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Crime Qualification as an Act of Interpretation

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The universal quality of interpretation as a method of cognition of the surrounding reality is addressed in the article. When qualifying a crime, the author considers not only the interpretation of the text of the criminal law rule, but also the events of the crime.

Keywords: law and order reality, interpretation, multiple interpretations, hermeneutic approach, crime qualification.

Contents

Introduction

In the theory of law, the legal reality (legal actuality) is interpreted broadly. Hence, S. S. Alekseev defines legal reality as four interrelated groups of phenomena: phenomena-regulators that constitute the basis and the regulation mechanism (rules of law, provisions of practice, individual directions, rights and duties); phenomena of legal form – normative and individual acts; phenomena of legal reality – law making, law enforcement, interpretation; phenomena of subjective side of legal reality – legal awareness, subjective elements of legal culture, legal science[1]. N. Nenovski defines legal reality more broadly. He includes in its essence legal awareness, rules of law, creation of law and law-making, realization of law, legal behaviour, legal activity, etc.[2]

[1] *Alekseev, S. S.* Pravo: azbuka – teoriya – filosofiya: Opyt kompleksnogo issledovaniya [Law: ABC – theory – philosophy: the experience of integrated research]. Moscow: "Statut", 1999, p. 14.
[2] *Nenovski, N.* Pravo i cennosti [Law and values]. Moscow: "Progress", 1987, pp. 36–40.

Thus, in the theory of law the interpretation is included in the legal reality. At the same time, the interpretation is the way of cognition of legal reality as one of the elements of surrounding reality.

Recently, in the sciences of the criminal cycle, attention has been given to interpretation as a hermeneutic procedure[3]. However, these studies probe only certain legal aspects (for example, the interpretation of criminal law). Meanwhile, the professional and practical activities of the officials conducting the criminal process, while qualifying crimes, are associated with a wider spectrum of legal reality, which may become the object of interpretation. In this sense, hermeneutic and phenomenological interpretation techniques, undoubtedly, become relevant. The purpose of the proposed research is to clarify, the methodological significance of the interpretation of legal reality in the process of qualification of the crime from the point of view of the hermeneutic approach.

1. Interpretation in the Process of Crime Qualification

In the sphere of criminal justice, the crime qualification is considered as a separate part of law enforcement process. In the theory and practice of crime qualification, the application of the criminal law rule in the narrow sense is considered as professional and practical activity of bodies that conduct criminal procedure and provide the application of the criminal law rule to the specific case.

In the process of the crime qualification, the interpretation is understood in the narrow sense in the context of law enforcement – as establishment of the correspondence between the real event and the features of crime, the type of which is described in the criminal law rule.

There are the grounds to consider the interpretation activity of a public official who conducts criminal procedure in the process of crime qualification in two aspects: the interpretation of facts of the case as the data that has the criminal law significance, and the interpretation of criminal law rules.

In the first aspect, it is important that the crime is not revealed immediately in front of the person who conducts criminal procedure. However, this person can reconstruct the crime through symbolism, objectification sings, "symbolic universes" that have absorbed different fields of meanings and that assign meanings to objects. The elucidation of facts that characterize the real event presupposes the interpretation of concrete data. These data become the facts that have the significance with regard to criminal law only as a result of legal interpretation. V. V. Suslov, on the basis of P. Ricoeur's research concludes that an investigator, for example, during examination of the scene of action, does not deal with objects, but with their symbols. Ordinary everyday objects during examination in connection with the committed crime gain "indirect,

[3] *Suslov, V. V.* Germenevtika i yuridicheskoe tolkovanie [Hermeneutics and legal interpretation]. Gosudarstvo i pravo, No. 6, 1997, pp. 115–118; *Pycheva, O. V.* Germenevtika ugolovnogo zakona. Avtoref. kand. diss [Hermeneutics of the criminal law]. Extended abstract of PhD dissertation (Law). Moscow State Law Academy, Moscow, 2005, 392 p.; *Golik, Y. V.* Istina v ugolovnon prave: analiticheskij doklad [Truth in the criminal law: the analytical report]. St. Petersburg: "Yuridicheskij centr Press", 2013, 53 p.; *Zaginej, Z.* Kriminalno-pravova germenevtika: monografiya [Criminal law hermeneutics: monograph]. Kiev: "ArtEk", 2015, p. 380; Yuridicheskaya germenevtika v XXI veke: monografiya [Legal hermeneutics in XXI century: monograph] / *Tonkov, E. N., Vetyutnev, Y. Y.* (eds.). St. Petersburg: "Aletejya", 2016, 440 p.; *Bochkaryov, S. A.* Filosofiya ugolovnogo prava: postanovka voprosa [Criminal law philosophy: raising the issue]. Moscow: "Norma", 2019, 424 p.

allegorical sense, become symbols, the modality of which requires decoration and interpretation"[4].

If the nature of a symbol is considered in rational aspect, then a symbol contains the data on object that has been received by logical means, while processing sensory impressions. A symbol may be imagined as a form in which human mind transforms the manifestations of external world. In the process of the crime qualification, a person who conducts criminal procedure interprets appropriate symbols, considers them as possible sources of evidences, and thus establishes, as philosophers say, "interpreted being". In this sense, the cognitive activity of an authorized person always leads him/her to the problem sphere of hermeneutics. The person conducting the criminal procedure is regarded not as a certain reflective person, but as a person who cognizes, understands and interprets the existing facts that he/she has to assess as a cognizing person. At the same time, a person who enforces law has to understand and interpret the available facts with relation to the requirements on relevance of evidence, as he or she conducts an appropriate procedural act.

Determination of the scope of the case's facts is specified by the interpretation of the meaning of the criminal law rule. Otherwise, a public official conducting criminal procedure is not able to determine which facts have the criminal law significance and which rule should be applied in the specific case. In the aspect of the crime qualification, an authorized person comprehends the meaning of the criminal law rule in the view of the specific event of the crime.

In hermeneutical tradition, the interpretation process of any text is connected with the reconstruction of the author's initial concept. It should be noted that the hermeneutic methodological standard is characterized by the tolerance toward the plurality of the interpretation results[5]. In general, this issue is important for the cognitive process, but it is not entirely in compliance with the objectives and aims of the legal interpretation. In the theory of law, the interpretation of legal rule is considered as a cognitive activity directed at disclosure of the meaningful context of the legal rule[6]. Furthermore, as long as jurisprudence views "the author's concept" as legislator's will, the interpretation of the legal rule is nothing else than elucidation of the meaning of legislator's will. As applied to a criminal law rule, the interpretation is directed at the elucidation of the meaning of legislator's will on unlawful criminal behaviour. In such a case, plurality of legal interpretations can distort legislator's will and disorientate a person who enforces law.

2. Conflict of Legal Interpretations

At the same time, a conceptual instrument used in some criminal law rules creates the prerequisites not only for the plurality of interpretations, but

[4] *Suslov, V. V.* Germenevtika i yuridicheskoe tolkovanie [Hermeneutics and legal interpretation]. Gosudarstvo i pravo, No. 6, 1997, pp. 116–117.

[5] *Kuznecov, V. G.* Slovar filosofskih terminov [A dictionary of philosophical terms]. Moscow: "INFRA-M", 2005, p. 111.

[6] *Shlyapochnikov, A. S.* Tolkovanie sovetskogo ugolovnogo zakona [Interpretation of the Soviet criminal law]. Moscow: "Yuridicheskaya literature", 1960, p. 84; *Brainin, Y. M.* Ugolovnyj zakon i ego primenenie [Criminal law and its application]. Moscow: "Yuridicheskaya literatura", 1967, p. 105.

also for their conflicts. For example, the application of evaluative features in the criminal law rules impartially entails an ambiguity in understanding of them by investigative and judicial practice. Lexical polysemy that takes place in many criminal law rules also inevitably creates textual (semantic) polysemy.

The interpretation of the criminal law rule in the crime qualification process is casual. However, the decision-making process on application of the rule to the specific case by an authorized person is influenced by the official interpretations that sometimes are contrary to each other.

The jurisprudence has already developed certain techniques to resolve the conflict of legal interpretations. One of these techniques is the subordination of normative legal acts on their legal force. For example, after the entry into force of the 1999 Criminal Code of the Republic of Belarus, court practice showed significant disagreements on the issue of the legal end of illegal catching of fish or aquatic animals (Article 281 of the Criminal Code). Some courts defined this crime as completed from the moment of the actual taking of the fish, that is, from the moment of its withdrawal from the natural state in the process of illegal fishing or slaughter. Other courts interpreted the moment of the end of poaching in a different way: the crime was declared to have been completed since the start of the catch, regardless of whether the fish was actually obtained. The reason for this discrepancy in the qualification was the extremely unfortunate term used by the legislator in describing this type of crime – "illegal catching". In order to uniformly apply the criminal law, the Plenum of the Supreme Court of the Republic of Belarus in its decision of 18 December, 2003 No. 13 "On the application by courts of legislation on liability for offenses against environmental safety and the natural environment" clarified that illegal catch of fish or aquatic animals means actions aimed at actually taking possession of fish or aquatic animals, regardless of the result. In accordance with such a judicial interpretation of the notion of "illegal catching", the end of poaching is determined there: the illegal catching of fish or aquatic animals will be over from the moment of taking actions aimed at the direct seizure of fish or aquatic animals, regardless of whether they were caught. However, the Fishery and Fisheries Regulations approved later by the Head of the State (Decree of the President of the Republic of Belarus of 8 December, 2005 No. 580 "On some measures to increase the efficiency of hunting and fishery activities, and improve state management of them") defines "catching of fish" as "the removal of fish from its environment without saving its life". Since the Presidential Decree has a greater legal force in relation to the decision of the Plenum of the Supreme Court of the Republic of Belarus, catching of fish as defined in the Rules of Fishery and Fisheries gives reason to interpret the end of this crime differently: illegal catching of fish or other aquatic animals should be considered legally ended from the moment of removal (catching) of the corresponding aquatic animal from its habitat. Actions aimed at catching fish or other aquatic animals should be considered as an attempt to commit a crime.

In general, it should be stated that the conflict of interpretations (explanations) of the legal norm is a negative aspect of law enforcement activity, as it gives rise to relativism. The solution to the problem of the conflict of legal interpretations should be sought not only in the elimination of the causes of such conflicts, which are mainly caused by the shortcomings of the legislative technique in the design of legal rules, but also in the status pertaining to the rule of law in the state.

3. Interpretation and Application of Criminal Law Rules

In the theory of law, the term "interpretation" is customarily used in two meanings: clarification of the content of the legal rule (internal form) and explanation of the clarified meaning and content of the legal rule (external form of interpretation). The interpretation of the criminal law rule in the process of qualifying a crime is casual, i.e. relevant only to a specific case. In the context of the hermeneutic paradigm of cognition of social reality, the interpretation of the criminal law rule in the process of qualifying a crime is reduced in applying the rule of criminal law to a specific case.

The interpretation of the criminal law rule forms an understanding of its meaning. A complete and adequate understanding of the meaning of the rule of law is based on a synthesis of preliminary understandings. In the aforementioned aspect, the pre-knowledge and the prediction are of a particular importance for interpretation. H.-G. Gadamer noted: "The accurate establishment of the normative content of the law requires historical knowledge of the original meaning, and only for the sake of this last an interpreter-lawyer takes into account the historical significance, communicated to the law by the law itself. He cannot, however, rely solely on that he has been informed about the intentions and thoughts of those who developed this law, the protocols of parliamentary meetings. On the contrary, he must realize the changes in legal relations that have occurred since then and, accordingly, redefine the normative function of the law"[7]. Such an approach does not mean at all that the person conducting the criminal process in such a situation arbitrarily interprets the rule of criminal law. The interpretation carried out by the law enforcer must always comply with the principles of criminal law and modern ideas of understanding law.

The interpretation of the criminal law rules is closely related to the hermeneutic circle method. For example, Article 399 of the Criminal Code of the Republic of Belarus provides liability for unlawful exemption from criminal liability of a person suspected or accused of committing a crime. In order to understand the essence of this crime, we must refer to other rules of the Criminal Code, determining the grounds and conditions for exemption from criminal liability, and the rules of criminal procedure legislation providing for the respective legal decision-making. In the context of the development of a conflict criminal relationship, the clarification of these issues allows us to interpret and adequately understand the criminal law nature of this crime and, through the interpretation of its other features, permits to establish the limits of criminal behaviour. The hermeneutic circle helps to understand the structure of compound crimes (crimes consisting of several acts, each of which is a separate crime), which contributes to the solution of questions about their qualification.

At the same time, in the early stages of pre-trial proceedings, there may be a "prejudgment", which performs the function of a preliminary decision (version of the qualification of the crime). H.-G. Gadamer assessed the legal value of the preliminary decision, as follows: "With regard to judicial practice, this is a legal pre-decision, preceding the final verdict. For a participant in a lawsuit,

[7] *Gadamer, H.-G.* Istina i metod: Osnovy filosofskoj germenevtiki [Truth and method: Fundamentals of philosophical hermeneutics]. Moscow: "Progress", 1988, pp. 385–386.

imposing such a preliminary sentence against him, of course, leads to a decrease in his chances"[8].

From the position of philosophical hermeneutics, the hermeneutic application procedure, which is due to interpretation, acquires great importance in the process of qualifying a crime. H.-G. Gadamer notes: "The application is not an application to the specific case of a certain universality, which was originally given and understood by itself, but the application is the real understanding of the universality itself, which is the text for us. Understanding turns out to be a kind of action (*Wirkung*) and knows itself as such"[9]. This H.-G. Gadamer's judgment has a deep meaning that allows us to have a different look at the essence of the application of the criminal law rule in the process of qualifying a crime. Hereby, the application does not act as some kind of independent stage of implementation of the legal rule. The task of understanding and interpreting, as noted by H.-G. Gadamer, is "the essence of the task of concretizing the law in a particular case, that is, the task of application"[10]. Application, in this case, determines the phenomena of understanding and interpretation in their entirety. With this approach, the text of the criminal law rule is not considered as the very "universality", which is then used only by an authorized official to apply to the particular. The application of the rule of the criminal law in the hermeneutic perspective serves as its practical understanding in the framework of the arising criminal legal situation.

Summary

1. A phenomenon of interpretation (exposition) in jurisprudence manifests itself in two ways. On the one hand, the interpretation is a part of legal reality. On the other hand, it serves as the means of understanding legal reality. However, universal character of interpretation allows it to be the means of comprehension of the environment as a whole.
2. While qualifying crimes, the interpretation should be considered in the narrow sense, in the context of application of laws. In the process of crime qualification, the interpretation manifests itself as a comprehension of, in respect of a concrete criminal case, the essence of an event that has taken place, and the sense of criminal legal rule, which is applicable to the event.
3. The understanding of a criminal legal rule in the process of crime qualification is casual, relevant to a concrete event. In the context of hermeneutic paradigm of comprehension of the environment, the interpretation of a criminal legal rule in the process of crime qualification forms the understanding of its sense, and, finally, it leads to the application of a rule of criminal law to the concrete case.
4. The multiplicity of interpretations (expositions) of legal rules is a negative aspect of law enforcement activity, and it contradicts the principle of legality. The solution of the problem of multiplicity of interpretations should be acquired by strictly abiding by the rules of law-making techniques while creating legal rules.

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[8] *Gadamer, H.-G.* Istina i metod: Osnovy filosofskoj germenevtiki [Truth and method: Fundamentals of philosophical hermeneutics]. Moscow: "Progress", 1988, p. 323.

[9] Ibid., pp. 402–403.

[10] Ibid., p. 389.

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