METHODOLOGY FOR THE INTERPRETATION OF LEGAL AND TECHNICAL TERMS

Alexey Pavlovich Albov
MIREA - Russian Technological University,
Moscow State University of Humanities and Economics (MGHEU)
Moscow, Russia

Bulat Vasilovich Shagiev
Law Institute of the Moscow State University of Railway Engineering (MIIT)
Moscow, Russia

Nikolay Nikolayevich Kosarenko
Plekhanov Russian University of Economics
Moscow, Russia

Anatoly Dmitrievich Selyukov
Russian State University of Justice
Moscow, Russia

Albina Mansurovna Fatkhutdinova
Department of Legal Regulation of Economic Activity of the Financial University under the Government of the Russian Federation
Moscow, Russia

ABSTRACT

The topicality of the research is stipulated by the fact that the 21st century saw the emergence of the philosophical discourse of actual philosophical linguistic problems related to the interpretation of legal documents, and problems of symbolism in legal texts. Especially if the case in point is categories and provisions of law that arose in the past within the framework of a certain socio-cultural environment and took roots in a new, changed stratum which impacts the adequate perception of the morphemic construction of a word in the synchronous aspect of a legal text.

One of the main problems is the awareness that for the scientific understanding of a legal text it is necessary to apply the methodology of linguistic philosophy, hermeneutics. To solve these issues the previous methodological tools are not enough, it is essential to find new inter-discipline linguistic and philosophical paradigms.

A leading approach in the present research is a verifiable model, according to which the culture is the most important source of law that in the course of selective
evolution absorbs the social experience, is expressed verbally and later takes the form of a legal text.

The methodological basis of the research includes the principles of hermeneutics, the additive model of morphology, heterogeneity of the system of scientific scholarship, normative logical, structural-functional analysis of the system of interaction between law and the language. These principles and methods allowed the authors to prove that the single natural cultural space is a connecting link between law and the language, and to identify the principal role of the hermeneutic method and the additive morphological model for the adequate interpretation of legal texts.

The article shows that the peculiarity of legal terms is that changes in the semantics of terms are often related to the revaluation of phenomena of reality, the main point of these changes is certain succession in the socio-political area that formulates its positions in the earlier created categories, but puts the other content into them, and integrates them into new scientific doctrines and legal texts. Consequently, the article’s materials are practical and can be provided to philologists, linguists, philosophers, and lawyers who study the interpretation and the application of the law, and to those who prepare and edit statutory documents.

**Keywords:** Hermeneutics In Law, Additive Morphological Model, Interpretation of Legal Texts, Component Of Language, Linguistic Economy.

**Cite this Article:** Alexey Pavlovich Albov, BulatVasilovichShagiev, NikolayNikolayevich Kosarenko, AnatolyDmitrievich Selyukov and AlbinaMansurovnaFatkhutdinova, Methodology For The Interpretation of Legal and Technical Terms, International Journal of Mechanical Engineering and Technology, 9(13), 2018, pp. 761–769.


**1. INTRODUCTION**

At the current stage, all developed countries intensively work on the following problems: the interpretation of legal texts, the study of changes in the scope and the content of notions and categories in connection with changing social processes, problems related to the theory of language and the interpretation of legal texts. The heterogenic nature of the system of scientific scholarship constitutes one of the most important sources of the modern methodology in the field of law that is based on the recognition of the fundamental role of linguistics for the adequate interpretation and the understanding of legal phenomena. The system of scientific scholarship that is related to the interpretation of legal texts is heterogenous. It can include various forms of knowledge (empiric facts, laws, principles, hypotheses, diverse theories, etc.). All these forms can be grouped into two main levels of organization of knowledge (empiric and theoretical). The so-called “standard approach” prevailed in methodological research until the 20th century, according to which theory and its interaction with experience were chosen as the starting point of methodological analysis. However, it was found out later that the processes of operation, development and transformation of scientific doctrines and paradigms cannot be described adequately if one overlooks their interaction. The article shows that the analysis has a multi-level structure which includes, firstly, the development of interpretation from the logical point of view within metalogic and mathematics, works written by A. Church [1-4]. Secondly, research which analyzes the process of building interpretation schemes in the modern theory of law [5].Little attention is paid to the study of problems related to the connection between law and
a language, hermeneutics in law, and the interpretation of legal terms with the new morphological content.

The theoretical research of scientific doctrines based on legal hermeneutics [6] showed that the fundamental property of consciousness is intentionality which is the main character of conscience in general, and due to this, there is not only experience, but experience bearing the meaning, which is immanent in the interpretation of legal texts [7-9]. Research of gnoseological and linguistic prerequisites for the comprehension of legal texts as the foundation of the theory of law were examined in phenomenology [6], although the authors found that its interpretation was substantially marked by Kant’s subjectivism. A number of scientists studied problems related to the interpretation of law and raised questions about the role of the language in law from the viewpoint of axiology and semantics [10-15]. It is the perspective of analysis that makes it possible to see the difference between axiological interpretation and interpretation in general. The axiological interpretation of a legal text aims to find the “focus” of an expression on its “target” meaning as the reflection of the apriori approved or actually corrected position of the subject of the expression along two possible vectors in the relationship of the Self (Self and the World) ↔ Non-Self (External World): from the world to the self and from the self to the world. As the world of meaning is nonlinear, then its interpretation will presently direct to the application of hermeneutical procedures for finding meanings on the basis, above all, of the principles of relevance and the applied norm of axiological interpretation [10].

For the linguistic axiology of interpretation of legal standards, it is necessary above all to consider the notion of “evaluation” as the most common procedural concept in the axiological paradigm. In this line, evaluation is considered in its procedural property as a specific form of perception, “cognitive phenomenon” [16]. One of the most important principles of hermeneutics in the theory of law is to recognize the language’s principal role for the adequate interpretation and the understanding of legal phenomena, especially if the matter concerns legal documents that arose within a certain historical period, but received a certain place in the cultural space of the present.

The typical feature of legal terms is that changes in the semantics of terms often relate to the revaluation of phenomena of reality. The main point of these changes is a certain succession in the socio-political, spiritual and moral areas that formulates its positions mainly in the previously created notions and categories, but builds a new meaning into them, includes them in new systems of views [17].

2. METHODOLOGICAL BASIS

In this research, we rely on the methodological principles of dialectical unity of analysis and synthesis, peculiarities of interpretation that include two aspects: clarification and explanation, unity and interpenetration of contradictions such as succession and update in law.

3. PHILOSOPHICAL PRINCIPLES

In this research, we relied on the principle of functionality and verification, i.e. aimed to discover the verity of theoretical statements by means of their experimental testing when the linguistic interpretation of the legal text is a way to develop skills to study separate sections of law on the principles of morphemic analysis. These principles require the following:

- sentences and hypotheses should also be compared with facts, and the possibility of hypothetically logical verification;
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- the additive principle, according to which the equality of the whole number is equal to the common sum of components;
- functional analysis that helps identify:
  - the specific meaning of a word in the text – accretion of meanings (meaningful, stylistic, expressive, emotional and evaluative);
  - changes in the style a word belongs to;
  - the place and the functions of the textual meaning of a word in lexocentricalepidigamatics and paradigmatics;
  - the textual significance of a word as a means of legal characterization [18].

4. THEORETICAL APPROACHES

The key approach to the study of this problem is the systematic functional approach to examining the meaning of legal texts. According to this approach, the aggregate culture of a nation is understood as the most important source of law that in the course of selective evolution absorbs positive, helpful, necessary and substantial experience, is later expressed in the verbal form and in future it takes the form of a legal text with statutory regulations and instructions, and this way it becomes an obligatory rule of conduct and is therefore formalized by the state. Later these standards are subject to interpretation for the socio-cultural environment.

The interpretation of a legal text includes the following:

The work with the text itself aimed to find whether it is authentic, adequate and actual. It is necessary to ascertain whether the act under interpretation is authentic with the official text of the actual version (whether all amendments are taken into account).

Linguistic interpretation – the meaning of a provision of law is clarified by analyzing the rules of the language, in which the meaning of a word is written.

Philological interpretation – the practice of interpreting legal documents that establishes with the use of philological methods the inter-textual essence of texts, parameters of a provision of law that make it possible to adequately disclose the specific meaning of statutory instructions, with the will expressed in a pronounced manner.

Logical interpretation – the meaning of the essence of an act is clarified based on the logic of legal thinking that consists of three principles: ways of making conclusions on the basis of a text if the text itself is conditionally insufficient (a paru); the principle of a fortiori (the principle of making a conclusion on the bigger basis); and the principle of a conrario, i.e. the principle of contrasting, the contrary principle.

Specific legal interpretation – specific properties of specific terms should be taken into account in the course of interpretation.

Systematic interpretation – a legal text is analyzed in the context of another legal text and its interpretation.

5. RESULTS

To understand the place and the role of interpretation of legal text using various methods, we examined diverse paradigms and discourses to understand interpretation and notions of interpretation of legal texts. We examine comprehensively various issues ranging from the role of linguistics in the improvement of the legislative style to practical issues of the organization of the term service for legislation in progress[14]. The detailed examination of the issues related to the hermeneutical interpretation of law can be found in the work
Problems of interpretation of legal texts and provisions of the law were examined by [20]. However, it can be seen that the latest achievements of the modern methodology have not been fully applied when examining these problems [21-23], although hermeneutics and the structural-functional method in the interpretation of legal texts are taken to the top of philosophical consideration. It can be said that without hermeneutics there is no approach to the existence of law because the latter concerns not only simple interpretation but rather the “disclosure” of the very essence of law as implanted in existence, i.e. the essence of the voice of the existence itself. For this reason, modern science emphasizes main approaches to the construction of interpretation problems in the system of integrated knowledge. Taking this into account, comprehensive developments have been made in relation with the topical issues of legal text interpretation [24, 25].

Modern problems of the interpretation of legal texts got an impetus from Martin Heidegger’s phenomenal and hermeneutical concept of law, from his concept of decisionism that to a certain extent maintained the stability of a social whole[26].

The globalization of the social and political life raised the question whether it is necessary to specify and provide in detail the meaning of notions that are introduced in legal texts in both the West European legal environment and on the general civilized scale [27]. The examination of his works shows that the understanding of legal texts constantly moves from the whole to the parts and back to the whole. The objective is to broaden the unity of the understood meaning by circles of concentration. One who wants to understand a text constantly sketches the meaning. Once the text begins to mean something, he/she makes a preliminary sketch of the meaning of the text as a whole. This first meaning becomes clear, first and foremost, only because from the very beginning persons start to read the text expecting to find one or another meaning in it.

So, the research has shown that the modern problem of interpreting legal texts is important not only in terms of law and linguistics, but is universal in order to preserve the socio-cultural environment of a nation and the state in the modern conditions of global socio-cultural shifts, economic integration, development of information technologies and arising conflicts in the course of communication among legal entities, public organizations and separate persons [2, 18, 28, 30].

The understanding of the meaning of a legal text is stipulated by the language spoken in the course of hermeneutical communication (the transfer of social information).

The theory of law is largely based on the instrumentalist concept of language, in accordance with which the language is solely in “the hands of a subject that creates”. According to this theory, the language is a tool and a material shell, in which the lawmaker’s will and intentions are dressed, and which – and only which – the executor of law should extract. The interpretation of the act of communication as a complicated process that consists [31, 32]of such stages as illocution (plan, intention), locution (implementation) and perlocution (result – the effect on the hearer) implies not only the shift of the focus from the intention (will) of a lawmaker (author) to the result which was personified in the hearer’s mental activity, but also the alienation of the text from the author, its independent being after the creation. It does not matter what the author wanted to say; it is important what he/she said. The principle of alienating the text from the author is connected with it. The authentic interpretation directly contradicts this principle, i.e. proclaims inalienability of the text from its author.

6. DISCUSSION

While analyzing literature on this topic, we wanted to show that broader analysis of the notions and the aggregate of philosophical methods of scientific interpretation in the conditions of cardinal changes in the science of law on the verge of the 21st century is at the
same time the process of complicating the very method of analysis and transformation of its methodological standard. As a result, the modern scientific paradigm faces the non-trivial problem of providing theoretical gnoseological and methodological support to the new type of analysis focused on the presentation of the legal phenomenon of interpretation of legal texts as a complete formation in the context of expanding socio-cultural reality. The update of modern linguistic and hermeneutical methodology has considerably contributed to solving this problem.

Another peculiarity is that one can point to the varying degree of connection between sections of linguistics and the augment of common scientific potencies of the notion of interpretation; the leader is semantics, in which this notion reached the highest stage of development, and acquired a substantial potential of paradigm. It is assessed by researchers [2, 33], as a priority in the linguistic measurement of the scientific theoretical activity, as a fundamental to systematize notions of linguistics itself.

We distinguished the following main characteristics for the interpretation of legal terms:

One of the main linguistic characteristics of terms is that they constitute units from various levels of a language’s sign system – main and intermediary levels (words and units above word – word combinations).

The terminology of jurisprudence is the terminology of the science of law; the terminology of law is the terminology of law enforcement practices. The interpretation of legal texts is a kind of both social and philological and linguistic practice.

The interpretation practice aims to clarify the limits of legal regulation, individualization and implementation of legal orders into real life. The principle of conceptualization as the focus of understanding helps find hidden prerequisites (tacit knowledge) in the content of education by uniting cognitive and affective moments of understanding a legal text.

We found that every new process of understanding proceeds from preliminary understanding, therefore, changed the view about the hermeneutic circle using the metaphor of the hermeneutical spiral. Hermeneutics asserts that the starting point of any understanding is a historical-critical interpretation that tries to objectively update unfamiliar verbal semantic expressions by means of knowledge and with the involvement of preliminary understanding. From the legal point of view, the historical-critical interpretation becomes a genetic, historical-social or dogmatic interpretation of the first stage of subjective understanding. The historical-critical understanding aims to restore the original meaning of a text. A lawyer, as a rule, should solve the problem, i.e. investigate a case. Only ahistorian of law engages in historical-critical understanding that is an end in itself for him/her. This kind of understanding creates the starting point for the achievement of practical goals. If the historical-critical understanding itself leads to a certain result, then in case of interpretation of a textual provision the understanding should be regulated in a certain way and the lawyer should decide whether he/she can understand as binding a legal text with such a meaning. The historical-critical understanding is just the beginning of humanitarian scientific hermeneutics.

“The final goal of the hermeneutical method should be better understood by the author then if he had understood himself” [34]. The scientific potential of W. Dilthey’s hermeneutics became the subject of thoughts [35] that showed that Dilthey’s ideas are productive in the context of modern logic and the philosophy of language. Cassirer[36] showed that the topical nature of Dilthey’s ideas is not limited to his role in the history of hermeneutics, calling him one of the most important figures in the “history of the philosophy of men”. Philosophy and philology differ from law that as a science it is not free from the laws of logic, the categorical apparatus of jurisprudence. An interpreter of poems can move away from the ideas of the author, and can introduce his/her own thoughts; interpreted texts are a call to action for a person who enforces the law. Lawyers are under obligation to look for objective and adequate
meaning using the rules which were set forth by German lawyers back in the 19th century. The hermeneutical method of interpretation is topical in any human activity where it is necessary to understand, learn and interpret a text: translation from one language into another, the accuracy of understanding a “foreign” language, including activity in the area of interpreting law, “everything that is supposed in hermeneutics – this is just a language, and everything that can be found, including the rest of objective and subjective prerequisites, all this should be found in the language” [37]. Dilthey [34] also thought that hermeneutics is a doctrine about the art of understanding written formalized displays of life. The hermeneutic interpretation is based on the entry not only into the objective available being but also into the subjective world in which interpretation is performed taking into account the positions of an interpreter and individual peculiarities of the author’s language. The main objective is to be able, on the basis of the personal frame of mind, to penetrate the frame of mind of the author who he/she is going to understand [37, 38].

We came to a conclusion that the method of interpreting legal texts, which implies the discovery of the only right meaning that is necessary for practical purposes, will be a private case with regard to the other model that allows multiple meanings. Per se, the contradiction between these models is settled by adding the factor of will that certainly cannot put an end to the existence of other, except one, interpretations of a text, but this can promote the idea that this interpretation will be announced as the only applicable when making practical decisions. Hence this is an important effect – the overcoming of alienation because the understanding procedure reduces the distance between a text and a reader who turns from a passive object of the legal influence into an active object of meaning generation. This does not at all hinder the preservation of pluralism and even a conflict of interpretation, for example, at the levels of linguistics, philosophy and doctrines. At the same time, it is especially important that within the framework of the hermeneutical model the meaning is not taken from a text in the complete form, but is a subject of creative activity of the interpreter who is consequently a co-author, to a certain extent [31, 39, 40].

7. CONCLUSIONS

The research allowed us to conclude that the most promising methods of examining legal texts and statutory legal acts are connected with the methodology of systematic analysis, hermeneutics, the examination of the morphemic composition of a word in the synchronous aspect, and the identification of all available morphemes from a word which are alive from the viewpoint of the modern language.

In our conclusions, we showed that some researchers who study the problem of legal text interpretation implement the substantial definition of the “meaning” of words and their “use” or “functions”. In this connection, several forms for the use of words are determined: symbolical (which determines the use of a language in science) and emotional (typical for the functions of words in the art). If words are used to give information, “to symbolize the attitude to the reviewer of designation – this will be the symbolical use (function) of words” and it is clear that this function can be executed through the symbolic meaning of words. The emotional use has several important functions: to express feelings to the listener, to bring feelings to the reviewer, i.e. an object, and to cause a goal-setting action to those who are addressed by the interpretation.

The materials from this article can be used by lecturers of philosophy, philosophy of law, and philologists. The article can be of practical use for experts who develop programs designed to improve lawmaking techniques, principles and methods of interpreting legal texts, and to understand not only tools but also deeper reasons for the formation of legal texts. New problems arose during the research. We will, therefore, continue our research because
the philosophical and linguistic understanding of initial principles of interpretation of legal texts is important. In the conditions of a democratic state and dominance of the legal law, the role of the initial legal basis that determines the objective sense and the meaning of all legal phenomena and forms, also including the rule of law, is already played by the principle of law itself, which all statutory acts, all sources of effective law and all forms of existence of the global community should correspond to.

REFERENCES


