HISTORICAL INTERPRETATION OF LEGAL NORMS IN THE MODERN PERIOD OF SYSTEMATIC AXIOLOGICAL TRANSFORMATION

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Summary

The aim of the article is a theoretical and legal analysis of the historical interpretation of law in the context of doctrinal views, its justification and comparison with other theories. Achieving this goal involves: establishing the methodological value of the historical interpretation of law; show the need to follow a historical approach to the interpretation of law. The novelty of the article is to substantiate the practical value of the historical interpretation of law in the modern period of systemic axiological transformation and development of digital technologies. It is proposed to use the historical method of interpretation of legal norms in connection with digitized access to historical sources of law, in particular to the catalog and content of legal principles that were developed in different periods and continue to be the foundation of modern legal systems.

The interpretive process gives the judge broad discretion. Voltaire's fear would find expression in the judicial environment if the methods of interpretation of legal norms were weak, applied subjectively or simply exploited in order to achieve the desired goal. Then there would be a real possibility that in some cases the courts would usurp the functions of the legislature and call into question their own legitimacy. Only an accurate interpretation of the text of the law and its implementation in accordance with the intention and purpose of the legislator can regulate social relations and contribute to the development of society and the state.

The analysis of the theory of historical interpretation of legal norms shows that the historical-critical analysis of law is interdisciplinary and relies on the growing amount of scientific literature as an approach to teaching and learning. It has been argued that historical approaches to the interpretation of legal norms are useful and effective for studying the relationship between internal and external contextuality in legal research. It is proved that due to the historical reconstruction of the genesis of the rule of law it is possible to explain the main factors, which probably explain the technical and legal features of legal interpretation. The formation of the rule of law in some way depends on socio-economic, political, cultural changes in society at a certain stage of its historical development. Which, in the end, affects our understanding of law and its epistemological consequences. Thus, for an adequate explication of the concept of legal technique of interpretation of legal norms, a relevant conceptual scheme that takes into account its characteristics is required.

Key words: lawmaking, legal technique, historical approach, ontology of law, the rule of law.

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1. Introduction

The question of interpretation of legal texts has been relevant since ancient times to the present day. Even in Ancient Greece, researchers, rhetoricians, judges and philosophers understood that the text of the law itself, no matter how correct it may be in terms of content and legal technique, has no power without correct interpretations.

Kant's words "each person has inalienable rights, which he cannot renounce even if he wanted to" sound modern. The idea of inalienability of human rights can be derived from Kant's definition of the categorical imperative. It is in Kant's philosophical works that the primary legal meaning of the words of the constitutional text about inalienable rights can be found. In jurisprudence, this method of interpreting the text of the law is called historical interpretation. It turns out that the inalienability of rights is also the ineligibility of a person to give up even a fraction of his innate rights in favor of the state.

Correct interpretation is the force of law. As Demosthenes rightly said in the speech "Against Medius", the law itself cannot help a person. This is, after all, a written text. The real power of the law is in the people who enforce it. Therefore, correct interpretation is necessary for accurate compliance and application of the law *(Nedil'ko, 2014: 1187-1188).*

Separate aspects of the theory of historical interpretation of legal norms were highlighted in their scientific works by A. Bielska-Brodziak [7], V. Goncharov [8], C. Elliott [10], H. Kötz [5], M. Kozyubra [6], Y. Kryvytskyi [9], F. Quinn [10], Y. Nedilko [1], I. Onyshchuk [2; 3; 4], S. Tkacz [7], K. Zweigert [5] and others.

At this stage, the historical retrospective is caused by the need to find out exactly how and under the influence of which factors the rules of interpretation were formed, as well as to reveal the cause-and-effect relationships of the interaction of different approaches to interpretation, especially in the light of the presence of external and internal means of interpretation produced by modern practice.

The purpose of the article is to establish the methodological value of the historical interpretation of legal norms and to show the necessity of following a historical approach to the interpretation of legal norms.

In order to rethink the theory of historical interpretation of legal norms, a number of research methods were used. The methodological basis of the study of the theory of historical interpretation of legal norms was the method of legal science as a system of means of knowing the law. With the help of a scientific approach, such research qualities as objectivity and evidence are ensured.

This research involves the application of methods and means of legal writing techniques, thanks to which the array of positive law loses its spontaneous character and becomes an expression of a certain preconceived structure subordinate to the logic of the internal structure *(Onyshchuk, 2013: 92).*

Thanks to the comprehensive (comprehensive) approach, there is a logical systematization of legal norms, which is carried out by the joint efforts of doctrine and judicial practice. The comprehensive approach is very often used in legal engineering *(Shutak & Onyshchuk, 2021: 45).*

The purpose of the study also dictated the need to use legal monitoring as a method of evaluating the effectiveness of legal regulation, studying the so-called "law dossier" (draft law) and expert assessments *(Onyshchuk & others, 2020: 440).*

2. Doctrinal views on the historical interpretation of law

According to German jurists K. Zweigert and H. Kötz: "In different legal systems, despite all the differences in their historical development, doctrinal views and thinking styles, they solve the same legal problems, down to the smallest details, in the same way, or to a significant extent somewhat similar. This allows, in a certain sense, to talk about the "presumption of identity" (presumptio similitudinis) as a tool for making practical decisions *(Zweigert, 2000; Kozyubra, 2015: 42).*

A. Bielska-Brodziak and S. Tkacz, for example, the basis of changes in Poland after 1989 aimed at the introduction of democratic standards and the construction of a new legal order was the replacement of legal principles characteristic of the totalitarian system of Poland of the era (1952–1989) with new principles, designed to create a new liberal-democratic legal system. In the literature, this period is usually called the transition period. Decisions made in Poland after 1989 can be called a continuation and gradual evolution of the legal system of 1952–1989. Accordingly, legislation created during that period did not automatically lose binding force after the 1989 changes. The legal system of Poland changed fundamentally, but it happened in stages *(Bielska-Brodziak & Tkacz, 2019: 45).*

Historical interpretation has its own characteristics in view of the system of interpretation that the interpreter professes. Proponents of primary-subjective approaches use materials from parliamentary hearings, while representatives of new textualism rely only on the objective meanings of words in a specific historical context. W. Eskridge points out that the court can apply legislative history in different ways, namely to confirm the direct meaning of words and to bypass such meaning *(Goncharov & Rabinovich, 2013: 111).*

Historical interpretation involves clarifying the meaning of a legal norm based on knowledge of facts related to the history of its emergence. The interpreter finds out the specific historical conditions that existed at the time of the adoption of the norm, economic and social circumstances, the reasons for the adoption of normative legal acts that became the object of interpretation.

It is clear that the specified information cannot be obtained from the text of the interpreted legal act. Therefore, it will be necessary to use sources that lie outside the legal system: draft regulations, explanatory notes, minutes of meetings of law-making bodies, reports and co-reports, speeches in debates on draft regulations.

Yu. Kryvytskyi singled out the following definitions of historical interpretation of legal norms: 1) the meaning of legal norms, in which the interpreter relies on knowledge of facts related to the history of the emergence of the legal norms being interpreted; 2) the content (meaning) of the legal norm based on knowledge of specific historical conditions and factors of its establishment; 3) the will of the legislator in connection with the historical circumstances of the adoption of the normative legal act; 4) content of legal norms on the basis of historical conditions and circumstances of their adoption *(Kryvytskyi, 2012: 34).*

In order to understand the true meaning of some law, it is often necessary to get acquainted with its origin, to go into the needs that caused its appearance. Only by understanding the nature of the relationship that the legislator regulated, we can understand his true intentions. Therefore, such an interpretation may be true, which takes into account social needs, specific reasons that caused the emergence of a normative legal act.

The rule of historical interpretation in English legal doctrine is sometimes called "the most satisfactory and balanced rule of interpretation" because it helps to avoid absurdity, unfairness in the application of the law, while ensuring at the same time the flexibility of judicial decisions *(Elliott & Quinn, 2014: 59).*

3. Historical interpretation of legal norms in judicial practice of the Supreme Court of the United States and the Constitutional Court of Ukraine

The use of different historical materials has unequal weight during official interpretation. For example, the Supreme Court of the United States determines the reliability of historical sources in the following order: committee reports, statements of representatives of factions in

Congress, materials of hearings and discussions, passivity of the legislator on some issues, and further history.

Investigating the controversial issue with the application of historical interpretation, the Constitutional Court of Ukraine established that in the justice system before the adoption of the Constitution of Ukraine in 1996, the position of a judge was filled only by election. According to the Constitution (Basic Law) of the Ukrainian SSR of 1978, all courts were formed on the basis of the election of judges and people's assessors, that is, judges, except for people's judges, were elected by the relevant councils, and the Supreme Court of the Ukrainian SSR was elected by the Verkhovna Rada of the Ukrainian SSR. Thus, at that time the meaning of the concepts of "appointment" and "election" had significant differences (Articles 108, 109, 150, 151 of the Constitution (Basic Law) of the Ukrainian SSR). In the current Constitution of Ukraine, these concepts are also demarcated, in particular, the concept of "election" is used for those judges who, after the end of the five-year term of office as a judge through the first appointment by the President of Ukraine, are then elected by the Verkhovna Rada of Ukraine indefinitely *(Constitutional Court of Ukraine, 2001).*

The Constitutional Court of Ukraine notes that, on the one hand, the instruments of international law, in particular the Framework Convention and the European Language Charter, do not impose on the state the obligation to provide equal protection to each separate national minority (minority group), and on the other hand, they give the state a wide scope deliberation (wide margin of appreciation) in order to decide on the issue of introducing one's own model of realization of the right of national minorities to preserve their national identity. Therefore, the implementation of the specific rights of national minorities depends on the unique circumstances in each state. In this plane, the historical context, the level of distribution of the language of the respective national minority, the state and level of distribution of the state language, as well as the geopolitical situation are of significant importance in this plane *(Constitutional Court of Ukraine, 2021).*

Historical analysis of law is often compared with the so-called "history of lawyers" in the sense of a tendentious presentation of legal events related to a certain rule of law or its interpretation. Professional historians often criticize the internal historical analysis of law as not being "true history." They are right, of course. However, the historical analysis of law as an interdisciplinary project within the framework of legal studies does not aim to deal with "real history". His contributions may prove more or less valuable, but they deserve to be appreciated on their own terms.

4. Conclusions

Historically critical analysis of law is interdisciplinary and draws on a growing body of scholarly literature as an approach to learning and teaching. Historical approaches to the interpretation of legal norms are useful and effective for investigating the relationship between internal and external contextuality in legal research, especially in the modern period of axiological transformation.

The historical context of the formation of legal norms is still underestimated and underutilized. In the modern period of systemic axiological transformation, there is a need to define new principles of the legal system. Although, together with the development of digital technologies, access to the history of the sources of law opens up, in particular, to the catalog and content of legal principles that were developed in different periods and continue to be the foundation of the legal system.

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