

Vitalii Serediuk¹

Methodological importance of legal constructions and their influence on the legal norms interpretation

Introduction

The theory and practice of interpreting legal norms has a centuries-old history. The question of interpretation of legal norms is considered “eternal” for jurisprudence. In every country, the lawgiver takes care that his prescriptions are correctly interpreted and carried out by those to whom they are addressed. Actually, this is the purpose of rule-making activity, regardless of which state and at which stage of social and economic development of society legal regulation is carried out.

One of the epistemological tools of legal science and means of interpreting legal norms in the process of their implementation are legal constructions, which are a concentrated expression of possible conditions of law enforcement. What determines the role of legal constructions during the interpretation of legal norms.

S. Avakyan, V. Babaev, P. Barnett G. Boyko, S. Wilken, K. Ghaly, Z. Zaginei, L. Lucas, S. Naruto, I. Onyshchuk, B. Rudashevskiy, L. Saits, I. Spasibo-Fateeva, T. Fuley and others addressed questions about the influence of legal constructions on the interpretation of legal norms.

In their works, the researchers marked the problems of interpretation of law as “eternal”, so finding optimal ways of solving issues of the tech-

¹ Ph.D, Associate Professor, Head of the Territorial Service Center, № 8049 Regional Service Center of the Main Service Center of the Ministry of Internal Affairs in Kyiv (branch of the Main Service Center of the Ministry of Internal Affairs); vitkov84@ukr.net; ORCID ID: <https://orcid.org/0000-0002-2423-4931>.

nique of interpretation of legal norms will always be relevant. In addition, the relevance of our research is enhanced by the fact that only the correct clarification and clarification of the true content and meaning of legal norms (the will of the legislator) and their uniform application by legal entities in practice is a guarantee of establishing a high legal culture in society and the state.

In view of the above, the purpose of this article is to reveal the methodological significance of legal constructions and show their influence on the interpretation of legal norms.

The role of legal constructions in legal regulation

An important means of legal technique is the distribution of material within a normative legal act. Legal material is presented in legal constructions, peculiar models of the construction of rights, duties and responsibilities. A complex internal structure and structure is characteristic of a legal structure. And the elements of legal construction are subjective rights and obligations, legal facts, etc.²

A legal structure is a set of stable connections of an object that ensure its integrity and identity. Intra-industry and inter-industry connections of legal norms allow the law to preserve its properties as a regulatory regulator in the face of internal and external changes, to be stable and stable. The existence of a stable structure determines the existence of law as a system is a condition for the existence of law.

As G. Boyko noted, "in the process of interpreting legal norms, the role of legal construction is expressed in the fact that it determines the direction of the mental process of the interpreter"³. With the help of

² I.I. Onyshchuk, *Tehnika dokumental'nogo vyrazhennja zmistu normatyvno-pravovogo akta* [The technique of documentary expression of the content of a normative legal act], *Universytets'ki naukovy zapysky Hmel'nyc'kogo universytetu upravlinnja ta prava*, 2011, p. 64.

³ G.I. Bojko, *Rol' jurydychnyh konstrukcij v procesi tlumachennja pravovyh norm* [The role of legal constructions in the process of interpreting legal norms], *Zahyst prav i svobod ljudyny ta gromadjanyna v umovah formuvannja pravovoi' derzhavy: Materialy I Vseukrai'ns'koi' naukovo-praktychnoi' konferencii'* (m. L'viv, 25 kvitnja 2012 r.), *Navchal'no-naukovyj instytut prava ta psihologii' Nacional'nogo universytetu «L'vivs'ka politehnika»*, L'viv 2012, pp. 272–275.

legal construction, a comprehensive clarification of the actual content of legal norms is carried out. The prerequisite for using a legal construction is the interpreter's answer to the question: what role do the elements of the legal construction play in the process of legal regulation⁴?

Attempts to include the legal norms of another branch into the branch legislation are considered a structural defect. In connection with the above, we note that the negative trend is the "blurring" of the branches of law, which consists in the desire to "squeeze" into homogeneous legal complexes the norms regulating various social relations, in the event that they are not covered by the subject of legal regulation inherent in this field. Criteria developed over decades, such as the subject and method of the field, are simply ignored. «Blurring» of the subject of legal regulation is the cause of the industry's loss of internal unity and systematicity, without which their independent existence, separated from other forms of legislation, seems problematic.

According to tradition, three elements are distinguished in the rule of law, which have the names "hypothesis", "disposition" and "sanction". Such a logical and legal structure has legal norms that establish a certain pattern of behavior in a certain situation, that is, they are rules of behavior. The parts of the three-element regulatory structure are connected, and the semantic content of each of the elements cannot be established, understood apart from the connection and relationship with other elements. In the two-element construction of a rule of law, one should not look for a hypothesis, a disposition or a sanction, but an element that indicates certain legally significant circumstances and an element that indicates the legal consequences that these circumstances cause. The most interesting thing is that due to the absence in the three-link construction of an element indicating the condition of the sanction, it is, accordingly, not marked with any term. In the independent security regulations, set forth, for example, in the articles of the Criminal Code of Ukraine, this element is a condition of the criminal sanction. From this, we can conclude that none of the designations of the elements of the three-link structure of the legal norm simply do not fit him. It is neces-

⁴ B.B. Rudashevskij, V.N. (eds.), *Pravo i modelirovanie. Metodologicheskie problemy sovetsoj juridicheskoj nauki* [Law and modeling. Methodological problems of Soviet legal science], Nauka, Moscow 1980, pp. 290–308.

sary to either simply talk about the terms of the sanction or introduce some new term⁵.

The three-part logical structure of the legal norm is extremely important for law-making and law-enforcement activities, because it allows creating a viable, practice-tested, effective system of state-legal influence on human behavior. The three-element composition of the legal norm ensures a clear definition of the actual version of the required behavior, the situation of its action (inaction), and the means that ensure the implementation of the legal prescription. The absence of a certain structural element of a legal norm – a rule of conduct indicates its defect and leads to “failures” in legal regulation: the norm either loses connection with specific life circumstances (becomes meaningless) or loses its properties⁶.

Legal constructions differ from the analogy of law. In the bourgeois science of law, analogy and construction are placed side by side as something related to each other, and the difference between these two ways of filling gaps in law is barely noticeable. But constructions mean concepts that are derived not from separate legal provisions, but from the “nature” of a certain institution, from the nature of a contract, from the nature of property, etc. These constructions are a priori concepts. Next to such a priori concepts, such postulates as, for example, freedom of contract, freedom of property, etc., are also put forward as axioms⁷.

Excessive politicization of law-making, unjustified haste in the adoption of laws and amendments necessary for the political elite, which narrow the democratic potential of constitutional and legal institutions of civil society, which are implemented without sufficient inclusion of the social component.

⁵ I.I. Onyshchuk, G.I. Bojko, *Logika jurydychnogo konstruivannja* [The logic of legal construction], “Naukovo-informacijnyj visnyk Ivano-Frankivs’kogo universytetu prava im. Korolja Danyla Galyc’kogo” 2015, №11, p. 42.

⁶ V.K. Babaev (ed.), *Teorija gosudarstva i prava* [Theory of the State and Law], Jurist, Moscow 2003, p. 386.

⁷ I.V. Spasibo-Fateeva (ed.), *Har’kovskaja civilisticheskaja shkola: v duhe tradicij* [Khar’kov civil school: in the spirit of traditions], Pravo, Har’kov 2011, p. 69.

Legal constructions and the law-making process

We agree with H. Boyko that within the law-making process, legal construction as a special procedure occupies a dual position: on the one hand, it is a predictable result of law-making, it symbolizes a higher level of law-making work on the systematization and construction of legal material; on the other hand, it acts in the sphere of competence of the legislator as a means of law-making technique. The legislator, operating with legal constructions as more abstract images of the construction of normative material, creates the legal norms necessary to fill the constructions, giving the law-making process a more consistent, logically verified character. In the process of its formation, the legal structure goes through all the main stages that are associated with the emergence of relevant law-making laws, their realization in the form of legally significant interests, and the formulation of legal ideas⁸.

The main technical and legal requirements for legal constructions are completeness, consistency, and simplicity. For example, I. Onyshchuk found out that in many legal systems since ancient times, a special construction of a legal entity has been used to designate enterprises, institutions and organizations that meet certain requirements. The concept of a legal entity is disclosed in Article 80 of the Civil Code of Ukraine, although it is also of a general legal nature, as it is important for business, tax, land, international private and some other fields of law, thereby turning into one of the categories of the general doctrine of law. The scientist noted that in some Western countries, one person with a certain status can be recognized as a legal entity. In Great Britain, there are single-person corporations (corporation sole), consisting of one natural person. The archbishop, trustee and some other persons act in this capacity⁹.

⁸ G.I. Bojko, *Jurydychna konstrukcija jak osoblyva procedura pravotvorchosti* [Legal construction as a special procedure of law-making], "Naukovyj visnyk Uzhgorodskogo nacional'nogo universytetu. Serija: Pravo" 2014, 27(1), p. 18.

⁹ I.I. Onyshchuk, *Tehnika jurydychnogo pys'ma v normatyvno-pravovyh aktah* [Technique of legal writing in normative legal acts], Pravo, Harkiv 2019, p. 130.

Connections between the elements of the legal system are the result of the joint influence of various legal entities on the participants of specific legal relations. In this regard, let's note that the elements of the system, placed in the need of interaction, adapt to each other in a certain way and, accordingly, are in relations of subordination and coordination among themselves. It follows from this that the regulations of one or different industries should not contradict each other. Non-contradiction is the main quality of any, in particular, legal system.

Clarity and comprehensibility of legal constructions

Along with constructions that perform their functions optimally, there are also inefficient constructions, which is expressed in the issuance of a normative legal act, which completely or partially do not achieve the necessary regulatory results. It is obvious that this is caused by errors in the development of the legal construction expressed in such normative legal acts¹⁰.

The increase in the number of scientific terms and special expressions in the normative material, the constant increase in the total number of acts expand the range of possibilities of ambiguous and inconsistent legal constructions. In practice, it is not uncommon to encounter insufficiently technically elaborated legal acts containing imprecise and vague prescriptions, contradictions and gaps. This is connected with the unjustified haste to develop new acts, disdain for legal technology.

However, the consistency of the legal system is an ideal legal model, a characteristic of flawless, high-quality legal regulation. It is in the process of interaction of individual elements of the legal system, at the level of interrelationships, that the real state of affairs is revealed: inconsistency, inconsistency, collision of legal prescriptions. If the legislator does not take into account the existing connections between the elements of the legal system or does not create the necessary connections between them, this leads to defects in regulatory and legal connections.

The clarity and comprehensibility of legal constructions is ensured by the simplicity of the text in compliance with the rules: use well-known terms in a well-known meaning; define and explain the meaning of the

¹⁰ Ibidem, p. 132.

most important terms; use simple and understandable terms; do not use complex grammatical constructions¹¹.

As Z. Zaginei pointed out, the legislator's disregard for the rules of construction of legislative constructions leads to such an assessment of a person's actions that does not correspond to the degree of gravity of the committed crime and the illegal orientation of a socially dangerous act. After all, actions with explosive devices and explosive substances, which are actually the same in terms of the degree of public danger, should be evaluated differently. This is an unacceptable situation, a legislative error (and possibly negligence of the legislator), which can and should be corrected in the process of current rule making. In order to prevent such an interpretation, it is expedient to make certain changes to the Criminal Code of Ukraine (hereinafter referred to as the Criminal Code). In particular, it is important to supplement the provisions of Art. 201, Part 3 of Art. 260, Part 3 of Art. 262 after the words «explosive substances» with the terminological reversal of «explosive devices», as well as specify the subject of the crime in part. 1, 4 Art. 410, Part 1 of Art. 414 of the Criminal Code, indicating explosive devices¹².

The creation of a scientific legal construction must be considered within the framework of a complex cognitive process and cannot be equated with a simple representation of a phenomenon in the mind based on the principle of a direct mental image. A scientific model in its most general form can certainly be understood literally as a mental image. However, it is believed that this level of generalization sharply reduces the heuristic capabilities of theoretical modeling. The point is that the theoretical model completely “copies” not the object itself, but only some of its properties. Therefore, if it were possible to model an object with all its properties, we would get not a model of the object, but a copy of it¹³.

¹¹ T. Fulej, L. Lukas, L. Sajc, *Provedennja ekspertyzy proektiv normatyvno-pravovyh aktiv z vykorystannjam metodyky vyrishennja problem* [Carrying out expert examination of projects of normative legal acts based on different methods of solving problems], FOP Moskalenko O.M., Kyiv 2013, p. 133.

¹² Z.A. Zagynej, *Germenevtyka kryminal'nogo zakonu Ukraïny* [Hermeneutics of the criminal law of Ukraine], dys. dokt. juryd. nauk za spec.: 12.00.08, Kyi'v 2016, p. 109.

¹³ G.I. Nelipovych (Bojko), *Jurydychna konstrukcija jak zasib strukturuvannja pravovoi' informacii'* [Legal constructure as a basis for the structure of legal information], dys. kand. juryd. nauk: 12.00.01, L'viv 2017, pp. 128–129.

For example, consider such a legal construction as “estoppel”. This construction refers to legal concepts that establish legal prohibitions that prevent “a person from denying or asserting something contrary to what has been established as true on the basis of law by acts of a court, state authorities, or a person’s own actions, acts, or statements (i.e., submissions)”. Scientists S. Wilken and K. Ghaly have been engaged in the development, and study of the principle of estoppel for a long time and they managed to formulate the most universal and generalizing definition of estoppel as “an exclusively useful legal mechanism; simple, which absolutely does not require legal and technical skills in the application of the concept; principle of honor; the principle of common sense; the principle of general justice. This universal approach to understanding estoppel has been accepted by the scientific community and is used in the judicial practice of many countries¹⁴.

The essence of judicial estoppel is when judgments or statements made in the course of a previous legal procedure, in the future, terminate the possibility of review in court of the same issues or grounds of claim¹⁵.

The main problem with the application of estoppel as a principle is the arbitrariness of its application within the framework of judicial discretion. Certainly, its use is increasing, but lower courts use estoppel within the framework of already existing legal positions of higher courts in certain cases.

Conclusions

In order to optimize legal interpretation activities, it is necessary to improve the process of eliminating defects in legal constructions. The ambiguity and inconsistency of legal constructions is a consequence of the increase in the number of scientific terms, special expressions, contradictions and gaps in the normative material. The reason for this is hasty normative design without compliance with the requirements of legal technique.

¹⁴ S. Wilken, K. Ghaly, *The Law of Waiver, Variation, and Estoppel*. Third edition, Oxford University Press Inc., 2012, p. 81.

¹⁵ P. Barnett, *Res Judicata, Estoppel and Foreign Judgments: The Preclusive Effects of Foreign Judgments in Private International Law*, OUP Oxford, 2001, p. 9.

With the help of legal constructions, insightful, detailed and in-depth clarification of the content of interpreted legal norms is carried out. However, it must be taken into account that the use of legal constructions in the interpretation does not exclude, but implies, the use of other methods of interpretation. The legal construction serves as a frame on which the knowledge about the content of legal norms, obtained with the help of various methods of interpretation, is strung.

References

- Babaev V.K. (ed.), *Teorija gosudarstva i prava* [Theory of the State and Law], Jurist, Moscow 2003.
- Barnett P., *Res Judicata, Estoppel and Foreign Judgments: The Preclusive Effects of Foreign Judgments in Private International Law*, OUP Oxford, 2001.
- Bojko G.I., *Jurydychna konstrukcija jak osoblyva procedura pravotvorchosti* [Legal construction as a special procedure of law-making], "Naukovyj visnyk Uzhgorods'kogo nacional'nogo universytetu. Serija: Pravo" 2014, 27(1), pp. 15–18.
- Bojko G.I., *Rol' jurydychnyh konstrukcij v procesi tlumachennja pravovyh norm* [The role of legal constructions in the process of interpreting legal norms], *Zahyst prav i svobod ljudyny ta gromadjanyna v umovah formuvannja pravovoi' derzhavy: Materialy I Vseukrai'ns'koi' naukovo-praktychnoi' konferencii'* (m. L'viv, 25 kvitnja 2012 r.), Navchal'no-naukovyj instytut prava ta psihologii' Nacional'nogo universytetu «L'vivs'ka politehnika», L'viv 2012, pp. 272–275.
- Fulej T., Lukas L., Sajc L., *Provedennja ekspertyzy proektiv normatyvno-pravovyh aktiv z vykorystannjam metodyky vyrishennja problem* [Carrying out expert examination of projects of normative legal acts based on different methods of solving problems], FOP Moskalenko O.M., Kyiv 2013.

- Nelipovych (Bojko) G.I., *Jurydychna konstrukcija jak zasib strukturuvannja pravovoi' informacii'* [Legal constructure as a basis for the structure of legal information]: dys. kand. juryd. nauk: 12.00.01, L'viv 2017.
- Onyshchuk I.I., *Tehnika jurydychnogo pys'ma v normatyvno-pravovyh aktah* [Technique of legal writing in normative legal acts], Pravo, Harkiv 2019.
- Onyshchuk I.I., *Tehnika dokumental'nogo vyrazhennja zmistu normatyvno-pravovogo akta* [The technique of documentary expression of the content of a normative legal act], *Universytets'ki naukovy zapysky Hmel'nyč'kogo universytetu upravlinnja ta prava*, 2011, pp. 63–66.
- Onyshchuk I.I., Bojko G.I., *Logika jurydychnogo konstruivannja* [The logic of legal construction], "Naukovo-informacijnyj visnyk Ivano-Frankivs'kogo universytetu prava im. Korolja Danyla Galyc'kogo" 2015, № 11, pp. 38–44.
- Rudashevskij B.B., Kudrjavcev V.N. (eds.), *Pravo i modelirovanie. Metodologicheskie problemy sovetskoj juridicheskoj nauki* [Law and modeling. Methodological problems of Soviet legal science], Nauka, Moscow 1980, pp. 290–308.
- Spasibo-Fateeva I.V. (ed.), *Har'kovskaja civilisticheskaja shkola: v duhe tradicij* [Kharkov civil school: in the spirit of traditions], Pravo, Har'kov 2011.
- Wilken S., Ghaly K., *The Law of Waiver, Variation, and Estoppel*. Third edition, Oxford University Press Inc., 2012.
- Zagynej Z.A., *Germenevtyka kryminal'nogo zakonu Ukraïny* [Hermeneutics of the criminal law of Ukraine], dys. dokt. juryd. nauk za spec.: 12.00.08, Kyi'v 2016.

Summary

The article reveals the methodological significance of legal constructions and shows their influence on the interpretation of legal norms. It has been found that legal construction is one of the epistemological tools of legal science and means of interpreting legal norms in the process of their implementation. A concentrated expression of the possible conditions of law enforcement determines the methodological significance of legal constructions during the interpretation of legal norms.

The legal construction is shown as a set of stable connections of the object, which ensure its integrity and identity. Emphasis is placed on the fact that intra-industry and inter-industry connections of legal norms allow law to preserve its properties as a regulatory in the face of internal and external changes, to be stable and stable. The existence of a stable structure determines the existence of law as a system is a condition for the existence of law.

The author came to the conclusion that in order to optimize legal interpretation activity, it is necessary to improve the process of eliminating defects in legal constructions. The ambiguity and inconsistency of legal constructions is a consequence of the increase in the number of scientific terms, special expressions, contradictions and gaps in the normative material. The reason for this is hasty normative design without compliance with the requirements of legal technique. With the help of legal constructions, insightful, detailed and in-depth clarification of the content of legal norms is carried out.

Keywords: law enforcement, legal technique, non-contradiction, law-making, normative design, estoppel