interpretive practice, the patterns of its emergence, development and functioning, is of particular importance in the study of this problem.

An important role in the study of legal interpretation is played by the sociological approach, in particular, such specific sociological techniques as the analysis of statistical sources and materials of interpretive practice, acts of official interpretation and unofficial documents, the method of observing specific subjects and participants in the interpretation, oral and written interviews, questionnaires, interviewing, study of individual, group and public opinion, factor analysis, modeling, expert assessments, tests, etc.

It is curious that foreign scientists (for example, F. Heck, J. Carbonnier) have long considered legal interpretation as a sociological phenomenon, a sociological interpretation, and the latter in the form of applied sociology. So J. Carbonnier writes: «If it is recognized that it is preferable to legislate in accordance with public opinion than contrary to it, then it is obvious that it is better to interpret laws based on this opinion. ...The difficulty lies in the practical implementation of such an interpretation» [5, pp. 307-318].

In the study of interpretive practice, the psychological approach is clearly underestimated, even in cases where legal interpretation is viewed as a process of clarifying legal prescriptions, intellectual-volitional activity. Due to O. D. Sitkovskaya, «the principle of scientific substantiation of legal regulation also includes the obligation to use the data of psychological science» [10, p. 1].

The need to use psychological means, techniques, ways, methods is due to the fact that in the process of interpretive activity, specific people are involved with certain feelings, emotions, abilities, ideas, attitudes,

will, knowledge, pursuing specific goals and guided in their actions by certain interests, motives etc. The analysis of the mental mechanism of the interpreter's activity will reveal not only the corresponding structural and substantive defects in this mechanism, but will also serve as the basis for a purposeful and conscious increase in the quality and effectiveness of admitted legal explanatory decisions.

The means, techniques, ways and methods that make up the psychological approach are widely used not only in national legal systems, but also in international law. For example, the principles developed by the International Institute for the Unification of Private Law state that when interpreting contracts, the intentions of the parties, the corresponding goals, knowledge, their rationality and other psychological factors must be taken into account (Articles 4.1, 4.2, 4.8, etc.).

The axiological approach allows one to assess various elements and aspects of interpretive practice, to determine the level of their effectiveness and quality in the legal system of society. Therefore, it is no coincidence that many legal scholars speak of a competent legal interpretation as an art, highly intellectual and creative activity, a factor of cultural progress.

The ethical approach is due, firstly, to the fact that law, as an object of legal interpretation, is a deeply moral phenomenon. A lawmaking body, forming certain prescriptions, sometimes deliberately fixes moral requirements in normative legal acts.

Secondly, in the legal literature there is a widespread opinion that the legality and effectiveness of law enforcement acts of judicial, law enforcement and other bodies largely depend on the moral requirements imposed on the employees of the relevant bodies. B. A. Strashun, for example, writes: «The rules of admission to the judiciary should apparently be complicated, paying special attention to checking not only the professional, but also, perhaps even above all, the moral and mental qualities of the applicant» [11, p. 36]. It seems to us that the legal explanatory decisions made also largely depend on the moral qualities of a particular interpreter.

Thirdly, the need to use ethical concepts and categories, techniques and means in interpretive practice is sometimes directly indicated in official and unofficial documents. Thus, the UNIDROIT Principles clearly state that in determining which condition is appropriate, among other factors, good faith and fair business practices must be taken into account.

The essence of the special legal approach is expressed in the fact that in the theory of legal interpretation, many concepts, categories, legal constructions, rules, means, ways, methods, techniques and procedures of cognition, common to fundamental, sectoral, intersectoral, applied and other legal sciences, should be used. , without the involvement of which it is impossible to sufficiently deeply and comprehensively explore the nature of interpretive practice.

A. F. Cherdantsev explains the methodological significance of legal constructions by the fact that when interpreting the norms of law, it (the structure) «gives the direction of the interpreter's thought process, organizes his thoughts, it serves as a frame that is clothed with thoughts obtained in the process of clarifying the norms of law. The use of a legal structure inevitably requires the interpreter to answer the question: how are the elements of a legal structure regulated?» [2, p. 258]. It can be concluded that legal constructions contribute to a deep understanding of the meaning of the rule of law. They help to avoid gaps in knowledge of the content of the rule of law, legally competent and correct resolution of specific cases.

It is possible to single out other (historical, economic, political, mathematical, etc.) approaches, which, together with others, will allow a more complete and objective study of the complex nature of interpretive practice, show the place and role of legal principles in the process of interpreting various legal phenomena, processes and states.

Conclusions.

The variety of approaches to legal interpretation is due to the complexity of the nature of the origin of this phenomenon, the conditions for the development of post-non-classical science, and the recent influence of the paradigm of communism, which presupposes a pluralism of opinions and ideas. There are four traditional theoretical approaches in legal science and legal interpretation. The first involves considering interpretation within the framework of legal hermeneutics. Static is expressed in the fact that the subject of interpretation must strictly and rigorously follow the letter of the law, establish only the meaning of the normative legal act, which was enshrined in it by the lawmaking body at the time of the issuance of the act. The essence of the dynamic approach lies in the fact that the subject of legal interpretation adapts the normative legal act to the changes that occur in various social relations. The activity approach is that interpretation is considered as a special kind of legal activity and practice.

Recently, such approaches have become relevant as logical (allows you to establish the content and scope of concepts, formulate their definitions, highlight essential features, classify), linguistic (aimed not only at the external, but also at the internal form of expression of a word), philosophical (considering interpretive practice from the most general, fundamental, ideological positions), sociological (aimed at analyzing statistical sources and materials of interpretive practice, acts of interpreting documents), psychological (considering legal interpretation as a process of intellectual and volitional activity), value (allows you to assess various elements and aspects of interpretive practice), ethical (studies interpretations through the prism of morality), legal (explores interpretation through concepts, categories, constructions of legal science).

To establish the true nature of legal interpretation, the traditional approaches to science are not enough. A comprehensive, integrative approach is required, which, based on the relevance of intersubject connections, would include different types of non-legal substantiation of the considered phenomenon.

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Shevchenko A. Ye., Kudin S. V. Variety of theoretical approaches to legal interpretation

The article explores the variety of theoretical approaches to legal interpretation. It has been determined that the variety of approaches to legal interpretation is due to the complexity of the nature of the origin of this phenomenon, the conditions for the development of post-non-classical science, and the recent influence of the paradigm of comparism, which assumes pluralism of opinions and ideas in legal research. It was found that in modern science there are four traditional theoretical approaches to the essence of legal interpretation. It has been determined that the content of the first approach is revealed within the framework of legal hermeneutics through a number of categories. The essence of the second approach (formal dogmatic or static) is expressed in the fact that the subject of interpretation must strictly and rigorously follow the letter of the law, establish only the meaning of the normative legal act, which the lawmaking body enshrined in it at the time of the publication of the act. That is why normative legal acts cannot, through interpretation, adapt to the changing economic, social, political, cultural internal and external conditions of public life.

It is proved that the essence of the dynamic theoretical approach lies in the fact that the subject of legal interpretation adapts the normative legal act to the changes that occur in various social relations. It was found that there is a contradiction between the dynamic and static approaches in legal interpretation, which is reflected in the traditionally called objective and subjective theories of interpretation. According to the subjective theory, the purpose of legal interpretation is to establish the «will of the legislator», and according to the objective theory – to establish the «will of the law». It has been substantiated that the essence of the activity approach is that interpretation is considered as a special kind of legal activity aimed at understanding and clarifying the content of legal texts.

The authors of this article point out that in order to establish the true nature of legal interpretation, the methodological foundations of the study should be presented much broader and more diverse, and not be limited only to traditional approaches. When studying it, a comprehensive, integrative approach is needed, which, based on the relevance of interdisciplinary relationships, would include logical, language (linguistic), philosophical, sociological, psychological, axiological (value), ethical, legal, historical, economic, political, mathematical and other substantiation of legal interpretation.

Keywords: diversity, theoretical approach, legal interpretation, interpretive practice, integrative approach.

Шевченко А. Є., Кудін С. В. Різноманіття теоретичних підходів до юридичного тлумачення

У статті доведено, що різноманіття підходів до юридичного тлумачення зумовлено складністю природи походження цього феномену, умовами розвитку постнекласичної науки, впливом останнім часом парадигми компарізму. З'ясовано, що існують чотири традиційних теоретичних підходи до сутності юридичного тлумачення. Визначено, що зміст першого підходу розкривається в рамках юридичної герменевтики через ряд категорій. Суть формально-догматичного виражається в тому, що суб'єкт тлумачення повинен неухильно дотримуватися букви закону.

Доведено, що сутність динамічного теоретичного підходу полягає в тому, що суб'єкт юридичного тлумачення адаптує нормативний правовий акт до тих змін, які відбуваються в різноманітних суспільних відносинах. Обґрунтовано, що сутність діяльнісного підходу, полягає в тому, що тлумачення розглядається як особливий різновид юридичної діяльності, спрямований на пізнання і роз'яснення змісту правових текстів.

Автори даної статті вказують, що для встановлення справжньої природи юридичного тлумачення методологічні основи дослідження повинні бути представлені набагато ширше і різноманітніше, і не обмежуватися тільки традиційними підходами. При його вивченні необхідний комплексний, інтегративний підхід, який би включав логічне, мовне, філософське, соціологічне, психологічне, ціннісне, етичне, юридичне та інше обґрунтування юридичного тлумачення.

Ключові слова: різноманіття, теоретичний підхід, юридичне тлумачення, інтерпретаційна практика, інтегративний підхід.

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