INTERPRETATION OF LEGAL CONSTRUCTIONS AS A SPECIFIC STAGE OF THEIR LEGAL REALIZATION

Pidhorodskyi Bohdan

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Annotation. In the current legal system, legal constructions play an important role in providing for effective interpretation of law and its further realization. That is why the author has selected the relevant information sources (scientific, normative and judicial practice), and has formulated the aim of the work (which consists in defining the interpretation of legal norms and its disclosure as a specific stage of expression of legal constructions in the law realization process) and tasks which fully reveal the subject matter of the study. Separately, the author outlines the methodological basis of the study, which consists of such methods as hermeneutic, synthesis and summarization. The author emphasizes that in the modern scientific doctrine the term "interpretation" is viewed in two aspects: as a process and as a result of activity which is set out in the relevant norms created by authorized subjects of law. It is established that while interpreting legal constructions of a text or a separate norm of law, the issue of judicial law-making is of particular importance, since their solution is much broader than a simple construction of a legal provision and serves to overcome the gaps that exist in legislation. In this regard, the author focuses on the limits of judicial law-making, and judges' prudence and carefulness while making such interpretations of legal structures, since the structure of an interpretive act should cover various aspects of legal relations, taking into account the expanded range of legal subjects, and should be repeatedly implemented and based on the principles of human- centrism. This is especially true of the decisions of the Supreme Court, the Constitutional Court of Ukraine and the European Court of Human Rights. The author examines international case law which demonstrates the practical value of the raised issue and the need for proper construction of both legal norms and court decisions, and as a result, their interpretation and realization. On the basis of the study, the author makes relevant conclusions which represent the conceptual framework of the scientific work.

Key words: legal construction, norm of law, interpretation, judicial interpretation, judicial law-making, legal realization.

1. Introduction.

Interpretation of legal norms occupies an important place in the mechanism of legal regulation of any state, which can be seen in the processes of law-making, systematization of legislation, and further legal realization. It does not require any additional argumentation that the last few years have been a significant challenge for Ukraine, when in parallel with the processes of ensuring healthcare (in particular, against Covid-19) and protecting the statehood, a long-term reform program, including in the legal sphere, was and continues to be implemented. The modernization of the legal system, driven by convergence with the European Union, has led not only to changes in the legal base in all branches of law, but also to the restructuring of legal constructions of the national legal system, the development of new legal technologies (digitalization), modification of the sources of law, and the search for new ways and instruments of legal influence on modern social relations. The significant stimulus for updating national legislation, and thus reforming most spheres of the existence of society, was the recognition of Ukraine as a candidate for membership of the European Union. However, the hurried adoption of legislative acts has presented new challenges to legislators

and government authorities, as legal collisions and gaps have arisen, which certainly indicates the inadequate quality and, therefore, low effectiveness of legal acts. As a result of such actions, the role of law enforcement activity has significantly increased, where interpretation plays a leading role, not only explaining the most modern legal constructions but also finding new and legitimate ways to implement them.

In view of the above, the problem of reviewing the understanding of interpretation of legal constructions as a specific stage of their further legal realization becomes relevant.

2. Analysis of scientific publications.

Separately, the issues of theoretical understanding of legal constructions and interpretation of legal norms have repeatedly been the subject of scientific discussions, in particular among such national representatives as: A.P. Zayets, O.V. Zaychuk, Zh.O. Dzeyko, L.I. Zamorska, M.S. Kelman, M.I. Kozyubra, P.M. Rabinovych, Y. Todika, O.G. Koban, G.I. Nelipovych, N.M. Onishchenko, O.I. Osaulenko, N.M. Parkhomenko and a host of other scholars. However, the authors did not pay attention to the issue of combining the above categories with the prospect of identifying them as a specific stage in the legal realization process.

3. The aim of the work is to reveal the legal nature of interpretation of legal norms as a specific stage of expression of legal constructions in the legal realization process. In order to achieve this aim, it seems quite logical to fulfill the following tasks: to analyze the existing conceptual and categorical framework regarding the definition of interpretation of legal norms; to study the meaning of interpretation of law as a specific stage of legal realization; to substantiate the thesis on the impact of legal constructions in the process of their interpretation on the direct process of their legal realization. To achieve these tasks, it seems necessary to use the appropriate **methodological framework**, in particular, the hermeneutic method, which will allow for the interpretation of scientific positions on the legal categories of legal construction and interpretation of legal norms; synthesis - to combine scientific positions on the meaning of legal constructions in the theory of law and the practical value of interpretation of legal norms; and summarization, which will allow for summarizing the results of the topic being researched.

4. Review and discussion.

As a rule, the construction of the text of a legal norm is not enough to obtain all the information contained in it, and therefore it (the legal norm) must be disclosed by other ways, in particular through interpretation or explanation. It should be understood that the need for interpretation of law follows from the nature of law itself, which is focused on regulating the behavior of an indefinite number of people [1, p. 155].

In view of the above, N.Y. Lepish's position seems to be justified that: «A proper understanding of the meaning and content of the law, in turn, is impossible without its correct interpretation. The rapid development of legislation in Ukraine is currently producing many problems for law enforcers. In this regard, the interpretation of legal norms as one of the elements of the legal regulation mechanism should contribute to the exact and equal enforcement of the law, the establishment and maintenance of legal order in society...» [2, p. 168].

Taking into account the pluralism of scientific views on the etymological meaning of this term, it is important to note that most of the representatives of both national and foreign legal schools agree that interpretation can be understood in two aspects, namely, as a process and as a result of activity.

For example, in the opinion of O. Bilous, «interpretation of legal norms is an intellectual and volitional activity of the interpreter, which is carried out on the basis of principles and with the help of interpretation tools, aimed at clarifying and/or explaining the content of a legal norm in order to

correctly and equally understanding and applying them in practice, can be fixed in special acts of interpretation, scientific and practical comments of legislation, doctrinal sources and other foreign forms of interpretation results» [3, p. 53].

At the same time, as the author notes, within the framework of such activities, two other procedures are realized – identification and explanation, which can exist as complementary logical stages of a single process, or serve as independent, not always related (interdependent) intellectual and volitional processes – «interpretation-identification» and «interpretation-explanation» At the same time, the scholar emphasizes that interpretation, as a process, is not a separate stage or type of law-making as a result of which a new construction of a legal provision is created, justifying this by the fact that the very definition of «interpretation» (lat. interpretatio) is based on its common language meaning and means nothing more than «to determine the meaning, to clarify, to find out the essence of something; to give some explanation» [3, p. 52].

At the same time, according to the representatives of the opposite approach to understanding of interpretation (e.g., V. Kostytskyi), it covers not only the process but also the result of such activity, the material form of which is written sources in which these results are recorded. They are usually called acts of interpretation of legal norms, which are in turn a type of meta-legal construction with corresponding of lower-level constructions. These acts include written results of interpretation recorded by an authorized subject and addressed not to the subject of interpretation, but to other persons. At the same time, it should be emphasized that the constructions of such legal prescriptions should be correlated with the relevant constructions of other legal acts [4, p. 26].

We support the vision of N.Y. Lepish about that the interpretation of legal norm constructions is a complex process which includes the procedures of law-making, systematization and realization of legal acts. Its role is especially growing in the process of determining the true content of a legal norm's construction both at the stage of its creation and further realization, because the latter indicates the effectiveness of understanding of the social needs and reflecting them in the relevant legal construction of the act [2, p. 168 – 169].

Somewhat disputable as to the contents is the question of interpreting the legal construction of normative agreements, law enforcement and other individual acts of legal subjects, where the will of the legislator is secondary in comparison with the will of the persons who have constructed this legal document. It is understandable that their will is created on the basis of the rule provided by the legislator, but it is also characterized by a certain independence without violating the current legislation [1, p. 157].

In our opinion, taking into account the practical aspects of studying the issue of interpretation and its impact on the further realization process, sometimes even numerous, more detailed review is required for the issue of judicial interpretation of legal constructions, which involves the creation by a judge of a wider scope (than the construction of the legal norm itself) of an act of law enforcement. Therefore, it is during judicial interpretation that a new legal norm can be created, because the provisions of the current legislation are designed in such a way as to strengthen the discretionary powers of the courts based on the principle of expediency and fairness. The provisions of the current procedural legislation, focused on those constructions of norms that strengthen the importance and procedural status of the Supreme Court on the issues of interpretation of substantive and procedural law [1, p. 154]. In accordance to the provisions of clause 10, subparagraphs 1 and 2, part 2, Article 46 of the Law of Ukraine «On the Judicial System and Status of Judges», in order to ensure equal application of the law in resolving certain categories of cases, the Plenum of the Supreme Court summarizes the practice of application of substantive and procedural laws, systematizes and ensures the publication of legal positions of the Supreme Court with reference to court decisions in which they were formulated; and also gives explanations of a recommendation character based on the results of the analysis of court statistics and generalization of court practice. [5].

At the same time, in accordance with the requirements of Article 417 of the Civil Procedure Code of Ukraine, the decisions of the Supreme Court are obligatory for lower courts during a new trial [6]. Part 4 of Article 263 of the Civil Procedure Code of Ukraine provides that while choosing and applying of a rule of law to a disputed legal relationship, the court shall take into account the conclusions on the application of the relevant rules of law set out in the decisions of the Supreme Court [6].

However, there are issues that have not yet been interpreted by the courts, however, taking into account the current realities of Ukraine's existence as a state, they require for urgent resolution. Therefore, taking into account Ukraine's desire to join the civilized international community, where human rights and freedoms, their protection and defense are in the first place, in August 2024, the Parliament ratified the Rome Statute of the International Criminal Court, which provides a new opportunity for further legal protection and persecution of the aggressor state. However, in the process of a deeper analysis of the normative framework, lawyers have faced some new questions, including those related to such a legal construct as «subject of the crime».

In the words of I. Gazdaika-Vasylyshyn: «...the current international criminal law includes as subjects of the crime of the aggression only persons who are able to actually control the military and (or) political actions of the state and (or) direct them. In the scientific field, the criteria for such «leadership» are being actively discussed, as well as the possibility of criminalizing persons who do not hold such a «leadership» position, but at the same time take an active part in the conduct of an aggressive war.

Ukrainian criminal legislation does not include such direct restrictions on the subjects of the crime of «planning, preparation, initiation and conduct of an aggressive war».

«According to the current Criminal Code of Ukraine, the subject of this crime is general. As a generally accepted rule, criminal liability is carried out by the state in whose territory the criminal offense was committed under national criminal law. Therefore, the hypothetical criminal liability of the leaders, organizers or participants of the Russian military invasion of Ukraine under international criminal law, may be possible in the distant future, should not exclude the possibility of their immediate criminal liability in Ukraine under the current Ukrainian criminal law» [7, p. 176]. Thus, as we can see, the issue of differences in the interpretation of seemingly clear and well-known legal constructions of national law is somewhat different in international law, which in turn raises questions about the realization of the law.

We agree with the scientific position of O. Bilous that «a certain result of interpretation set up in a particular court decision (primarily of higher courts) may be the basis for reviewing the court practice in a certain category of cases. Obviously, in such cases, the legal norm itself has not changed, but only received, so to speak, a new and more correct understanding and rules of application» [3, p.52].

At the same time, as O.G. Koban correctly notes, it is very important that the legal content of the judicial interpretation construction is not questioned either by the participants to the trial or by the higher instances of the judicial system and could be used repeatedly in further judicial practice. That is why the author focuses on such a feature of judicial activity as legal predictability. In her opinion, «legal predictability applies equally to law enforcement and interpretation. The court's justification of its decision always contains an element of interpretation, based on the fact that the court must express its views about, firstly, the content of legal texts applicable to the case (which the court is going to apply to the specific circumstances of the case); secondly, its own powers to decide the case, which are also based on the content of certain legal texts» [1, p. 158].

Thus, the logical issue arises as to the possible limits of judicial interpretation, which would indicate the permissible limits of creating new constructions of legal norms in the process of interpretation. «Representatives of the dynamic direction in the theory of interpretation, as a rule, demand recognition of the freedom of the law enforcer, vesting him with a certain degree of law-making function in cases where the current law has clearly ceased to meet the requirements of justice or existing social needs. On the other hand, the static approach should definitely reject dynamic trends.

However, it should not be forgotten that the degree and character of restrictions that are imposed on the law-making activity of courts varies greatly from one legal system to another. It is not possible to compare the powers granted to courts in the Anglo-Saxon legal system and the continental legal system» [1, p.160].

As practice shows, the presence of law-making components in legal interpretation is not something anomalous, but rather can be characterized as an objective necessity, since it cannot be completely excluded from the activities of the Constitutional Court and other courts of general jurisdiction, since it is provided for by the relevant legislation [8, p. 6].

The following statements by M.I. Kozyubra and O.M. Balynska are quite correct and in their opinion, one of the most important conditions for the need for judicial law-making appears when in the process of judicial interpretation it is necessary to overcome the gaps in the construction of laws and other normative legal acts [8, p. 6 – 7; 9. p. 233]. At the same time, in such situations, judges must act with particular care and caution, because the court cannot refuse to apply justice on the grounds that the law does not contain the relevant provisions (norms) [8, p. 6 – 8]. Also, in the course of such activities, judges should take into account the principle of legal certainty, which means clarity, stability and comprehensibility, the ability of subjects to predict their own actions in the further realization of the construction of legal norms and to foresee the occurrence of certain legal outcomes [10, p. 492].

It is also important to mention that, under the general rule, decisions made by the Constitutional Court become a part of the national legislation and are an important source of law [11, p. 66-67]. As indicated in the decision of the Constitutional Court of Ukraine in the case on the constitutional petition of the President of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of the Verkhovna Rada Resolution «On the Validity of the Law of Ukraine «On the Accounting Chamber», the official interpretation of the provisions of part two of Article 150 of the Constitution of Ukraine, as well as part two of Article 70 of the Law of Ukraine «On the Constitutional Court of Ukraine» concerning the procedure for the execution of decisions of the Constitutional Court of Ukraine (case on the order of execution of decisions of the Constitutional Court of Ukraine) of December 14, 2014№ 15-рп/2000: «Decisions of the Constitutional Court of Ukraine have a direct impact and do not require confirmation by any public authorities to become effective. The obligation to execute a decision of the Constitutional Court of Ukraine is a requirement of the Constitution of Ukraine (Article 150(2)), which has the highest legal power over all other legal acts (Article 8(2)).» [12].

Also, taking into account Ukraine's desire to become a member state of the European Union, the judgments of the European Court of Human Rights are of particular relevance, as they are actually recognized as a precedent law, and therefore should be so in our country, since in 2006 the relevant Law of Ukraine «On the Execution of Judgments and Application of the Practice of the European Court of Human Rights" was adopted» [13].

Without going into an in-depth analysis of the current discussion in academic circles on the use of terminology (e.g., judicial law-making or law-creation, judicial development of law or its completion), it can be argued that the interpretation of legal constructions made by courts has long gone beyond the scope of identification and explanation, which indicates a high level of social value of a person in law. The modern legal realization of legal constructions of legal acts created by the legislator cannot be limited only to their direct form of presentation, since such a situation «means remaining in the position of extreme formalism and dogmatism» [8, p. 7].

5. Conclusions.

Thus, summarizing the above, we can come to the conclusion that in the modern scientific literature there are pluralism of opinions about the meaning of the definition of "interpretation", which are expressed in two polar visions. Thus, a number of theorists propose to consider interpretation as a process or intellectual activity aimed at identifying and explaining the content of the legal construction of a legal norm. At the same time, both identification and explanation may be interrelated stages or not. Another group of scholars substantiates the thesis that interpretation is the result of activities which are reflected in the written constructions of various normative and legal acts created by authorized subjects of law.

Thus, in view of the latter approach for understanding interpretation, the issue of the specifics of judicial interpretation as a stage of its further implementation becomes particularly relevant. Since this type of interpretation is usually somewhat broader than a simple analysis of the construction of a legal norm, there is a discussion in academic circles about the limits of possible law-making by judges to reflect a wider range of legal relations and factual situations that would provide for the admissibility of using this norm in its numerous implementations. At the same time, it is noted that this type of law-making is not something new in the field of law and is usually used to overcome gaps in current legislation

when the legislator has constructed a norm in such a way that questions arise as to its effectiveness in the post-realization process. That is why attention is focused on the fact that in his/her activities, while interpreting the legal construction of the text of a legislative act, a judge must be balanced and prudent, considering that in the field of law a person is recognized as the highest social value. In its turn, such decisions, especially those made by the Supreme Court, the Constitutional Court of Ukraine and the European Court of Human Rights, are in fact a part of the national legislation of our country and must be compulsorily executed and taken into account by an indefinite number of people.

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Bohdan Pidhorodskyi,
graduate student of the Research Laboratory on the problems of state-building and law enforcement
Institute of Law and Psychology,
National Academy of Internal Affairs
E-mail: bogdan00123321@gmail.com
ORCID: 0000-0002-7417-0040