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## SOCIAL DETERMINANTS OF LEGAL INTERPRETATION

**Issue.** The recognition and study of the essence, structure, forms, types and abilities of interpretation has been one of the most examined issues in the theory of law and philosophy since antiquity, when hermeneutics was considered as the theory and practice encouraging people to understand natural and social phenomena. The representatives of different philosophic-legal schools and approaches try nowadays to determine the essence and meaning, bounds and functional opportunities of interpretation in different aspects:

- 1) thinking process;
- 2) scientific method;
- 3) general way of the universe cognition;
- 4) existential modus of human beings;
- 5) social reality method creation .

On the whole, positively evaluating important philosophical-legal and theoretical-methodological level of the theme under discussion, it is necessary to point out some problematic aspects in legal interpretation phenomenon comprehension. Besides, it's worth not only to understand the diversity of existing approaches, defining role and place of legal interpretation on different levels of social reality, first of all in law, but to recognize the conditions, creating the phenomenon of legal interpretation comprehension as a problem.

**The degree of scientific development of the problem.** On the basis of different ways of comprehension, developed before the beginning of XIXth century, one can speak on the formation of two approaches in the same period: gnoseological and ontological. The crucial difference between them is in the comprehension of interpretation. The sources of gnoseological tradition of interpretation are tightly connected with the works of Aristotle "On the interpretation", scholastics, with the ideas

of representatives of new European "intellect ontology" (F. Bacon, R. Descartes, T. Hobbs, B. Spinoza, D. Lökk, D. Hume, I. Kant, H. Hegel), and later on, in XIX-XX c. positivists (O. Kont, H. Spenser, J. Mill), neopositivists (M. Slick, F. Frank, A. Whitehead), postpositivists (K. Popper, I. Lakatos, P. Feierabend, H. Lenk). But, the most important here is the fact, that even nowadays the socio-cultural approach to the phenomenon of legal interpretation is not properly developed. Despite of the importance of ontological models, the essential in them predominates over the social, excluding any possibility to realize a person's place and role as the author (creator.). It contradicts the fact, that interpretation value is in creating the discourse field, where human self-evaluation takes place, as interpretation is always the position of an individual.

**The purpose of the article.** The purpose of the article is the analysis of the existing conceptual approaches in modern theoretical-legal science in the context of integral law comprehension, which determine legal interpretation nature, essence, place and role on different levels of social reality.

**The Main Body.** In the context of gnoseological approach interpretation is the process of nature recognition, notion, content, meaning of reflexion and representation in human consciousness some connections, social-legal reality relations.

From the point of view of ontological approach interpretation in law is considered not simply as a form of human existence, but the human being as a subject, (subject of law).

Within the framework of philosophy of law interpretation appeared on the front place, concerning V. Diltey's discussion on specific character of humanitarian and social cognition. The term "art of interpretation" became popular in the 50s of XXth

century in Emil Steiger's works, the author of the work under the same title, with the idea, that interpretation serves, in the deepest sense, to perceive humanitarian truth about human nature [1, p.241].

Not less important became the question of social institutions functioning mechanism in the middle of XX th century for sciences of spirit, where the theme of communication, transmission of socio-cultural experience attracted attention of philosophers, lawyers, culturologists, political scientists. German sociologists T. Lukman and P. Berger proposed to consider interpretation the main process of social communication. Their idea was developed in social theory by P Riker, N. Luman. Janusz Slawinski defines interpretation as a hypothesis of a work's hidden integrity, with the aim to find out a cryptic content in potential sphere of the text, in contrast to that of the surface of the work [2, p.164].

Postmodern social thought investigates interpretation in connection with the analysis of contemporary society. M. Foucault in his "hermeneutics of a subject" proposed to consider interpretation the possible way of a person's legitimation.

However, the most important here is the fact, that even nowadays the anthropo-socio-cultural approach to the phenomenon of legal interpretation is not properly developed. Despite of the importance of ontological models, the essential in them predominates over the social, excluding any possibility to realize a person's place and role as the author (creator.). It contradicts the fact, that interpretation value is in creating the discourse field, where human self-evaluation takes place, as interpretation is always the position of an individual. In Schleiermacher's view, imitate literary hermeneutics the realization of its own interpretation potentials as it does, all the same it is functioning on the boundary between regional hermeneutics and metahermeneutics, thus, being between them, after all it opens general conditions of comprehension.

When translated from Latin, interpretation means "explanation". Greek equivalent of this notion is the term "hermeneutics" – the art of presentation, systematic study of philosophic works interpretation, legal documents, works of art, that's to say, any human activity content. Interpretational references to the texts, whether they meet the requirements of initial statements, basically, don't differ from those verbal references of the world experience in accordance with Schleiermacher's argument, that the experience of the universal could be achieved only with the help of continuous approach to the individual.

In the culture of ancient Rome the equivalent of the notion "hermeneutics" was the term "interpretation". On the whole, this term reflects another socio-cultural atmosphere, peculiar only to ancient Roman history. "Inter" is translated from Latin as "between", and "predation" – as process. Interpretation in this aspect is the way a man perceives and explains the environment; or as a cognitive process aimed at ascertaining the essence of the phenomena and processes of natural, social activity. From this point of view the question arises as to the necessity of analyzing the history of authoritative-interpretative practices, legitimation, conditions and mechanism of their application, depending on different historical situations. This statement is especially of current importance nowadays, when there's a great need of the publicity of interpretation.

A separate epoch in the development of interpretational practices is the period of Renaissance. German philosopher, theologian and philologist F. Schleiermacher (1768–1834) came out to be the creator, spiritual "father" of the Present hermeneutics; he considered interpretation the art of the foreign language understanding, explanation of the text content with the aim to give other people correct information.

The project of hermeneutics as a philosophy of language was proposed by W. Humboldt. In particular, developing the ideas of historical method in the manner of J. Herder and G. Hegel, he proved, that to comprehend the human social-historical existence, it is necessary to proceed from the postulates of totality and universality. The way of hermeneutic problem development towards its transformation from a specific science to general and philosophical one was continued by V. Dilthey (1833–1911). Dilthey's ideas were further developed in the works by M. Weber, J. Zimmel and many others, but the works by German philosopher M. Heidegger were the real revolution in the comprehension of interpretation problem. His innovations concern transforming the problem of interpretation and comprehension from gnoseological level to ontological one; also, he found out in the process of interpretation the structure of precomprehension. Trying to understand any text, we don't transfer to author's spiritual state of mind, whenever to speak about transference itself, but into the perspective, within the framework of which the author would come to his point of view. Every form of knowledge is based on a question, problem, misinterpretation. Text contains a question to the interpreter.

Another important point in M. Heidegger's philosophy became the declaration, that language

was the real field of hermeneutic experience and, simultaneously, home of existence. Literally, it was consolidation of ontological language status that appeared to be indispensable condition of linguistic revolution in philosophy. One of M. Heidegger's students – H. Hadamer believed, that language is a universal environment, in which its own comprehension is produced; the way of its realization is the interpretation, taking place in linguistic environment, which, on the one hand, tries to explain the object with the help of words, on the other hand, is the language of the interpreter himself [3].

In the second half of XXth century E. Betty, P. Ricker, O. Apel played great role in the development of the theory and practice of interpretation. E. Betty's activity is closely connected with the effort to generalize interpretation canons, which can limit willfulness of "subjectivity" in humanitarian cognition. The result of E. Betty's research was the formulation of basic interpretation canons: 1. The principle of the object's autonomy: the object of interpretation is caused by immanent logic of existence (the product of human mind is interpreted – text, the sense of which the interpreter has to find out). 2. The principle of sense coherence: the sense of the object of interpretation is indicated through its intracohesive integrity. 3. The rule of sense urgency: reconstructed sense of the text should be included into the interpreter's intellectual horizon. 4. Adequacy (coherence) principle of comprehension: the wish to understand is not sufficient, corresponding perspective to understand is necessary [4].

The project of social-philosophical hermeneutics replaced classical philological one in XXth century; it proved the fact, that the sphere of culture doesn't have a single horizon, and so, interpretation is not so much the way of working with the text, as the form of social existence. Nonclassical type of social philosophy (end of XVIIIth – beginning of XXth c.) had just been appearing as the criticism of classical type, actually, in the context of sociality itself.

The main P. Ricker's idea is that the world of XXth century became global and indivisible; this globalization requires communications, comprehension of the art of interpretation as well. Thus, the object of interpretation is one of the aspects of communicative sphere, where socio-cultural experience is being transmitted [5].

That's to say, one can affirm, that the basic descriptive language in interpretational practices of civilization subject is always the language of law. One can outline two main approaches in jurisprudence, based on the meaning of interpretation in

the context of linguistic rules: both, linguistic meaning and extralinguistic one, i.e. stipulated by context, are used in the practice of interpretation [6].

Modern setting of legal interpretation problem in anthropo-socio-cultural aspect is connected with the change of methodical approaches, the way of thinking itself in the research of social-legal phenomena.

It's important to realize, that in the processes of legal communication different legal interpretations correlate, hermeneutic field of a dialogue is, so to say, created. In other words, society is the integrity of people closely connected with understanding and comprehension of social-legal processes.

One can ascertain, that the phenomenon of legal interpretation has long been considered beyond the system of specific historical, social-legal and anthropo-cultural characteristics. Alongside with that the socio-cultural analysis of historical periods – Antiquity, Middle Ages, Renaissance, New Times and Contemporaneity – allowed to discover diversity of interpretational practices, that had formed during the development of mankind in the process of anthropo-socio-genesis. It became clear, in particular, that each type of interpretation – hermeneutics, exegetics, explanation – is defined by the peculiarity of sense legitimation in a specific historic-cultural existence of every nation. Legal interpretation is a form of coexistence of a legal text and a person, whose being is stipulated by cultural-legal description of the epoch. Peculiarity of legal interpretation is based, first of all, on a specific aim orientation – "real" law fixation [7, p.8].

The task of legal interpretation in social truck is the scheme building process, which allows to see and recreate the reality, which is of interest to the interpretator, according to some legal text (in a legal text). Ontological status of the legal interpretation process is determined by the distance between legal text and legal activity.

It's interesting, that one and the same legal text permits different interpretations. In this sense some legal interpretations counteract others. It's because all of them create common hermeneutic field of legal dialogue. Such specific character is connected with text notion itself, its structural-grammatical characteristics (e. g. text coordination), and its positioning in a certain situation of linguistic communication [8, p.55–58] and subjects' character of this social-legal communication (that's to say its participants, those sending and those receiving the legal text).

The main intention of legal interpretation is not only to gain knowledge, but also to recreate situations of social-legal being and to enter its structure.

Specific character of a legal text stipulates its interpretation on the basis of determined instructions both in teaching and practice, that's why the interpreter (subject) has limited freedom (as a result of the specificity of interpretational activity). As Artur Kozak states, the situation of a lawyer as an interpreter differs from the situation, for instance, of literary interpretation, because the lawyer should deal not only with the meaning of the text, but establish its legitimation as well [9, p.124.] The author explains also the thesis, that the adoption of specific interpretational directives (which allow to gain a single interpretation) stipulates, in the end, social influence of law, approval of legal practice [9, p.124]. But, evidently, irrespective of the text – literary or legal – interpretational practice is a priori a reflexion of human existence dynamics.

The role and place of legal interpretation in these processes are very important, as institutionalization of social forms is connected with legitimation of structures and conditions of legal consciousness, structures of legal communication and legal reflexion. In other words, it is in the process of legal interpretation that the sphere of social-legal values is formed.

Within the framework of social-legal activity interpretation practices widen people's abilities. However, the process of legal interpretation is always the process of overcoming the meanings, dogmata and standards peculiar to a specific historical epoch, to unite the experience, common to all mankind, with legal relativist specific character, which a person (legitimator) can implement "here-and-now". An important for the interpretation of legal texts, institutional authority, consists in the fact, that the authority of law is transferred on the interpretation level [8]. Interpreter's aim and truth of a legal text (in contrast to literary text) is connected with compulsion. That's why, the authority of legal instructions, formed by lawyers, could be gained with the help of interpretation means [6].

The object of interpretation is what has already sense, what has fallen into the sphere of people's influence, what could be defined as "a sphere of culture". Thus, legal interpretation includes simultaneously the moment of social-legal reality reflexion and the moment of legal activity. Legal interpretation, from the point of view of the subject of perception (interpreter), appears as a constant process of sense addition to social-legal reality. The given sense in the process of legal interpretation needs "unwrapping" in another process of legal interpretation. So, sense is not an object, it's a process.

The task of legal interpretation is to give second (third and so on) life to recreated legal forms, to give every person a chance to enter into the world of law, history, culture, civilization, and alongside with that to facilitate a person's legitimation as a subject of law, history and civilization.

Sociological approach to law in general and to the problem of legal interpretation in particular stipulates studying not only of their meaning, but also their interrelations with public processes. One of the founders of sociological approach in jurisprudence E. Ehrlich stated at the beginning of XXth century, law, being a dynamic organism, is not limited by local practices, or local legal proposals, and is a unity, including not only legal proposals and legal experts' law, but social order of the existent legal relations as well [10, p.146]. Klaus Ziegert remarked E. Ehrlich's thought, that neither force, nor monopolized state power is a decisive factor in the dynamics of living law and steady peaceful social order [11, p.231]. According to E. Ehrlich, the task of interpretation is to determine subjective content of the words, their correlation with consciousness [12, p.6]. The scientist defined objective parallels while analyzing legal nature and other kinds of interpretations, stressing the author's personality, and all that concerns the human language interpretation, is valid for legal instructions, especially for laws; one can understand them only in case the attendant circumstances and personal relations are clear and the author knew about them; we'll comprehend them when we understand the author's consciousness content and scope [12, p.12]. E. Ehrlich's were categorical statements about textual expression of interpretation, about objective sense of legal text search, the words having no fixed content, being only symbols, indicating the sense direction [12, p.2]. To his mind, the practice of legal text interpreting realization as a dogmatic formula was erroneous; the scientist gave an example, that German lawyers fixed in a word a certain meaning, which could be substituted to get the content of the whole expression, assuming a special content could be used in other ways alongside with that one [12, p.28].

As legal instruction is the result of joint activity of society and an individual [12, p.14], it is clear, that speaking about a special social function of legal interpretation, E. Ehrlich stated the illegitimacy of all the legal instruction, that is correct for another people's mind creation, because it should serve not personal aims and intentions rather social interest [12, p.14–15]. E. Ehrlich was convinced that in the case of court law, the judges act as the



representatives of society, thus better reflect the deepest social thoughts and better understand their vocation [12, p.15].

The problem of free law creation is therefore not the problem of substantial law rather the problem of judges' choice that is to say the problem of court organization which has to provide the freedom for strong personality [13, p.30]. In the twenties of the XXth century soviet professor B. Manelis, strong critic of sociological ideas, the school of free law (to the theorists of free law school B. Manelis refers E. Erlich as well as Radbruch, Fuchs and Stampe who consider the personality of judge to be the guarantee of correct law application) and E. Erlich's creative activity, stated that the best prove of its ideas the school of free law considered the fact that in reality judges were not guided exceptionally by positive law and rules of scientific hermeneutics, they are not only logical machines matching the facts to specific law but constantly creating the law by their mind, feelings, will and all their personalities [14, p.216–217].

According to Ehrlich, any scientific, sociological comment of law is historical [12, p.14]. As an argument, he stated the fact, that exterior interpretational circumstances are those having the aim of the author, and (in this case) theological interpretation coincide with historical one, being non-scientific [12, p.14].

To add, Ehrlich proved the legal instruction to be interpreted by the author, that's to say, it tended to equal decisions [12, p.27].

**Conclusions.** Let's formulate some statements, defining the components of sociocultural legal interpretation comprehension.

First, the history and formation of mankind can and should be considered in the light of different forms of description (legal as well). Second, according to historical reconstruction, hermeneutics, exegetics and interpretation were the forms of perception and explanation of legal reality (each of them perceived and interpreted the world, place and role of the man in its own way.). Third, the significance of interpretational activity restitution is possible only through comprehension, that the real subject of social philosophic-legal reflexion is mankind. Fourth, human beings' existence as a single subject of history and law becomes apparent in the

forms (institutions, structures, situations), which are a part of interpretative activity. Fifth, the most fully and thoroughly the meaning of interpretative practices is revealed in the dynamics of people's (and their communities') existence.

Thus, the sociocultural analysis of legal interpretation process stresses the problem of the mankind, the problem of social existence formation. In particular, the development of the mankind is the activity, where, alongside with nature development, the legitimation of social institutions takes place. It is the social institutions (family, society, state), that are the space – "between" – to which ancient Greeks and Romans pointed; the main attribute of existence of these institutions are interactiveness (legal proceedings) and interpretativeness. Place and role of legal interpretation in social-dynamic processes is very important, because the institutionalization of social forms is connected with structures and conditions of legal consciousness, structures of legal communication and legal reflexion, where social-legal sphere is formed.

Interpretation is not an evaluative process of thinking, it is a dialogue between a man and universe, the process, which depends on socio-cultural experience of the period. One can affirm, that legal interpretation "appears" as people's attempt to make clear their own existence. Within the framework of gnoseological approach, interpretation is a natural process, representing social-legal reality in a subject's consciousness.

Ontological approach in law treats interpretation not simply as a form of human existence, but a man as a subject of law. Socio-cultural value of legal interpretation seems to be the manifestation of human existence, personally according to a separate legal act.

In the context of Ehrlich's "living law" concept legal interpretation is considered a social-historical effect, and so it should substantiate not personal, but social legal instructions.

Thus, we can state, that in the context of integral law concept the task of legal interpretation is to give new life to new legal forms, the right to be active creators of social standards, to give chance for a man to enter into the world of law, history and culture, and to legitimate a man as a subject of law.

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In the context of integral legal comprehension of modern theoretical-legal science the article analyzed variety of the existent conceptual approaches, which determine the place and role of legal interpretation on different levels of social reality, law in particular, and ascertained the conditions, constructing the perceptive situation of legal interpretation as a problem. Within the framework of gnoseological approach interpretation is the process, which helps to find out reflexion and representation nature, notion, content and meaning of certain ties and relations of social-legal reality in a subject's consciousness. The fact is established, that on the level of ontological approach legal interpretation is considered not only as a form of human existence, but a human being as a subject of law. The predominance of the essential over the social in ontological models is determined, it excludes the possibility to seize a man's place and role as an author (creator), which, at the same time, contradicts the fact, that interpretation is valuable for creating discourse field, where a person's self-determination takes place. Legal interpretation in the context of E. Ehrlich's sociological "living law" conception is regarded as a social-historical phenomenon, and so it should explain not personal, but public prerequisites of legal instructions.

**Key words:** law comprehension; interpretation; legal interpretation; cognition; hermeneutics; social reality; social institutions; human existence; "living law"; a man as a subject of law

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**Заморська Л.І., Карвацька С.Б. Соціальні детермінанти правової інтерпретації**

У контексті цілісного (інтегрального) праворозуміння проаналізовано різноманіття існуючих у сучасній теоретико-правовій науці концептуальних підходів, які визначають місце та роль правової інтерпретації у різних площинах соціальної реальності, передовсім, у праві, та виявлено умови, що конструюють ситуацію сприйняття правової інтерпретації як проблеми. Встановлено, що у площині онтологічного підходу інтерпретація у праві розглядається не просто

як форма буття людини, а людини як суб'єкта права. Визначено, що в онтологічних моделях сутнісне домінує над соціальним, що виключає можливість досягнути місце і роль людини як автора (творця), а це суперечить тому, що цінність інтерпретації полягає у створенні поля дискурсу, де відбувається самовизначення людини. Обґрунтовано, що соціокультурне значення правової інтерпретації полягає у процесі становлення та розвитку людини і суспільства як суб'єкта права. Вказується, що соціокультурна цінність правової інтерпретації проявляється у тому, що вона являє собою маніфестацію буття людини, яка виступає стосовно конкретного правового акту особистістю. Проаналізовано, що у контексті соціологічної концепції Є. Ерліха про "живе право" правова інтерпретація розглядається як явище соціально-історичне, і тому вона повинна обґрунтовувати не особисті, а суспільні передумови правового припису.

**Ключові слова:** право розуміння; інтерпретація; правова інтерпретація; пізнання; герменевтика; соціальна реальність; соціальні інститути; буття людини; "живе право"; людина як суб'єкт права

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**Заморская Л.И., Карвацкая С.Б. Социальные детерминанты правовой интерпретации**

В контексте целостного (интегрального) правопонимания проанализировано многообразие существующих в современной теоретико-правовой науке концептуальных подходов, которое определяет место и роль правовой интерпретации в различных плоскостях социальной реальности, прежде всего, в праве, и выявлены условия, конструирующие ситуацию восприятия правовой интерпретации как проблемы. Установлено, что в плоскости онтологического подхода интерпретация в праве рассматривается не просто как форма бытия человека, а человека как субъекта права. Определено, что в онтологических моделях сущностное доминирует над социальным, что исключает возможность понять место и роль человека как автора (создателя), а это противоречит тому, что ценность интерпретации заключается в создании поля дискурса, где осуществляется самоопределение человека. Обосновано, что социокультурное значение правовой интерпретации заключается в процессе становления и развития человека (общества) как субъекта права. Указывается, что социокультурная ценность правовой интерпретации проявляется в том, что она представляет собой манифестацию бытия человека, выступает относительно конкретного правового акта личностью. Проанализировано, что в контексте социологической концепции Е. Эрлиха о "живом праве" правовая интерпретация рассматривается как явление социально-историческое, и поэтому она должна обосновывать не личные, а общественные предпосылки правового предписания.

**Ключевые слова:** правопонимание; интерпретация; правова интерпретація; познание; герменевтика; соціальна реальність; соціальні інститути; бытие человека; "живое право"; человек как субъект права