

Interpretive activity in the judge's professional occupation

Інтерпретаційна активність у професійній діяльності судді

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Abstract

The purpose of the article is a comprehensive analysis of the issue of the judge's interpretive activity from the standpoint of the judge's cognition in such a process of unchangeable dualism of the factual circumstances of the case and the norm of the law. To achieve this goal, such methods as dialectic, comparative, formal-logical, communicative and phenomenological was used. The article deals with the approach according to which the judge's interpretive activity during professional occupation is a necessary method of specifying the content of abstract, relatively defined legal norms; and these norms become applicable in solving certain debatable questions. It is concluded that the judge creates the search for the best solution of a particular legal position. Reconciling the uniqueness of the law case and the formality of the legislative provisions resolving case is impossible without interpretive activity. One of the peculiarities of the dynamics of the interpretive activity of the European Court of Human Rights is its intellectual and creative nature; mechanical transformation of the norms of law into individual acts and "stereotype" application of previous court decisions are not admissible. The judge's interpretive activity combines rational-technical and existential-semantic levels, which necessitates a high level of personal and professional maturity of the judge. The problem of interpretation is not only technical skills in legislative provisions; it covers an important "standpoint" of the reality based on

Анотація

Метою статті є комплексний аналіз проблеми інтерпретаційної активності судді з позиції пізнання суддею у такому процесі незмінного дуалізму фактичних обставин справи й норми закону. Для досягнення цієї мети використовувались такі методи, як діалектичний, порівняльний, формально-логічний, комунікативний та феноменологічний. У статті аргументується підхід, згідно з яким інтерпретаційна активність судді під час професійної діяльності є необхідним засобом, за допомогою якого зміст абстрактних, відносно визначених правових норм конкретизується, і вони стають застосовними при вирішенні окремих спірних ситуацій. Зроблено висновки про те, що суддя моделює пошук оптимального рішення щодо конкретної юридичної ситуації. Узгодження унікальності судової справи та формальності законодавчих приписів, які вирішують при вирішенні цієї справи неможливе без інтерпретаційної активності. Однією з особливостей динаміки інтерпретаційної активності Європейського суду з прав людини є його інтелектуально-творчий характер; не допустимі механічна трансформація норм права в індивідуальні акти та «шаблонне» використання попередніх судових рішень. Інтерпретаційна активність судді поєднує в собі раціонально-технічний та екзистенційно-смысловий рівні, зумовлює необхідність високого рівня особистісної й професійної зрілості в судді. Проблема тлумачення не зводиться до суто технічної

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the professional experience and legal consciousness.

Key words: decision of the ECHR, interpretation of law, legal argumentation, legal communication, legal consciousness.

Introduction

The uniqueness and originality of the specific factual circumstances of the case and the formality of the general provisions of the law, which are applied by a court in the solution of this case, are impossible without the interpretative component. The hermeneutic constant in the law enforcement activity is able to give a new impetus to the development of a judge's opinion for solving contemporary pressing issues that are not always clearly defined by the law.

Progressive dynamic social life is constantly being modified, complicated and it requires relevant legal determination. The ability of a legislative norm to change with a change in social relations is a basic feature of its effectiveness and determines its ability to act as a reliable regulator of social relations. Instead, the law is not always able to provide for an infinite number of possible socially changeable social situations, the full variety of cases of its practical application.

Reconciling the universality of the provision of law and the individuality of the factual circumstances of a particular case is a complex cognitive process, in which the judge plays a special role. An experienced judge finds a "middle ground" between the formality, the generality of the law, and the individual, special features of a particular case, which is the most important point in a judge's knowledge: to interpret the general legislative norm taking into account the special features of a particular situation. The role of the judge in the application of law is that, interpreting the abstract norm of law, he / she simultaneously acts as the creator of its meaning in each case, "here and now". It is the intellectual component of the interpreter-judge in the procedure of application of the legal norm is a decisive factor, and his/her thinking is the key mechanism that makes it possible to interpret the content of the law, to evaluate the essence of the

майстерності оперування законодавчими приписами, в ній важливим моментом є «кут зору» на дійсність, що виробляється на основі професійного досвіду й стійко закріплюється у правосвідомості.

Ключові слова: інтерпретація права, правова аргументація, правова комунікація, правова свідомість, рішення Європейського суду з прав людини.

latter, its relevance in terms of a particular situation.

The issue of interpretive activity in the judge's professional occupation is complex and debatable. There is a need for new scientific research. Therefore, the purpose of the study is a comprehensive analysis of the issue of the judge's interpretive activity from the standpoint of the judge's cognition in such a process of unchangeable dualism of the factual circumstances of the case and the norm of the law. The subject of the study is to characterize the rational-technical and existential-semantic levels of the process of interpretation of law and the act of legislation by the judge; to analyze the principle of effective and dynamic interpretation in the decisions of the European Court of Human Rights; to substantiate the attributive role of legal consciousness in the judge's interpretive activities; to investigate the unity of communication and play principles of interpretation in court proceedings; to clarify the peculiarities of the transformation of the conflict of interpretation of the norm-fact relations into the conflict of argumentation of the legal positions of the parties to a court action

Theoretical frame work

The state of the outlined issues shows that attempts to reconstruct the scientific works and to form new conceptual approaches to the description of effective means of organizational, procedural, methodological support of the cognitive interpretive activity of the judge were identified in the legal doctrine. The analysis of the main directions of legal thought, such as the schools of "free law" (Erlich, 2011), pragmatic instrumentalism (Pound, 2002), legal realism (Holmes, 2011), and existential and hermeneutical phenomenology (Gadamer, 1988), which, in their knowledge of the true nature of judicial activity, typically accentuated their attention to the problems of judicial law-

finding, judicial interpretation, the nonconformity of normative law and multifaceted social life, criticism of mechanical adjudication, – led to the conclusion concerning the interactions of conceptual projections of the above directions. At the same time, each conceptual projection as a universal logical construction remains a speculative system based on a number of fundamental provisions, offers its view on judicial activity in the context of legal interpretative functioning.

E. Ehrlich (2011), the founder of the contemporary sociological direction in law carried out significant actualization of the problems of judicial law-finding and the essential role of interpretation in this process. He emphasized that the law is never complete and adequate; changes in social conditions inevitably lead to its application in the spirit of modern times. Only "living law" responds to permanent changeable demands of reality, it changes according to the necessities of life, organically develops and improves in the context of social relations.

H.-G.Gadamer (1988) analyzed the principles of interdependence of jurisprudence and legal interpretation on the basis of the universal hermeneutical method. Gadamerian hermeneutics is a philosophy of understanding as a means of the existence of a person who recognizes, evaluates and acts. The most important goal of Gadamer's philosophical hermeneutics was to achieve a theoretical recognition of hermeneutical experience. In order to analyze this concept, the author used a model of the relationship between the reader and the text, which was the prototype for the model of the relationship between the subject of knowledge and the known object. Using this model, he demonstrated the continuity of three components of experience – understanding, interpretation and application. H.-G.Gadamer points to the possibility of its practical application in the field of justice. The legal text implements itself only through interpretation, the law is a "dead" zero-value matter that comes to life and finds its existence only in fulfillment.

P.Ricoeur (1995) compared interpretation of general norms with the search for a just solution of a legal conflict. The philosopher assumes that the wealth of the daily life relationships that initiate true ("unwritten") law cannot be reflected in abstract norms, and, therefore, a judge should "find" this law from the social content of the case itself, be guided by reason, conscience, ideas about the just in modern life.

A.Kaufmann (2009) revealed legal hermeneutics as an original means of law-finding. The scientist deeply convinced that "just" law combines the complementary elements of essence (justice as the natural state of man) and existence. Law in its development is explored through combining structured elements of essence and existence in the hermeneutic circle. This process is not limited to the level of legislation, and it mainly takes place at the level of court negotiations. A hermeneutical method gives understanding of "just" law, and the basis of its finding is somewhat "ontological" – freedom as a natural state of man, which cannot be removed directly from the abstract legal norm and which the judge cannot "dispose of at discretion", is "object-law".

Methodology

Any process of cognition is based on the fundamental choice of methods that can play a decisive role in its course and determine its ideological core and purpose. Sometimes one of the methods is fully implemented in a specific context, but none can be recognized as exclusive and absolute. The proclamation of a priori dominant provision is always counterbalanced by another one, indicating the constant role of dialectics. Scientific and practical study of the issue of interpretation of law, which is determined by the use of dialectic methodology, defines its volumetric dimension and takes into account the complex nature. The use of this approach reveals the diversity and complexity of the process of interpretation, within which the interaction and balancing of the abstract and concrete, dynamics and statics, norms and facts take place.

The necessity to compare antinomic models of interpretation – the restrictive within the law and the extended in accordance with the principles of law; diametrically opposed cognitive styles of constructing court speeches in professional and jury trials; the specifics of the rational-technical and existential-semantic levels of interpretation – led to the use of the comparative method. Using the formal and logical method promoted to formulate the basic concepts of the study, to ensure the consistency of presentation of the paper.

The communicative method was used in the process of sociocultural analysis of the legal thinking of a judge as an important instrument for cognition of social life, formulation of one's own judgments in the process of communication, legal views, beliefs and values; in the process of

generalization of the specifics of the trial as a discursive struggle between the parties to interpret the provisions of the law; in the process of description of judicial argumentation and eristic. The phenomenological method made it possible to investigate the interpretation of judicial activity in the field of practical gnoseology of law, to examine the reflexive activity of the judge's consciousness.

However, evaluating the problem of the judge's interpretive activity in the context of cognition of the fact-norm dichotomy, you should take into account the system of the above methods in general. Each established methodological concept has a dual aspect; if you consider it in isolation, it may lead to bias and unreasonable conclusions. If you consider it to be a part of universalized system of methods, it will allow comprehensively understanding the problem outlined in this study in general.

Results and discussion

Rational-technical and existential-semantic levels of interpretation.

The variety of life circumstances, their unpredictability, as well as the complexity of law itself, the understanding of its essence do not allow solving any legal position with absolute accuracy, "mathematically". Such abstraction will inevitably encounter difficulties of implementation in the presence of atypical, single, extraordinary life circumstances. All circumstances of life are different, and it is impossible to determine their features in one abstract provision of the law. Describing the aforementioned problem, A. Kaufmann (2009) wrote, law can become a reality only in the live interaction of people, their legal relations, because law is nothing but "correct action and correct decision in a particular situation", not a scheme of the law for correct action.

The interpretative component in the judicial activity as a mental process of obtaining the judge's true knowledge of the factual side of the case is carried out in the area of rational-technical and existential-semantic methodological levels.

Having adopted rationalism as a methodological level of interpretation, as the main gnoseological guideline, the search for a substantive legal solution of the situation (the solution of the situation on its merits), for which a true solution must be found, also comes to maximum logicity and consistency. Objective truth is achieved as a result of rational cognition, which

is characterized by reliance on logical convincingness of thinking, preference for consistency of external credibility, construction of a special categorical mechanism, modeling of conceptual structures. Attributive features of rational interpretation are analysis (procedures of distinction, separation, and differentiation), synthesis (procedures of generalization, establishment of similarity, unification, and integration), consistency, conceptuality, reflectivity, logical severity and persuasiveness, systematic, discursive, critical, substantiated thoughts and their emancipation, appeals to the mind contrary to the feelings.

Mental activity concerning the evaluation of available information may not always be subject to the laws of logic, in which the conclusions imply strict consistency. Often, even the best techniques, state-of-the-art logic cannot guarantee the accuracy of the truth of knowledge. If, in a stable world, attributive features of rationality are sufficient because, by identifying typical situations, standard solutions can be developed for them, then in an information society, which is temporal, pluralistic, spontaneous, unstable, and integrative and becomes more and more global, there is a need for somewhat different thinking.

All experience of rational cognition will have only a service character. Excessive adherence to logic will inevitably lead to schematization and simplification of a changeable social life rather than to grasping its deep foundations. In the course of his/her work, the judge not only guides the understanding and interpretation of law from the point of view of legal concepts and constructions of legal logic, but also resorts to an intuitive insight into the content of the norm of law, seeking its connection with real life (Merezhko, 2003). Due to the fact that legal thinking is deeply hermeneutic in nature and constantly replenished due to the individual cases that predetermine this knowledge, at present, the judge not only applies the law, but also contributes to the development of law by his / her own sentence (Chechulina, 2020). Their interpretation of law is not limited to the search for what the legislator once established and contained in the law, and in contrast, becomes an act of "new creative lawmaking". The longer the time between the date of issue of the norm of law and the moment of its application, the greater the freedom of judicial discretion for the completion of the norm, and the greater the need to take into account the change in socio-ethical ideas and the change under the influence of this necessity to the original purpose that the authors of the law

once set themselves. As a result, interpretation is not simply establishing what is already valid, but in some cases becoming an act of seeking and creating a new law (Krizhanovsky, 2010).

The principle of effective and dynamic interpretation in the decisions of the European Court of Human Rights.

The legal position, according to which the interpretation of law is not limited to the search for what the legislator has established and contained in the law, but, in contrast, is an act of "creative lawmaking" that is now absolutely prevalent in the activities of the **European Court of Human Rights**. The interpretation of the decisions of the European Court of Human Rights is not only an act of cognizing the facts of the case, establishing that it already has legal force, but an act of effective and dynamical creating a new law.

The legal position formulated by the European Court of Human Rights in the case of *Airey v. Ireland*, – "The Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective" – played a decisive role in determining its significance in the European system of protection of human rights. It was the need to put into practice the effective protection of human rights and freedoms that led to the application of an interpretation of the Convention by Court that would allow it extending the safeguards established by the Convention. Taking this fact into consideration, the principle of an effective and dynamic interpretation of the Convention provisions in the case-law of the Strasbourg Court has become a way of "exploitation" of the potentialities of the Convention. In its attempts to interpret the Convention, the Court is based more on its spirit than on its letter, and considers, first and foremost, the future prospects of its application, not its significance to the past.

The decisions of the European Court of Human Rights were adopted in order to ensure the "viability" of the Convention for the Protection of Human Rights and Fundamental Freedoms and to maintain its effectiveness. The performance of the principle of effective interpretation of the Convention is that it allows best adapting the provisions of the Convention to the changeable social conditions. This principle determines the so-called "dynamic" or "evolutionary" interpretation of the Convention provisions applied by the Strasbourg Court. There is the provision in its case law that the Convention is a "living instrument" that should

be interpreted "in the light of the present conditions" (*Case of Airey v. Ireland*, 1979).

In its activities, the European Court of Human Rights adheres to the so-called model of compelling precedent, that is, the Court adheres to its previous interpretation in all cases where there is no good reason to refuse it. The former President of the Court, L. Wildhaber (2001), stated this position at one time, precedents should be followed regularly, but not invariably. The European Court of Human Rights itself outlines its attitude to previous decisions: "Although the Court is not formally obliged to adhere to previous precedents, but in the interests of legal certainty, predictability and equality before the law, it tries not to deviate from the previous precedent in the absence of proper grounds for doing so. But since the Convention is first and foremost a system of human rights protection, the Court must monitor the changes in conditions in the respondent State and in the Contracting States and respond, in particular, to any agreement on the achieved standards" (Millutin, 2014).

In the human rights case, from time to time, the European Court of Human Rights has been known to openly abandon its previous case-law positions established in its decisions and to formulate new, contrary in content, legal positions. For example, in the case of *Rees v. The United Kingdom* (1986), the Court unanimously held that the concept of marriage covers only the traditional marriage between a man and a woman. The man who changed the sex could not obtain the right to marry another man. This decision was successfully overturned sixteen years later, when this issue changed not only within the Council of Europe but also beyond (European Court of Human Rights, 1985).

The interpretation of the legal provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms by the European Court of Human Rights is characterized by indeterminate dynamics, the presence of sociocultural determinant spontaneity of the emergence of new social situations, the existence of possible different trajectories of movement of their solution, as a result of a "gap" between the abstract content of the provisions of the Convention and their understanding by the Court.

Any normative legal act is characterized by generality; it cannot be fair on a case-by-case basis. The process of interpreting a norm of law is creative, co-authorial, and, in effect, a judge acts as a co-legislator, creates a new rule by performing the act of bringing a particular case

to a general norm of law. This process can be seen as an "ability of thought", a practical syllogism that implies the presence of a creative component in solving practical issues. According to this methodological approach, the interpretation is carried out by alternately moving from the argumentation used in the situation to the argumentation concerning the provisions of the law. Such a transition from the argumentation of the provisions of the law to the argumentation of a situation requiring a legal solution is always an attempt to interpret this norm, an attempt to understand it, and so adjust its content to the circumstances in order to ensure a fair resolution of the case.

The central point in such a process is the Gadamer (1988) concept, according to which, because of a certain "elasticity" of legal regulation, actual law-making force of a case is constantly preparing a new codification, and the generality of the normative act and the specificity of the fact leave the field of action for the interpreter whose main problem is to minimize the gap between the law and a case.

Attribution of legal consciousness in the judge's interpretive activity.

In the process of interpretation there is personal knowledge, which cannot be definitely expressed by formal means; there are ideological guidelines that are perceived as axioms by judges. If purposefully developed objective methods of interpreting facts in the process of judicial knowledge could definitely ensure their comprehension, then the problem of interpretation was reduced to an exclusively technical mastery of operating legally meaningful and special legal terminology. However, interpretation is not a purely technical process; it involves all the spiritual potentials of the individual.

The legal consciousness of subjects is important in the interpretation of the legislative texts (Bigun, 2009). The quality of the implementation of the requirements of legal provisions, their practical approval in accordance with the existing ideals and values of law depends on the level of legal consciousness and professionalism of legal practitioners. Worldviews in the form of a judge's personal beliefs, ideas and intentions, mediated by value orientations, are the axiological bases determining the internal, subjective aspect of the interpretation process (Rotan & Samsin & Yarema, 2013).

At present, a judge cannot remain a faceless enforcer of the letter of the law; he/she must apply the current legislation creatively, relying on fairness, life and professional experience in his or her work (Denisenko & Siroid & Fadova & Shapovalova, 2015). By substituting the "spirit" of the law with the "letter" of the law in the judicial enforcement process, the judge actually reduces law and the act of legislation to a set of technical methods for conducting a certain number of court cases, thus disorienting the public about the essence of justice. Overcoming this negative and significant (according to social impact) tendency implies a clear and unambiguous understanding of personal responsibility by the judges, compliance with the rules of professional ethics, honest and conscientious performance of their duties, a manifestation of the necessary care for the preservation of both personal honor and dignity, as well as dignity and authority of the judiciary as a whole.

Interpretation in judicial proceedings: the unity of communication and play principles.

Interpretation in the judicial activity aims to solve **problems of communication**, clarification and explanation of different and sometimes contrary points of view on one or another investigated issue, finding common ground for exchange of ideas, discourse, and understanding of the essence of the case.

Judicial proceedings are always a contest of conflicting or even contradictory interpretations of the same group of legally significant facts. To resolve a conflict by legal remedies for a court is to bring something into the situation that did not exist before – authoritative and with social consequences interpretation. The elaboration of this interpretation often appears as "a dispute in words", which at the same time manifests itself as "a dispute on its merits". The same phenomenon of legal reality can be interpreted differently (Van Hook, 2012). One of the most reliable criteria for the "permeability" of one or another version of interpretation is its textual form – a set of qualities that give it a special feature of semantic imperative.

The expressive play semantics can be observed in the judicial proceedings, in which the capability of the hermeneutic constant is always increasing when it comes to legal discourse, legal communication concerning rights and obligations, beliefs in rightness and innocence. The judicial proceedings clearly express the intersection of thoughts of the parties, in which

the prosecution looks at a height of "the letter of the law" in the case, the generality of the norms of law, and the defense tries to show its originality, nonidentity with other cases, the inadmissibility of the proposed charges to the abstract provisions of the law of factual circumstances of the case. By engaging in such discourse generated by the parties to the case, the judge seeks to make a fair decision.

Under such circumstances, the judge's interpretive activity is reduced to finding the true meaning of law and the act of legislation during legal discourse. Due to the actualization of certain interpretative meanings in the mind of the judge, understanding is formed in the process of this communication. The judge is at the intersection of a variety of discursive continuums, so it constantly unfolds "conflict of interpretations", which develops into "conflict of motivation". The semantic field will win if it has the greatest potential of argumentation from the standpoint of the relationship between the generality of the norm and the individual factual circumstances of the judicial case.

Transformation of the conflict of interpretation of the norm-fact relations into the conflict of argumentation of the legal positions of the parties to a court action.

Conditionally, a conflict of interpretations can be called a conflict between norm and fact. Norms are abstract and universal. The actual state of affairs, which requires the use of these norms, is particularly individual (Bocharov, 2011). Norms have many features, and the factual circumstances of the case are potentially innumerable. On the one hand, the circumstances of the case are described in norms by these features; on the other hand, the signs of the real state of affairs may serve not to use a norm which is apparent at first sight, but another, in order to clarify or reject certain features of factual circumstances of the case or, conversely, to add new ones (Alexi, 2009).

In a particular legal position, this aspect of conflict is manifested in the parties' desire to convince the judge of the validity of their arguments, in particular, of the legal significance of any circumstances. Interpretation of a legally significant fact can be expressed in an intellectual version of a litigant interested in seeking to give legal significance at one time or another to the progress of cases. This view may not meet the requirements of maximum objectivity and disinterest in the operation of focusing on a legal fact (Zakomlistov, 2003). These points are

conditioned through a system of communication codes that mediate the process of presenting and interpreting reasons and arguments in order to change the position or beliefs of the other party regarding the statement (Dudash, 2016).

A factor of audience with its willingness to perceive the information as an argument for a particular position is a key component in understanding of the nature of judicial argument. Any evidence in the court may be defamed with doubt as to its plausibility and disproven by the means of rhetorical persuasion. In order to make a given audience in a given place and time to believe the speaker, one must know it. Therefore, it is worth mentioning the role of one of the most common logic and rhetorical methods of argumentation – the accent method, which allows improving the flexibility of interpretation, quickly switching from one point of view to another, sensitively responding to the changed situation.

Cognitive accentuation is related to concentration, organization of material interpretation, orientation to situation and listener. In the context of comparative analysis, the application of this method differs in jury and professional court. Judgments on authenticity are made by the jury under the general impression or as a result of the use of eristic, psychological methods. Important points in judicial argumentation are the composition of the question with its simultaneous interpretation, the manner of conducting the interrogation, the language of the body, which form the image of the argumentator as a sincere and decent person seeking to establish the truth, or, conversely, as a person who should not be trusted. In addition, the influence of psycholinguistic, emotional factors can also be reciprocated in the following: nothing affects the mind of the jury as a result of their own investigation; the discoveries made by them will always impress them most and often even ignore the contradictory fact in the case. Argumentation of the party's position in such courts is carried out through appeal to established statements and stable stereotypes (folklore – proverbs, parables, and sayings); great attention is paid to the question of interpretation of the fact as a phenomenon of objective reality, events, actions that took place in the past (Alexandrov, 2009). In particular, the prosecution and defense in their speeches seek to convince the judge of the defendant's guilt or innocence, and as a result, in most cases the accent is on person-centered arguments rather than arguments pertaining to the dispute on its merits. In courts that include only professional judges, this accentuation can be

observed in part because the main issue that is being addressed is not the interpretation of a fact but the interpretation of the norm of the law (Andriyanova, 2013). The essence of judicial evidence *de jure* is defined as the discursive struggle of interpretations within the meaning of the text of the law, which forms the universe of communication in the judicial proceedings and is embodied in the "episteme" of the distinction between veritable and mistaken.

The individual characteristics of the judge play a decisive role in the process of the judge's interpretive activity. Only a high moral person with the highest level of intentions of legal consciousness and adequate thinking is capable of adopting judicial verdicts from the standpoint of extended interpretation. Therefore, judicial reform should begin not with discussions concerning the ideal structure of the judicial system, but with a real improvement in the quality of the moral and professional capacity of judicial personnel. The judicial elite should think systematically and deeply, combining the "spirit" of law and the "letter" of the law, and have a differential sense of the importance of incumbency and maximum responsibility for their wrongful exercise.

Conclusions

The variety and complexity of legal positions require an appropriate evaluation – determining the scope of the "general" in each case. However, in order to "see" the general in the individual, the ability to determine algorithmic principles is not enough. Therefore, an adequate understanding of the legal position by a judge inevitably involves combining the individuality, unrepeatedness and uniqueness of the factual circumstances of the case with the generality and universality of the norm of the law.

Judge's interpretive activity is a process that combines rational-technical and existential-semantic levels, necessitates a high level of personal maturity and demands certain requirements for the development of professionally significant qualities in a judge. An important area of the problem is actualized with such an emphasis on the issues of the essential foundations of the professional legal interpretation. The interpretative origin of a judge should be sought not only in the field of objective formalization – in the law, but also in the judge himself / herself, his / her desire to achieve justice, an active position on the inviolability of constitutional rights and

freedoms and guaranteeing the protection of universal values.

Judge's interpretive activity is a process in which, in addition to logical and normative mechanisms determined by the peculiarities of the law-enforcement activity, there are also valuable and irrational mechanisms caused by the gnoseological and ideological features of the judge's thinking. The analysis of the legal position of a judge cannot be considered only objective, it reflects both the mental capacity of the judge and his/her social values, understanding of the purpose and meaning of his/her activity. Intentional structures of consciousness play an important role in such a process; and no efforts of the state to regulate the formation of an internal conviction of a judge by means of the legislature will achieve their goal, just as any similar attempt to subordinate "the internal" to "the external".

The dichotomous concept of fact-norm is expressed both from the point of view of asymmetric interpenetration and opposition. Norms are always abstract and universal, but the actual state of affairs, which requires the use of these norms, is specific and individual. The conflict of interpretation of the dichotomy of the fact-norm becomes a conditional conflict of argumentation, which is expressed as an interpretive projection of the construction of arguments by the parties to a court action in order to convince the opponents of the truth of the statement.

In the judicial proceedings, with their expressive interpretive "play of meanings", the hermeneutic mechanism allows finding a common ground for exchanging and explaining the same set of legally significant facts and thus transforming "conflict of interpretations" into "conflict of argumentations" of legal positions of parties to a court action. Through this methodological tendency, there is a shift in emphasis from the analysis of the static meanings of law to their practical analysis. The interpretative component in the judicial activity is individual interpretation of reality in all the unity of its changeable processes, events, relations with the purpose of the next evolutionary development of law or the formation of a new image of it.

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