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LAW AS A TEXT: ANTHROPOLOGICAL-COMMUNICATIVE ASPECT

This research aims to identify anthropological-communicative features of the textual form of law. The author grounds her conclusions on the understanding of the "legal text" concept in the broadest sense of legal hermeneutics – as any phenomena of legal reality that can be understood, interpreted, and mediated by communicative acts. The need to shift the emphasis in the study of the textual form of law in favor of the anthropocentric approach is explained with the help of E. Husserl's phenomenological ideas. The paper substantiates the idea that any symbolic form in its development starts from the emotional-sensory perception in the individual consciousness and, afterward, consolidates as a symbol, a carrier of cultural (including legal) content that gets disseminated in the collective consciousness. Law as a text is an instrument that transmits legal tradition through national language. This inference calls into question the universality of legal texts for different cultural communities. The author stresses that modern jurisprudence should be based not only on rational arguments but also consider the influence of mythologized ideas, which reflect social being of a person, legal traditions and legal thinking. This approach gives the possibility not only to identify the ways and means of creating legal texts by people, additionally it will help to establish conditions for the legitimation of legal texts at the level of an individual and society as a whole.

Keywords: legal text, legal hermeneutics, phenomenology, communication theory of law, philosophy of law, legal anthropology.

Introduction. At the present stage of human development, the value of law as a social phenomenon designed to effectively regulate social relations, to resolve conflicts in a civilized way and to look for compromises is beyond question. In this context, law may be considered as a perfect means of communication, as a specific sign system that reflects information about desirable and prohibited behavior, about values recognized by society and protected by the state. Legal texts have regulatory, informational, educational and other socially important functions. However, modern stage of development of practical and academical jurisprudence, gives rise to new questions: what exactly should be considered as a legal text? How to distinguish it from other types of texts? What are its typical peculiarities? What is the mechanism of its formation and legalization?

Traditionally, academical jurisprudence examined the textual form of law as positive law characterized by deep formalism, devoid of the influence of moral, religious and other socio-cultural factors. In our opinion, this approach significantly limits the understanding of the essence of law and does not correlate with the modern ideas about the nature of its formation, mechanisms of understanding and interpretation.

The consistent criticism towards classical legal positivism, which has prevailed in domestic jurisprudence for a long time, induces a revision of scientific paradigms of the understanding of law. A return to metaphysics and the application of a philosophical approach to the analysis of social and legal phenomena gives the possibility to overcome the methodological crisis in theoretical jurisprudence. As for the Western jurisprudence, the writings of M. Scheler, E. Husserl, M. Heidegger, H. Gadamer, and others reflected an updated ontological paradigm. Today there is a need to establish a link between rational empirical science, which explores social reality, and the ontological factors of a human being, influenced by human spiritual consciousness and cultural tradition. In our view, the most optimal methodological approaches to the study of legal texts are legal hermeneutics, legal anthropology, and communication theory of law. Exactly these approaches have got an anthropocentric orientation and see human consciousness, not the "mythical" will of the state, as the determining factor in the construction of legal reality and formation of law and order.

On the one hand, the anthropological approach allows studying law in an institutional context, by considering how authorized subjects within their powers formulate and implement regulatory rules through

specifically created bodies and institutions. On the other hand, legal anthropology tries to find out how legal texts are understood and legitimized by their addressees – ordinary citizens; and how ethnographic peculiarities, cultural traditions can transform perception. Outlining the subject matter of legal anthropology, M. Goodale notes that anthropologists have studied and criticized different aspects and meanings of law – as a system of coercive rules, as ethical rules, as the limits for political activity, as the categories of identity. But since the early 90s, anthropologists have been facing law in new forms (such as human rights) and in new cultural contexts, where law is a central mechanism through which such issues as citizenship, indigenous movements, biotechnologies can be explored in the frameworks of the anthropological approach[1].

Analyzing how deep problems of textual expression of law are studied, we've noticed the absence of complex and thorough academic works in the field of the theory of law, including in Western jurisprudence. Law as the text is studied in a few works by domestic scholars, however, it does not stand out as an independent object of scientific research, and rather studied within the analysis of legal semiotics and linguistics[2]. I. Griazin's work "The Text of Law" is entirely devoted to the textual form of law and justifies the need to change methodological approaches to the study of legal texts. This work has become the basis for our study, in view of the fact that modern domestic jurisprudence does not clearly answer the questions about the concepts and features of legal texts, their types, mechanisms of formation, and, most importantly, algorithms of understanding and interpretation.

The purpose of the study. The epistemological problems of legal texts are directly related to the methodological problems of legal interpretation, which in modern conditions are actualized by the transition from static to dynamic (evolutionary) interpretation. In this regard, a thorough analysis of the anthropological foundations of the origin, formation, and perception of legal texts allows us to understand the subjective component of the communicative nature of law and the mechanism which legitimizes normative rules in the consciousness of an individual and society as a whole.

The main materials of the study. Legal text is a complicated legal structure that can be considered in several aspects. In particular, O.M. Balynska suggests to analyze the praxeological nature of the concept "law as a text" as a special functional style of literary language; as a symbolic reproduction of legal reality; as an open and closed system of legal relations[3]. In our opinion, all these aspects reflect the anthropological-communicative nature of law. The anthropological characteristics of the textual expression of law are linked to the fact that only a human can be the creator and the carrier of language (including legal) as a symbolic reflection of social reality.

Phenomenological ideas that have been actively developing in post-nonclassical science may be considered as the conceptual basis of the communication theory. In particular, if we analyze E. Husserl's views, we'll see that his book "Cartesian Meditations: An Introduction to Phenomenology" is a transition to intersubjective phenomenology, which includes not only the understanding of interconnection between individual and social, but also the processes of social communication, within which the transmission of cultural values and meanings takes place. The author emphasized that each person first and foremost understands their specific outworld with its center and undisclosed horizon, i.e., own culture – as a person belonging to the community that historically shapes that culture[4].

Thus, social reality, unlike the world of nature, is constructed by man. According to A.V. Poliakov, suchlike "human-created social reality, objectified in the form of a semiotic, sign system (texts), ultimately determines options of socially significant behavioral reactions of a person as communicative acts"[5]. Developing this thought, it can be argued that law, as a part of social reality, has a textual (sign) form as well.

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Similar views are expressed by A.I. Ovchinnikov, who states that from the standpoint of the phenomenological concept of society, legal reality is not reflected epistemologically, it is rather constructed by the human in every act of his\her legal understanding – cognition. Human understanding of legal relations represents the meaning-construction process, since the human endows legal relations with meaning and, therefore, constructs[1].

Thus, the external law and order should not be regarded as objectively given. In fact, there is a mutual influence: on the one hand, legal values, cultural, religious, and mental peculiarities imbibed since childhood impact individual legal awareness; on the other hand, under the influence of new experience gained by the human, the existing law and order is constantly being transformed, improved, and endowed with other meanings. And in any case, normative rules, symbols, and meanings reflected in legal texts cannot be implemented unless they are fully understood and perceived by the human.

Considering the trend for the approximation of the national and western methodology of legal studies, we stress the need for a broader application of the philosophical approach to the analysis of law, including textual forms of its expression. Modern philosophy suggests applying for such cognition the tools of hermeneutical theory, linked with the names of P. Ricœur, E. Husserl, H. Gadamer, and M. Heidegger. Legal hermeneutics allows combining rational arguments, logic and common sense with intuitive cognition and value assessment of the world in human thinking.

In the previous publications, we have already turned to the concept of the legal text, defining it as an object of legal interpretation. The conclusion was made that in conditions of modern methodological pluralism, the most reasonable is to use the category "text" from the standpoint of philosophical hermeneutics. In this case, the text is virtually everything in the world capable of being understood: written documents, actions, oral statements, gestures, signs, etc[2]. In contrast to the semiotic approach, hermeneutics does not focus on the internal structure of the text but perceives it in connection to the subject, as the basis for the activity of the latter. Text is something that can be read and interpreted. Whether this object was originally created as a text (for example, whether it was a written work) or became a text as a result of special textualization – this depends on the conditions of the particular situation of the hermeneutical study[3].

As for the legal field, it is legal hermeneutics, as the science of the "spirit" of law, that appeals to such anthropological features as the legal outlook, legal mentality, legal thinking, legal culture. Understanding of any text, including legal text, is closely associated with subjective traits of both the author of the text, who transmits certain information, and the addressee. The subject of interpretation must take into account the variability of the semantic meanings of the individual concepts, choosing the one that correlates with the purpose of the text and objective factors (i.e., historical, political, cultural context). Obviously, in this case, any understanding should be based on previously accumulated knowledge, axioms, prejudgements, empirical data, etc. Moreover, as we see it, symbolic associations, peculiar cultural codes formed by legal tradition are the source of such prior knowledge. We believe that legal tradition is successfully defined from the standpoint of legal hermeneutics, as an institutional matrix of classification and assessments of human behavior set by national culture[4]. Therefore, so that communication was successful and achieved its goal, it is important to implement it within a sign system (language) common or at least related (understandable) for the subjects.

Summarizing previously stated information, in the most general sense, a legal text can be represented as a certain system of signs and symbols, which is a product of cultural tradition. Studying law as a phenomenon of culture, we can speak about the primary role of the human in its formation and development. N. Mezey offers to consider law as one (albeit very powerful) of institutional cultural

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institutions, which meaning is defined and changed by a range of agents (legislators, judges, civil servants, citizens)[1].

Also, while ascertaining a considerable amount of approaches to understanding the phenomenon of culture, we should agree with I. Griazin on the point that all the diversity of attempts to separate culture from non-culture boils down to the fact that culture acts as a sign system[2]. Accordingly, law as an element of culture is the result of creativity, of the social existence of the human. However, this provokes a question: how exactly is the process of legal texts' development takes place? Since what moment does law acquire its textual expression and what is a legal text in modern interpretation?

In this context, the philosophy of Ernst Cassirer is of great importance, because it represents the human as the creator and, at the same time, the interpreter of symbols, in the terminology of the author as animal symbolicum. The human lives not only in the physical but also in the symbolic universe. Language, myth, art, religion are all parts of this universe, different threads from which the symbolic web, the complex fabric of human experience is interwoven. All human progress in thoughts and experience has thinned and, at the same time, strengthened this network[3].

According to Cassirer, it is the symbol that structures the empirical reality of the human and accumulates the experience of previous generations, which essentially is a culture. I. Griazin calls this a collective memory, the epitome of social experience that ensures human progress, so far as each new generation begins to develop on the basis of already accumulated ideas.

After the study of Cassirer's basic works, we may claim that he distinguishes the following symbolic forms: myth, language, technology, art, religion, science, and law. It is interesting that, according to the philosopher, all these forms originate from mythological ideas of the human. They are not genetically autonomous and have to gradually obtain own specific traits, without completely eliminating their mythological specificity.

The analysis of law as a symbolic form is contained in Cassirer's little-known work "Axel Hägerström. A study on the Swedish philosophy of the present". Cassirer claims that any symbolic form in its development starts from the emotional-sensory perception in the individual consciousness and, afterward, consolidates as a symbol, a carrier of cultural (including legal) content that gets disseminated in the collective consciousness. The author proves that the development direction evolves over time from "mystical" to "symbolic" and "idealistic"; that the mythical image is gradually displaced by the knowledge of "canons", rules, and principles[4].

So, it turns out that in order to be aware of the true content of legal documents, one should refer to their mythological origins. Primitive thinking typical for primordial people was based on intuition, remote observation, and polytheism as an attempt to gain favor in the struggle against different supernatural forces. Hence the impossibility of formulating universal rules and laws, which consistent application would put social interaction in order. However, over time, the transition from sensory to more rational thinking takes place, and all symbols get legalized.

It's interesting that some domestic scholars substantiate the existence of legal mythologems in modern jurisprudence as a consequence of overcoming its excessive rationality. In particular, Yu.V. Tishchenko suggests considering mythologems in law as metaphors, which combine the desired and the real in the functioning of the legal system. According to the author, the category "human rights" is a striking example of a mythologem, symbolically formed when the content of the concept "subjective law" was substituted by its symbol – "freedom"[5].

However, although not denying the genetic link between myth and law, Cassirer still criticized Axel Hägerström's position, as the latter saw the presence of mythological thinking, albeit hidden, in modern

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classical jurisprudence. He argued that in the course of development a gradual change in the meanings of cultural symbols takes place, the transition from the magical meaning of the word to a pure concept. N. Rulan interestingly points out that the processes of legalization are inherent in every society. This happens through the formation of language, life skills, forms of representation, that deemed by each society as fundamental to its functioning and reproduction[1].

When examining legal texts, it is crucial to establish a link between law and national language, as both of them are products of exclusively human activity. The peculiarity of each language is based on the originality of meanings given to certain symbols. As H. Gadamer wrote, a person living in the world is not only provided with a language as a certain tool; everything that, in general, the world means to a person is based on language or expresses by it[2].

In other words, the perception of the world, even the understanding of what is appropriate (right), will differ between two people whose socialization took place in different linguistic communities. Therefore, the textual expression of law as a set of elements of the national language contains information about legal values traditional to a particular society. This conclusion reminds us of an important warning urgent in the context of globalization and European integration. It is not advisable to mechanically transplant legal structures, terms, institutions borrowed from foreign countries in the national legal system. They can become a part of legal texts only as a result of the transformation of legal reality, which is constructed by the human under the influence of new experience, forming new interpretations of traditional symbols.

Anthropological features of the legal text indicate the existence of ontological pluralism of law, the loss of state monopoly on the creation of regulatory rules. In this regard, E. Ehrlich's concept of "living law" gains particular importance. This scholar emphasized that the desire to restrict law of the whole epoch or the whole people by code paragraphs had as much reason, as the desire to stop the stream in the puddle – what will come out of this, will no longer be a living stream, but stagnant water. And so much water will not fit into the puddle! It should also be considered that any legislation with necessity is far behind living law. This fact reveals an infinite and still untreated field for the work of modern legal scholars[3].

It should be mentioned that Ehrlich did not contradistinguish state and "living" law, but substantiated the possibility of their simultaneous existence as original manifestations of law. That is, the positive (officially enshrined law) is the result of actual legal relationships. However, in the context of this study, the process of formation of "living law" is of bigger interest, of course. What is its prerequisite? What factors influence the creation and legitimation of such norms?

E. Ehrlich himself stated that "this is law that dominates over life itself, even if it is not enshrined in the legislative acts. The sources of our knowledge about this law are, firstly, modern legal documents, and secondly, direct observations of the life, commerce, customs and habitudes of all communities; and not only of those recognized by law but also those ignored and neglected by law, and even those whom it does not directly recognize"[4].

Here we may conclude that customs and traditions, formed as a result of the evolution of mythological representations in the form of symbolic forms, manifested at the level of actual legal relations, are the sources of actually operating law. In the future, these symbols are transformed into a system of signs that are elements of the legal text but retain their symbolic meaning.

In the theoretical jurisprudence, the anthropocentric approach allows one to change the traditional perception of the primary role of coercion in adhering to the normative rules formulated in legal texts. As legal texts are written by people, who, thus, transmit certain symbolic information about the legal culture, the addressee will adequately interpret and perceive the texts as belonging to the same culture. In this context, state coercion is not so important for the legitimization of the legal text in human consciousness. Similarly, society will not accept new requirements as belonging to the field of law if they contradict legal tradition and dominant legal values.

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Anthropological and communicative peculiarities of the legal text manifest themselves in the process of symbolic formation of particular legal terms or constructions, which are the result of legal thinking of a person. In a modern interpretation, legal thinking is seen as a meaning-construction process that combines different types of cognition – sensual, intuitive, and rational. Law acts as a system of cultural signs and meanings that construct legal reality and consolidate the legal tradition of every society. That is why, in our opinion, modern jurisprudence should be based not only on rational arguments but also on the influence of the sensual, emotional, subconscious perception of law, which is a reflection of a person's social being and thinking.

Conclusions. In the face of changing the scientific paradigm of jurisprudence, the legal text as its category requires clarification of substantive characteristics, as traditionally it was regarded in the narrow sense – as positive law or legislation. In our view, it is possible to solve this problem through philosophical approaches that emphasize the primary role of anthropological factors: legal tradition, culture, legal thinking, and experience. The use of the methodological potential of phenomenology, communication theory and legal hermeneutics has helped to make the following conclusions. The category "legal text" is not limited to verbal sources but considered in the broadest sense – as the phenomena of legal reality, which are understandable, interpretable and mediate communicative acts. The way in which the legal text is formed from myth to symbol and later to the system of linguistic signs determines its functional, structural and lexical grammatical features. Law as a text is a tool that transmits a legal tradition through national language. This inference questions the universality of legal texts for different cultural communities. We see the prospects for further studies of the textual expression of law in the development of criteria for the classification of legal texts, the study of conditions and mechanisms of their formation and legitimation, the creation of effective algorithms for interpretation in the process of law enforcement.

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