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HERMENEUTICS IN THE CONSTITUTIONAL LAW OF UKRAINE

Problem statement and its connection with important scientific or practical tasks. Hermeneutics, having emerged due to innovations in philosophy, is currently used by other humanities, including jurisprudence. Hermeneutics (from the Greek ερμηνεύω (*hermeneutikos*) – interpreter) – the art of understanding, comprehension, the doctrine of the interpretation of signs and understanding of meanings in the form of theory of the art of understanding, certain rules (methods, techniques) of interpretation, the art of their application, as well as the process of interpretation; organization, process and result of such correct reasoning, which actualizes various interpretive methodologies, adequate for understanding a text.

Hermeneutic principles and approaches are harmoniously combined with centuries-old legal traditions – because the history of interpretation of legal texts dates back at least to the Renaissance, reflected in many schools (glossators, commentators (postglossators), etc.).

Analysis of recent research and publications. Ukrainian jurists successfully use hermeneutic tools, paying considerable attention to the study of this issue – the article uses the works of Yu. M. Oborotov, P.M. Rabinovych, others. Their recommendations on methodological issues were applied to solve problematic issues that arise in the process of creating and functioning of house, neighborhood, street committees, the study of which was conducted by C.A. Yampolskaya, K.K. Kamilov, A.E. Chigir and others. The author of this article also has some works on the mentioned topic [1–3].

The aim of the article is to demonstrate how the hermeneutics is used in the field of constitutional law based on the self-organized bodies of population's materials and practice.

Yu. M. Oborotov stated that figurative, metaphorical language was historically primary in relation to scientific terminology, and proposes to use the theory of metaphor for a proper understanding of legal texts. In his opinion, the task of hermeneutic interpretation is to see in one sense with the help of metaphors another, which is born in the process of interpretation [4, p. 129]. However, as P.M. Rabinovych aptly noted, "in the legislation the level of informativeness of public phrases is much lower than the level of informativeness of terminological constructions" [5]. The gaps that arise are filled by the

Constitutional Court of Ukraine, courts of general jurisdiction and scholars in their doctrinal research, using, inter alia, hermeneutic methods. But the task of scientists is also to prevent the emergence of ambiguous terms in the legislation, and, if this has already happened – to identify them in order to suggest possible ways to remedy the situation. This article is devoted to this question.

The article uses the theory of metaphor to consider the term "self-organized bodies of population" (hereinafter – the SOBPs) in comparison with other terms that have been used or are used to name these organs. The author, considering the names (titles) that existed in the USSR and Ukraine to denote the SOBPs or their counterparts since their inception, argues that most accurately characterizes the house, quarter, etc. committees term "bodies of territorial self-organization of the population" and not "bodies of self-organization of the population". The first part of the article analyzes the terms "self-employment", "self-government" and "self-organization" in order to choose the one that best describes the house, neighborhood, street, etc. committees. The second part compares the term "bodies of territorial self-organization of citizens" with the term for which it was changed by the legislator, and which is used at the present stage – with the term "bodies of self-organization of the population". The last part of the article contains conclusions and prospects for further creative explorations.

The emergence of house, street, neighborhood, etc. committees dates back to the early twentieth century. During the period of their existence on the territory of the USSR and Ukraine in the legislation they were called:

- bodies of public amateur activity – in the period of 1950 – 1980 – years (till then analogues of modern bodies of SON did not have the generalized name at all);

- territorial public self-government bodies – a variant that appeared in the late 1980s, during democratic transformations, was used in the Law "On Local Councils of People's Deputies of the Ukrainian SSR and Local Self-Government" [6] and is still used in the legislation of the Russian Federation;

- bodies of territorial self-organization of citizens – this term was used in the Law of Ukraine "On Local Councils of People's Deputies and Local and Regional Self-Government" [7] and in normative acts adopted on its basis (for example, in the Regulation "On General Meetings of Citizens residence in Ukraine" of December 17, 1993, which is still in force);

- bodies of self-organization of the population – a modern version of the name of house, neighborhood, street, etc. committees, which is used in the Constitution, in the laws "On local self-government in Ukraine", "On bodies of self-organization of the population" and in most current regulations.

The term "amateur" C.A. Yampolska defined as follows: "amateur initiative, activity, a certain degree of independence in action ... The word ... sometimes means unprofessional, but not in the sense of lack of skill, but in the sense of occupation, which is not essential for a given person or group of persons" [8, p. 63]. A.E. Chigir explains the definition of "amateur" in the context of house, street and other committees as follows: "in a broad sense, amateur are all public organizations as self-governing associations. But from the middle of 50th years the narrower concept of amateur performance for definition of concrete organizational forms of social and political activity of masses – forms

of public amateur performance came into circulation... In this sense amateur performance means not only self-government of the organization, its activity, creative search, but also something other order of creation and formation of public organizations "[9, p. 11].

The explanations of scientists are quite convincing, and it may seem that the term "amateur" is acceptable for use at the present stage. However, the disadvantages of this solution are much greater. First, even during Ukraine's membership in the Ukrainian SSR, researchers drew attention to the fact that in the doctrinal literature "often confuse the bodies of public amateur performances with creative associations such as amateur performances" [8, p. 20]. Thus, K.K. Kamilov noted that "there is a third meaning of the word" amateur "in the sense of" unprofessional ", those related to the field of art" [10, p. 11], and apparently that is why he referred the 'rayon (block)' committees in cities, towns, villages together with amateur folk theaters to such a variety of public organizations of workers as amateur organizations [10, p. 179–180]. Secondly, when using the term "amateur" to define the bodies of the SOBPs, these bodies will be associated with the former house, street and other committees of the Soviet era. However, it would be better to get rid of such associations because, despite the existence of legal norms that contained certain democratic initiatives... it should be noted that they (house, street, etc. committees of the USSR. – N.M.) in their activities are not fully reflected the interests of the relevant territorial groups, which eventually led to the practical attenuation of such public activity and discrediting such initiatives" [11, p. 176].

Thus, in comparison with the term "self-employment", the term "self-organization" better emphasizes the nature of the dream bodies, because it involves independent organization of their work – that is, the initiative to create a body, and the order of its work, and its timing – all depends on a certain number of people. As for "amateurism", in this term the emphasis is on the independent activity of the already established body (although the manifestations of initiative in the creation and / or creation are not excluded).

In the name "territorial public self-government bodies" the term "public" causes the greatest argues. After all, the name of the body actually indicates the nature of these bodies (public). The legal position of the Constitutional Court of Ukraine, which was expressed in one of its decisions from 2008, testifies to the fact that the SOBPs have a public nature. However, this view seems debatable, and therefore it is hardly worth using the adjective "public" when it comes to the SOBPs.

Thus, of the terms "self-employment", "self-government" and "self-organization", the latter is the most acceptable. The term "self-organization" has a "public" – neutral nature. In addition, it is to some extent associated (but not identified!) with self-government.

In the legislation of Ukraine, when referring to street, neighborhood, etc. committees, the term "self-organization" is used in two versions: "bodies of territorial self-organization of citizens" (in regulations adopted before 1996) and "bodies of self-organization of the population".

The term "body of self-organization of the population" seems more correct because, unlike the term "bodies of territorial self-organization of citizens", the

circle of persons entitled to participate in the activities of house, street, etc. committees is not limited to citizens of Ukraine. After all, the population is people who live in one place. The Law of Ukraine "On Bodies of Self-Organization of the Population" stipulates that "residents who legally reside in the respective territory may elect and be elected to a body of self-organization of the population" and prohibits any restrictions on the rights of residents who live in the relevant territory, to participate in the relevant body of self-organization of the population depending on their race, skin color, political, religious and other beliefs, gender, ethnic and social origin, property status, language or other characteristics.

On the other hand, the Great Explanatory Dictionary of the Modern Ukrainian Language defines self-organization as: 1) independent organization of one's work and behavior; 2) the process during which the organization of a complex dynamic system is created, reproduced or improved. Based on this, the self-organization of the population – is an independent organization of their work, behavior of people (individuals) who live in one place. Thus, the term "body of self-organization of the population" carries just such a semantic load. However, researchers distinguish between self-organization of the population by interests ("community of interests") and self-organization of the population by place of residence ("community of place"). A.E. Balobanov's proposal is more detailed, according to which it is expedient to allocate different types of self-organization of the population in accordance with the types of groups of persons who carry it out:

- territorial (neighborhood) self-government, which is based on the community of the city of residence – house, neighborhood, etc.;
- social – group self-government, which is based on permanent or long-term membership in one social group (ethnic, religious, age, etc.);
- self-government of professional communities, which is based on belonging to one profession;
- civil self-government within the associations of citizens, which unite to solve problems that have city-wide (national) significance [12].

It may seem that A.E. Balobanov really deepened the seemingly simple classification of types of self-organization of the population (by interests and by the place of residence), further highlighting the self-organization of one profession, as well as the same ethnic, religious, age, which enriches the capabilities of researchers. However, both added groups are only a kind of self-organization by interests: it is unlikely that such associations would have arisen if their members did not have common needs, problems, and therefore common interests.

Conclusions. Thus, self-organization of the population is an independent organization of their work, behavior of individuals living in one place, to meet their political, ethnic, professional, religious and other needs. Self-organization of the population includes self-organization of the population by interests and self-organization of the population by place of residence (territorial self-organization of the population) is an independent organization of their work, behavior of individuals to meet their needs arising from living within the settlement. Thus, the term "bodies of self-organization of the population" is less accurate (broader) than the term "bodies of territorial self-organization of citizens", because the latter contains an indication of the type of self-organization of the population, which is

implemented in the process of creating and operating house, neighborhood and other committees. Thus, the term "bodies of territorial self-organization of the population" would most fully reflect the essence of these committees.

At the present stage, the term "bodies of self-organization of the population" is used to refer to house, street, etc. committees, although the term "bodies of territorial self-organization of the population" seems more accurate, which would indicate not only self-organization but also its type. Given that in most regulations and doctrinal literature the term "bodies of self-organization of the population" is used and that the change of the name "bodies of self-organization of the population" is not envisaged by the legislator, it seems appropriate to unify terminology in all regulations, to introduce a uniform name of the SOBPs. Prospects for further research in this direction are seen in the need to clarify and unify the normative definitions of the SOBPs in the Law of Ukraine of May 21, 1997 "On Local Self-Government in Ukraine" and the Law of Ukraine of July 11, 2001 "On Self-Organization Bodies".

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Summary

Mishyna N. V. Hermeneutics in the constitutional law of Ukraine. – Article.

Hermeneutics, having emerged due to innovations in philosophy, is currently used by other humanities, including jurisprudence. Hermeneutics (from the Greek *ἑρμηνεύω* (*hermeneutikos*) – interpreter) – the art of understanding, comprehension, the doctrine of the interpretation of signs and understanding of meanings in the form of theory of the art of understanding, certain rules (methods, techniques) of interpretation, the art of their

application, as well as the process of interpretation; organization, process and result of such correct reasoning, which actualizes various interpretive methodologies, adequate for understanding a text.

Hermeneutic principles and approaches are harmoniously combined with centuries-old legal traditions – because the history of interpretation of legal texts dates back at least to the Renaissance, reflected in many schools (glossators, commentators (postglossators), etc.).

The aim of the article is to demonstrate how the hermeneutics is used in the field of constitutional law based on the self-organized bodies of population's (SOBPs) materials and practice.

The use of the term "self-government" is not entirely successful in the name "territorial public self-government bodies". After all, according to modern doctrinal concepts, one of the conditions for the formation of the rule of law in the country is the division of public power into public state and public municipal (self-governing) power. In this case, public state power is exercised by the relevant bodies, which, as a rule, belong to one of the branches of state power in accordance with the requirements of the concept of its division into legislative, executive and judicial. Municipal power is exercised by local governments. Based on this, both public authorities (local governments) and public municipal authorities (local governments) will function at the level of administrative-territorial units. According to the legislation of Ukraine, SOBPs are part of the system of local self-government, but are not bodies of local self-government. Thus, the use of the word "self-government" in the name of the SOBPs will indicate the system to which the house, street, etc. committees belong, but will be confusing because it will facilitate their identification with local governments. In addition, the use of the name "territorial public self-government" will characterize the nature of the dream bodies as mixed (public – public), which, in the author's opinion, is also not true.

Key words: hermeneutics, hermeneutics method, public law, constitutional law, municipal government, territorial collective.

Анотація

Мішина Н. В. Герменевтика в галузі конституційного права України. – Стаття.

Герменевтика, що з'явилася завдяки новітнім у філософії, в даний час активно використовується іншими гуманітарними науками, зокрема юриспруденцією. Герменевтика – мистецтво розуміння, осмислення, вчення про тлумачення знаків та розуміння значень у формі теорії мистецтва розуміння, певних правил (методів, прийомів) інтерпретація, мистецтво їх застосування, а також процес інтерпретації; організація, процес і результат таких правильних міркувань, які актуалізують різні інтерпретаційні методології, коли йдеться про розуміння тексту.

Герменевтичні принципи та підходи гармонійно поєднуються із багатовіковими правовими традиціями – адже історія тлумачення юридичних текстів сягає принаймні епохи Відродження, відобразившись у багатьох школах (госатори, коментатори (постгосатори) тощо).

Метою статті є продемонструвати, як герменевтика використовується в галузі конституційного права на основі матеріалів та практики органів самоорганізації населення (ОСН).

Використання терміна "самоврядування" не є цілком доречним у назві "територіальні органи громадського самоврядування", як інколи пропонують іменувати ці органи. Адже, згідно сучасних доктринальних концепцій, однією з умов формування правової держави в країні є поділ публічної влади на публічну державну та публічну муніципальну (самоврядну) владу. При цьому публічну державну владу здійснюють відповідні органи, які, як правило, належать до однієї з гілок державної влади відповідно до вимог концепції її поділу на законодавчу, виконавчу та судову. Муніципальну владу здійснюють органи місцевого самоврядування. Виходячи з цього, на рівні адміністративно-територіальних одиниць функціонуватимуть як органи державної влади, так і органи місцевого самоврядування. Відповідно до законодавства України, ОСН є елементом системи місцевого самоврядування, але не є органами місцевого самоврядування. Таким чином, використання слова "самоврядування" в назві ОСН вказуватиме на систему, до якої належать комітети будинку, вулиці тощо, але буде заплутаним, оскільки полегшить їх ототожнення з місцевими органами влади (публічної влади). Крім того, використання назви «територіальне громадське самоврядування» буде характеризувати природу ОСН як змішану (публічно-громадську), що, на думку автора, також не відповідає дійсності.

Ключові слова: герменевтика, метод герменевтики, публічне право, конституційне право, муніципальне управління, територіальний колектив.