

Main Ideas of the Legal Hermeneutics

Pavel P. Baranov and Alexey I. Ovchinnikov
The Southern Russian Institute of Management of the Russian,
Academy of National Economy and Public Service at the Russian President,
Rostov-on-Don, Russian Federation

Abstract: The Hermeneutics the term of the Greek origin having some close values art of the interpretation of ancient religious and historical texts, literary monuments, in writing recorded manifestations of life, the doctrine of the principles of their interpretation. The general basis of all these values “does clear”, “bring to understanding. In research the theoretic-methodological problems of the legal hermeneutics are analyzed, the overview of its primary subjects and the directions is given, the characteristic of legal thinking from the hermeneutics is offered, the argumentation of its recognition is provided as the philosophical and legal paradigm. Locates that at the heart of the legal hermeneutics the strong protest against scientism and technocratic tendencies of modern political and legal thinking is located. Is shown that the legal hermeneutics proceeds from sociocultural factors in the genesis of the right that especially, actually today when the threat to cultural pluralism became obvious in connection with globalization processes. Research consider that the legal hermeneutics allows consistently (unlike numerous mechanical and plastic models of “synthetic right understanding”) “conciliate” legal positivism and natural law doctrines, different on the basis. The legal hermeneutics represents a unique approach to the right and is not reduced to the theory of interpretation or interpretation of the right. The researchers ended the study with these conclusions recognition of another is the cornerstone also of humility and love for the neighbor. Without at least some share of humility and love for the neighbor neither communication with another, communication, knowledge acquisition, need to influence other people has a huge impact on the genesis of thinking, to convince and induce them to certain actions, capability to understand these actions are communication and philosophical and legal value of hermeneutic approach to the right leads to thought that right roots at all not in fall of the person, not in initial perversity of the person egoism and in spiritual life of the personality, in the nature of the conceiving and communicating person.

Key words: Legal hermeneutics, law, hermeneutical, methodology, Russian Federation

INTRODUCTION

In the modern Russian and foreign jurisprudence, the subject of the integrative law continues to remain actual. In its framework those concepts of right understanding which overstep the bounds of the classical rational paradigm of the right thinking gain the development also and are guided by irrational, existential and hermeneutic parameters of legal life of society and the person. One of such concepts is the legal hermeneutics. The legal hermeneutic philosophy which the main object of research makes understanding of the right, allows on new to look at right understanding problems.

Literature review: The hermeneutics received the powerful impulse of development already in works of Aurelius Augustine who addressed to it as to the system

of rules of finding the original sense of the Gospel. Later, interest in this problem revived in the subsoil of the Protestant theology developing the hermeneutics as the art of true interpretation of the new testament in a polemic with Catholic theologians. From the Middle Ages, the hermeneutics became also known to lawyers as the proper direction of eternal law which simple beginnings were mortgaged at the time of the glossator interpreting regulations of the roman right for the purpose of establishment of their initial contents and the adaptation to the economic life of medieval Europe. For this reason, traditionally legal hermeneutics closely contacted legal positivism. The dogma is right, being the only source of justice assumes law enforcement adequate to the will of the legislator. Most often as the art of interpretation of texts of laws is considered the legal hermeneutics and today Suslov (1997).

Corresponding Author: Pavel P. Baranov, The Southern Russian Institute of Management of the Russian,
Academy of National Economy and Public Service at the Russian President, Rostov-on-Don,
Russian Federation

The general for all early hermeneutic doctrines it that the novelty moment introduced by the interpreter in own interpretation relation to work was not considered. Establishment of intention of the author-the legislator was considered as the main objective of the legal hermeneutics.

The second stage of development of the legal hermeneutics began in connection with the formation of hermeneutic c, existential and phenomenological philosophy in the 20th century. Heidegger develops hermeneutic phenomenology, based on the statement that the understanding makes beingness structure of human existence is the original form of human life and not just orderly transaction. Gadamer shows the role of tradition, language, sociocultural premises of understanding: a set of the prejudices and prejudgments caused by tradition makes "the understanding horizon". At this stage of development, the understanding is considered not only as the method of historical thinking but also as fundamentals of philosophy. Thus the movement in the circle of understanding seems not as coming nearer to the reschers intention any more and as the co-authorship, designing of sense. The interpreter and the interpreted text-not two isolated worlds but the essence one "Any understanding is eventually self-understanding".

The fact that understanding is based on something was already given, something expected, leaves no doubt: who wants to understand the text that always makes the assumption about the meaning of the wholes which is the first meaning. As Gadamer points out. "The construction of the text in the course of reading the manual, certain sense, the expectation arising from the preceding". Within the same prescience, hermeneutics is providing pre-understanding, takes on different forms and shapes: from intuition, Husserlian "life-world" to the transcendental subject.

Modern science approaches connect methodological issues with the hermeneutics and some philosophers associate with the hermeneutics and philosophy in the true sense words, new ontology Riker within the understanding sociology interpretation is considered as the basis of social life: the daily world is represented as the inter-subjective world of culture, the semantic universe, set of values which we shall interpret to find the support in this world, to compound with it Riker, Shyuts (1988) and Ionin. Thus, the central question of the modern philosophical hermeneutics is the problem of nature not only that the third, thanks to which only and possibly mutual understanding of individuals (Shleyermakher and Diltey's perspective) but also as the famous representative of this direction writes Riker, the method of "existence that remains from beginning to end interpreted life".

MATERIALS AND METHODS

In this research methods of the philosophical and legal analysis of legal reality, the idea of the philosophical hermeneutics, the concept and theory of philosophy of science, the epistemology are applied. Besides, in article authors rely on achievements of the modern legal axiology and anthropology.

In this study, the analysis of the legal hermeneutics relies on the following special circumstances and the principles.

First, it is the principle of anti-positivism. The process of interpretation of the precept of law is creative, with-researcher and, in fact, the law enforcement official, acting with-the legislator, creates a new regulation, performing the act of leading the general regulation and the specific case. This process can be considered as "capability of judgment".

Secondly, the principle of the irrationalism. Analogy shall not consider the scientific and professional right thinking with engineering and natural science thinking in the commonly accepted understanding-as "thinking objective" explaining. Respectively, logical criteria of truth cannot apply to this level of thinking without additional amendments that sense is reduced to the restriction of rational and logical knowledge of the spiritual and practical world (Ovchinnikov *et al.*, 2015).

RESULTS AND DISCUSSION

"Capability of judgment" capability of leading under the rule of the specific contents. There are no rules for such leading as the general rules would be required, whether this or that rule for this case and for these general rules approaches even more general rules, etc. were required. From here "capability of judgment" performs the creative act, but not the logical conclusion. It is capability estimated: the judge bringing the incident, act under the precept of law uses "capability of judgment" estimating the case and using this assessment as "the desirable right" performs search and interpretation of regulation regarding its applicability to this case. As regulation is whole and the specific case-private, arises the hermeneutic circle-to understand the whole, it is necessary to begin with private but to understand private, it is necessary to have an idea of the whole. Therefore law-enforcement process-deeply intuitive in essence (Ovchinnikov *et al.*, 2015; Baranov *et al.*, 2015a, b).

Thus, we come to the restriction of the inclusiveness of social knowledge, to limits of the universality of the right thinking depending on sociocultural factors. If the process of knowledge of the right to consider as the

process of judgment, the valuable structures of a sense of justice of the thinker which are the cornerstone of this process is also implicit, pre-predicative knowledge of the right. From the legal hermeneutics the position according to which the right understanding is represented as a process of knowledge of the right-the objective phenomenon that is allegedly existing in itself, generalizing properties, signs and which quality characteristics, we come nearer to its essence, demands adjustment. The tradition, in general and tradition is right in particular, defines and believes borders to right thinking. The judgment of the right always looks as the hermeneutic circle because the life of the right, as well as life, in general, time character and therefore, the scientist has-the jurist has in himself no "extra historical" point, having got on which he could take the permanent position. Will not help here and studying of the tradition as studying tradition, the historian of the right does not go beyond its limits and "moves in its circle". And still before the scientist will take the reflexive position, he with complete self-evidence positions himself as the family member, society and the state in which lives therefore the ordinary knowledge of everyday life created within this or that sociocultural community is according to Shyuts "undoubted but always doubtful premises" Shyuts within which it is made scientific research of the right. Thus, the jurist already always has some it the "preliminary understanding" set to it by that tradition and history of the right to which he belongs. In this sense of sumption-free right thinking and universal right understanding does not exist that proves insolvency of polemic round the "true" right understanding suitable for all times, the people and cultures.

The right shall conduct to the lawful world order provision that is recognized as all. However, the universal formula of justice cannot be as social life owing to possession of the person of will and reason is not predictable with the mathematical accuracy-about it still Aristotle in the wrote "Nicomachean Ethics" Aristotle. However, a person cannot live without law. What a concept of right understanding we would not assume as a basis legal models, the criterion of justice of the judgment in "final instance" there is always the sense of justice, but not regulation of the positive or natural right. The intuition of the law enforcement official, his legal thinking act here in a sense as author's or law-making procedures in which it "the living world", sociocultural experience, aexternalizing using legal formulas, purchases the form of the law-enforcement act Carlos. The understanding of precepts of law and the social relations is the central moment of any law-enforcement process and there where there is the process of understanding, always there is the element of creative participation.

In the course of proper communication some area of the crossing of opinions of the parties in which the judge and tries to find the middle and the fair solution is reached. Thus, charge looks at the case from a height of "the law letter", the generality of regulations and protection tries to show its originality, not identity to other affairs, the untranslatability under the complex instructions of the positive law of specific facts of the case offered by the charge. The law and judicial law making become thus the necessary and complementary legal structures allowing to perform justice Baranov *et al.* (2015a, b).

In the legal hermeneutics, a provision according to which the judge performs the application of regulations using logical acceptance. The judge understands and applies regulations through "the desirable right" often extra mental, intuitive, depending on valuable preferences of the person and arising under the influence of clean feeling. This statement adjusts, in our opinion, current orientation of views of scientists-lawyers according to which optimum option for the functioning of the system of law is the creation of "hassle", "all-embracing" laws with liquidation or minimization of judicial law-making. It is necessary to understand that the social reality does not represent something existing and developing under the certain laws similar natural and which can be programmed using regulations for the achievement of particular purposes. There are entirely no identical situations and cases as there are no two same people. The law not in forces to provide an infinite number of possible situations, to expect all variety of cases of the application as there is something not giving into rational thinking and the explanation-human freedom Mordovcev *et al.* (2015).

Still Aristotle specified that there is an inevitable tension between the law and concreteness of the practical acting as any law has a general character and, therefore, cannot cover practical reality in all its concreteness. Exactly here the original problem of the legal hermeneutics also disappears. She recognizes that the law should because it is imperfect in itself but because the human reality in comparison with that order that is meant by laws, inevitably remains imperfect and, therefore, does not allow simple application of the law. It is impossible to express all legal phenomena in the general concepts and then to consider legal reality as manifestation or application of the content of these concepts of special cases. After all the law as the most normal form of the right, top of its formality and the world of society until the person did not turn into the rational and predictable being . Therefore, knowledge of the right, just thinking deeply hermeneutic in essence: it constantly is replenished at the expense of

isolated cases that predetermine this knowledge and it is productive. After all the judge applies not only the law but also itself, the sentence makes the contribution to the development of the right, performing thereby “full law-making. Similar to it and the scientist comprehending the innocent life of society using concepts of each case of their use creatively performs the specification that generates the long discussions similar to the review of judgments, concerning their adequacy afterward. It is thought both in the first and in the second case the known maxim of the Roman lawyer is applicable: in the civil right any determination is fraught with danger because there are not enough cases when it cannot be disproved. Though it is rational to prove its applicability it is impossible: search of the rule for application of another rule will take away in bad infinity. Social life and legal thinking in the bases are irrational Ovchinnikov *et al.* (2015).

CONCLUSION

The reschers concluded from the research 3 main conclusions that are. The Recognition of Another is the cornerstone also of humility and Love for the neighbor. Without at least some share of humility and love for the neighbor neither communication with Another, nor a legal relationship with it, recognition and, therefore and legitimacy of the right and law and order is impossible.

The Communication, knowledge acquisition, need to influence other people has a huge impact on the genesis of thinking, to convince and induce them to certain

actions, capability to understand these actions, in a word, communication. The psychology convinces us: participation of each person in general forms of intellectual activity does possible formation of original thinking and the afterward opportunity to be the member of human communication, communication.

The Philosophical and legal value of hermeneutic approach to the right leads to thought that right roots at all not in fall of the person, not in initial perversity of the person egoism and in spiritual life of the personality, in the nature of the conceiving and communicating person.

REFERENCES

- Baranov, P.P., A.I. Ovchinnikov and A.Y. Mamychev, 2015a. The state authority constitutional legitimacy in modern Russia. *Mediterr. J. Social Sci.*, 6: 201-208.
- Baranov, P.P., A.Y. Mamychev and A.I. Ovchinnikov, 2015b. The legitimacy of power and power relations as a multi-level political and legal phenomenon: Approaches, interpretation and conceptualization. *Mediterr. J. Social Sci.*, 6: 209-216.
- Mordovcev, A.Y., T.V. Mordovceva and A.Y. Mamychev, 2015. The convergence of law: The diversity of discourses. *Mediterr. J. Social Sci.*, 6: 262-270.
- Ovchinnikov, A., A. Mamychev and D. Mamycheva, 2015. Sociocultural bases of state-legal development coding. *Mediterr. J. Social Sci.*, 6: 67-74.
- Shyuts, A., 1988. Structure of daily thinking. *Sotsis*, 2: 130-131.
- Suslov, V.A., 1997. The hermeneutic aspect of legislative interpretation. *Jurisprudence*, 1: 87-88.