

To the problem of linguistic interpretation of law on criminal liability

До проблеми лінгвістичного тлумачення закону про кримінальну відповідальність

Tetyana Kotyay

Key words:

interpretation of law on criminal liability, grammatical method of interpretation, linguistic method of interpretation.

Ключові слова:

тлумачення закону про кримінальну відповідальність, граматичний спосіб тлумачення, лінгвістичний спосіб тлумачення.

Formulation of the problem. In legal literature you can repeatedly find the opinion about insufficient research on grammatical interpretation issues of rules of law in terms of systematic study of this interpretation method. Thus, scientists point out that not everything in modern grammar has found its application both in interpretation theory of rules of law and in jurisprudence in general. Lawyers' considerations about law language are mostly reduced only to general conclusions about the necessity to write laws clearly, concisely, and understandably. In turn, linguists study law language problems not enough as a special functional style of literary language.

There is a variety of interpretation methods, but we should give special attention to the linguistic one since it is an essential element of the algorithm of clarification of the content of criminal law rules. Thus, the bases of the law text are the words, terms, terminological phrases, normative sentences which reflect the legislator's will. However, law language uses not only special terminology but also has its own descriptive style with its typical linguistic stylistic features. That is why law language should be studied as a separate stylistic type of literary Ukrainian language.

The works of such well-known scientists as follows are devoted to the research of the stated range of problems: E.V. Vaskovskyy, J.S. Vaschenko, J.L. Vlasov, N.N. Voplenko, S.Z. Hurak, P.S. Elkind, O.I. Kadykalo, V.S. Malenta, M.A. Moliboga, T.J. Nasirova, P.O. Nedbaylo, M.I. Novikov, A.S. Piholkin, S.V. Pryyma, J.O. Tikhomirov, Y.I. Todyka, O.F. Cherdantsev, L.I. Chulinda, Z.M. Yudin, including scientists criminalist: V.O. Bilonosov, O.I. Boyko, E.O. Volosyuk, M.D. Durmanov, O.V. Kaplina, M.I. Kovalev, M.J. Korzhanskyy, M.B. Kostrova, N.F. Kuznetsova, P.I. Lublinskyy, V.O. Navrotsky, M.D. Sharhorodskyy, O.S. Shlyapochnikov.

The purpose of the article. Creation of a linguistically verified text of criminal law is not an end in itself. At the same time the main task is to ensure the addressee's correct reading of the text of criminal law and of the content of criminal law rules. This clarification is actually achieved by interpretation of criminal law, namely by its linguistic method that is analyzed in this paper.

Presenting main material. Study of law language intersects in linguistics and jurisprudence as a legitimate and reasonable application of law rules and it depends on its proper clarification by the subject of law explanation by means of linguistic and law analysis. Awareness of such necessity became the reason for appearance of a science such as "forensic linguistics"^{1,2} and appropriate terminology: "linguo-law", "juridization of natural language", "forensic linguistic examination".

It should be noted at first this method wasn't identified implicitly by all researchers. In particular P.I. Lublinskyy wrote: "The thing that is usually meant by grammatical interpretation, in fact, is not interpretation. This easy understanding <...> of the thought expressed in words by the legislator, regardless of any other conclusions that can be made from it. We learn the law here as we learn any written phrase. There is no interpretation of

¹ Прадід Ю.Ф. У царині лінгвістики і права / Ю.Ф. Прадід. – Сімферополь : Ельнію, 2006. – 256 с.

² Прадід Ю.Ф. Юридична лінгвістика та деякі актуальні проблеми правознавчої науки / Ю.Ф. Прадід // Наук. пр. Одес. нац. юрид. акад. – 2003. – Т. 2. – С. 147–152.

the legislator's will here but only understanding of a legislative text³. I.J. Farber⁴ supported and developed this point of view. Now this approach has no support among scientists, as they are united by the only thought that this method helps to understand the relevant lexical items paying attention to their grammar forms, grammar constructions and sentences which they form, the use of punctuation marks in these sentences etc.

Linguistic interpretation is an interpretation based on the data of grammar, vocabulary, sciences of philological schools.

In law theory the given method has different variations of names such as language, philological, grammatical, linguistic which are usually used as synonymous definitions.

Thus, the definition «linguistic interpretation» is broad in meaning because language should be examined as a set of certain spelling rules and as a means of people's communication, expression and exchanging of ideas and as a social phenomenon that arises, develops and lives and functionates in society. It is the name that is used by the authors of the large Law Encyclopedia as a symbol of the interpretation way providing a set of language rules (vocabulary, morphology, syntax, punctuation, special language rules developed by law science) to interpret external expression of the text of law rules⁵.

Also the term «philological interpretation» is unacceptable because philology (Gr. *Philologia* – love of science) is a humanity that studies language and literature (oral or written) of any nation⁶. Therefore, its use is insufficient for the whole display of interpretation features in criminal law rules.

The most common name is “grammatical interpretation” that is used by the authors of textbooks on the theory of law and criminal law in particular^{7,8}. Thus, grammar (Gr. *grammatike*) is 1) a branch of linguistics that studies patterns of structure, changes and creation of word forms in a certain language (morphology) and of word combinations and sentences (syntax); 2) a system of rules of word changes and joining of words in word combinations and sentences in language in general and certain language in particular and book language which contains the rules (e.g., normative g., school g.)⁹. This name seems to be inaccurate because the method of interpretation is not limited only by grammatical knowledge.

The usage of the name «linguistic interpretation» seems to be reasonable. Linguistics (philology) means the science of natural human language in general and of all languages in the world as its individual representatives which includes phonetics, grammar, lexicology, phraseology word formation, lexicography, spelling, orthoepy, punctuation, and graphics¹⁰. We believe that this designation is the most appropriate because it covers all necessary methods and rules to fulfill both lexical and grammatical interpretation that are necessary to clarify the content of rules of law.

There is no unity of views on the designation of this interpretation method among the scientists. Thus, Y.M. Braynin, E.O. Volosyuk, P.S. Elkind, V.V. Lazarev, M.B. Kostrova use the term “grammatical method of interpretation”, J.S. Vashchenko, M.D. Durmanov, P.M. Rabinovich use “philological interpretation”, S.V. Davygora, N.L. Radayeva, O.G. Panchak, Z.A. Trostyuk, V.F. Schepelkov use “linguistic interpretation”, S.G. Pyshyna, O.F. Cherdantsev use “language interpretation”, O.V. Kaplina writes “lexical grammatical interpretation”, E.V. Vaskovskyy, P.O. Nedbaylo use “philological interpretation”, O.S. Piholkin uses “text interpretation”, I.N. Hryazin writes “textual interpretation”, L.I. Chulinda uses “law linguistic interpretation”, A.V. Osipov uses the term “grammatical”, “philological” and “language” as synonymous. S.V. Pryma also uses several definitions at the same time: language (text, grammatical, philological) method of interpretation.

³ Люблинский П.И. Техника, толкование и казуистика уголовного кодекса : [пособие к практ. занятиям по уголов. праву] / П.И. Люблинский. – Петроград : Типо-литогр. Романова, 1917. – С. 123.

⁴ Фарбер И.Е. Вопросы толкования советского закона / И.Е. Фарбер // Ученые зап. Саратов. юрид. ин-та. – 1956. – Вып. 4. – С. 48.

⁵ Великий енциклопедичний юридичний словник / за ред. Ю.С. Шемшученка. – 2-ге вид., переробл. і доповн. – К. : Юридична думка, 2012. – С. 915.

⁶ Новий словник іншомовних слів: близько 40 000 сл. і словосполучень / [Л.І. Шевченко, О.І. Ніка, О.І. Хом'як, А.А. Дем'янюк] ; за ред. Л.І. Шевченко. – К. : АРІЙ, 2008. – С. 627.

⁷ Кримінальне право України: загальна частина : [підручник] / [Ю.В. Баулін, В.І. Борисов, В.І. Тютюгін та ін.] ; за ред. В.В. Сташиса, В.Я. Тація. – 4-е вид., переробл. і допов. – Х. : Право, 2010. – С. 49.

⁸ Українське кримінальне право. Загальна частина : [підручник] / за ред. В.О. Навроцького. – К. : Юрінком Інтер, 2013. – С. 96.

⁹ Новий словник іншомовних слів: близько 40 000 сл. і словосполучень / [Л.І. Шевченко, О.І. Ніка, О.І. Хом'як, А.А. Дем'янюк] ; за ред. Л.І. Шевченко. – К. : АРІЙ, 2008. – С. 169.

¹⁰ Кочерган М.П. Вступ до мовознавства : [підручник] / М.П. Кочерган. – К. : Видав. центр «Академія», 2002. – С. 135.

Authors of textbooks give an indication of grammatical (or philological) interpretation^{11,12} which is considered to clarify the content of a legal norm by its etymological or syntactical text analysis and to clarify the meaning of words, terms, definitions used in the criminal liability law. The training manual for judges and candidates for judges doesn't contain an appropriate way of interpretation but "textual study of provisions of legal acts"¹³.

According E.V. Vaskovskyy¹⁴, the lexical element of the rule of law describes how etymology of words is important in interpretation. Meanwhile this scholar points to the necessity to take into account changes in word usage through time and space. The scientist distinguishes between main (proper) and figurative (improper) meanings while it is possible to digress from the general meaning of the word when it have an individual meaning. Also, there may be words with uncertain meaning. In this case one should use such method of philological hermeneutics as parallelism while the interpreted terminology is researched inductively especially in the text where it can be found, and if it is not enough it is researched in other sources by the same author or of the same historical period.

M.S. Tagantsev wrote that grammatical interpretation means to appeal to "the construction of phrases, so to speak, to the etymological and syntactical analysis of the text", to "explain meanings of words and expressions used in the text of the law"¹⁵. The author treated the emphasis of this method of interpretation carefully because he believed that it is the most imperfect. The actual reasons for this are in nature of language that is alive with its changeable grammatical rules and in conditions of compiling, notably in the compilers' lack of grammar knowledge.

However, not all scientists agree with reasonability to emphasize this method of interpretation. P.I. Lublinsky¹⁶ believed that this activity precedes interpretation, it even precedes law criticism. Grammar or word interpretation, as the author wrote, is only the beginning of any interpretation since it is a prerequisite for clarification of word meaning. Clarification of the word meaning or philological interpretation (*the terminology of P.I. Lublinsky*) is not a subject of a lawyer's work since it details the knowledge that is necessary for each person who tries to understand the legislator's written words.

The soviet criminal law doctrine stood for the fact that the basis of the grammatical method of interpretation is the only possible way to present legal norms and it is fulfilled by means of language forms. "Each rule of law is the legislator's thought. But any thought cannot exist without language form. <...> That's why to cognize the legislator's thought and will embodied in rules of law first of all we must discover the meaning of those words which express the rule. It means its word interpretation that serves as a starting and necessary way of disclosing its true meaning"¹⁷.

"The basic rule of grammar interpretation of words means to follow the meaning which the legislator gives to them strictly. Violation of this rule leads to incorrect application of the law"¹⁸.

Thus, linguistic interpretation outlines the syntactic and morphological structure of the text of the law, the grammatical meaning of a sentence or several sentences; forms of nouns, adjectives and verbs are important as well as putting punctuation and etc. The person applying the law must assume that the legislator uses words and expressions, forms phrases and puts punctuation in strict accordance with the general philological and grammatical rules of the language that this act of law uses and therefore grammatical interpretation of the law nothing but literal perception of the text. It is a very important specification for any law user; it is associated with the principle of separation of powers. The judge cannot replace the legislator while interpreting the criminal law. "The meaning of the criminal law text is clear then", emphasized L.S. Shlyapochnykov, "when the result of its

¹¹ Кримінальне право України: Загальна частина : [підручник] / [Ю.В. Баулін, В.І. Борисов, В.І. Тютюгін та ін.] ; за ред. В.В. Сташиса, В.Я. Тація. – 4-те вид., переробл. і допов. – Х. : Право, 2010. – С. 49.

¹² Українське кримінальне право. Загальна частина : [підручник] / за ред. В.О. Навроцького. – К. : Юрінком Інтер, 2013. – С. 96.

¹³ Практичний курс тлумачення правових актів : [навч. посіб. для суддів і канд. на посади суддів] / [І.Л. Самсін, В.Г. Ротань, А.Г. Ярема та ін.] ; за ред. І.Л. Самсіна. – Х. : Право, 2014. – С. 35–65.

¹⁴ Васильковський Е.В. Цивилистическая методология. Учение о толковании и применении гражданских законов / Е.В. Васильковский. – М. : АО «ЮрИнфоР», 2002. – С. 99–100.

¹⁵ Таганцев Н.С. Русское уголовное право. Часть общая: лекции : в 2 т. – М. : Наука, 1994– . – Т. 1 / Н.С. Таганцев ; сост. и отв. ред. Н.И. Загородников. – 1994. – С. 90–92.

¹⁶ Люблинский П.И. Техника, толкование и казуистика уголовного кодекса : [пособие к практ. занятиям по уголов. праву] / П.И. Люблинский. – Петроград : Типо-литогр. Романова, 1917. – С. 123–124.

¹⁷ Недбайло П.Е. Применение советских правовых норм / П.Е. Недбайло. – М. : Госюриздат, 1960. – С. 364.

¹⁸ Шляпочников А.С. Толкование уголовного закона / А.С. Шляпочников. – М. : Госюриздат, 1960. – С. 158.

grammatical interpretation causes the only definite understanding of the law which is checked by its identical application in practice¹⁹.

When grammar interpretation separates into an independent type of explanation of the law text, it does not mean its isolation from other types. The grammatical interpretation is most closely connected to logical one since it provides not only lexical, grammatical and other text analysis, but also setting up a correspondence of its content with the title of the section, the chapter, the part, the law in general. If grammatical interpretation analyzes words (which are terms or not), their meaning (initial, literal and gained in language practice, including just law one) then the logical interpretation of the analysis operates with the ideas and phenomena meant by these words and correlation between them. Awareness of regularity of lexical items usage to form the text of criminal law, correct understanding of features of its functions and correlations are necessary prerequisites for correct interpretation of the section text of the Criminal Code.

The text of the criminal law uses almost all parts of speech of both open and closed classes, except interjections (nouns, adjectives, verbs, participles, gerunds, numerals, conjunctions, prepositions). Each of them is important for understanding the text of the law on criminal liability.

Such parts of speech have importance as conjunctions, perfective and imperfective verbs and adverbs, polysemantic words and terms that can have different meanings in the context of different law rules.

Use of coordinate and disjunctive conjunctions has particular features. Coordinate conjunctions are "і (and), та (and), також (as well as), теж (also)", and disjunctive conjunctions are "або (or), то-то (either... or...), хоч-хоч (either... or...), чи-чи (either... or...)". Thus, adjudication of the crime as committed depends on the exact use of these conjunctions, it can be either the moment of committing a socially dangerous act or occurrence of a socially dangerous consequence (in case of using disjunctive conjunctions) or the time of committing all socially dangerous acts or occurrence of a whole set of consequences provided by the rules of criminal law (in case of use of coordinate conjunctions). So, part 1, section 309 of the Criminal Code of Ukraine (hereinafter – CC of Ukraine) provides liability for illegal manufacture, production, acquisition, storage, transportation or sending narcotics, psychotropic agents or their analogues without intent to sell. The use of disjunctive conjunctions "або (or)" and "чи (or)" means that the subject of the crime can be either drugs or psychotropic agents or their analogs, and as well as the crime provided by part 1, section 309 of CC of Ukraine is completed after committing one of these acts of positions in this section: illegal manufacture, production, acquisition, storage, transportation or sending.

Coordinate conjunctions "і (and)", "а також (as well as)" are often used as disjunctive ones in criminal law rules. Therefore, not only the linguistic analysis of normative sentences is important, but also the logical analysis of contents of criminal law concepts. In particular in part 1, section 200 of CC of Ukraine the conjunction "а також (as well as)" is used as a disjunctive one, so criminal liability arises in case of committing the following acts: forgery of remittance documents, payment cards or other means of access to bank accounts, electronic money, as well as acquisition, storage, transportation or sending with intent to sell forged remittance documents, payment cards or their use or sale and unlawful production or use of electronic money.

Such parts of speech have importance as perfective and imperfective verbs or nouns derived from them that are related to identifying the moment of completing certain acts. Thus, while using perfective verbs or nouns derived from them, the legislator shows the connection of occurrence of legal consequences with both performing a certain action (inaction) and happening of a certain criminal result. For example, while studying the types of accomplices, in section 27 of CC of Ukraine it is provided that the organizer is a person who organized a crime (crimes) or directed its (their) preparation or commitment. Such perfective verbs used in the wording of the section as "organized", "directed" means a completed act and provides that the organizer's action was successful. In case that the organizer's act is not completed then the act is considered to be an unsuccessful organization. Nouns derived from perfective verbs indicate that the components of crime provided by that section where they are used will be considered to be completed after fulfillment of a certain act. The nouns used in criminal law rules derived from imperfective verbs indicate that the crime is considered to be completed after committing socially dangerous acts, regardless of its success. For example, section 157 of CC of Ukraine adjudicates criminal liability for obstruction of voting rights or to participate in the referendum, work of the election commission or the commission of referendum or of an official observer's activity. The noun "obstruction" means continuing and incomplete action, that is why the crime is considered to be completed since the moment of the effect on the victim related to deception or coercion and avoidance of the member of work of the election com-

¹⁹ Шляпочников А.С. Толкование уголовного закона / А.С. Шляпочников. – М. : Госюриздат, 1960. – С.169.

mission without any good reason (part 1, section 157 of CC of Ukraine) and the same acts related to violence, destruction or damage of property, threat of violence or destruction or damage to property (part 2, section 157 of CC of Ukraine), regardless of whether the perpetrator managed to prevent the fulfillment of the victim's appropriate right.

The terms derived by adding the prefix "не- (non-)" are ambiguous because they receive one additional meaning: they indicate not only denial of an action or a process but an appropriate action or a process with a negative result. For example, using the terminology of "ненадання (non-accordance)" (part 2, section 31, section 136, section 139, section 284 of CC of Ukraine), the uncertain thing remains: one did not accord or accorded but without any result). This list can be supplemented by the terms "неусунення (non-removal)" (part 2, section 31 of CC of Ukraine), "невиконання (non-fulfillment)" (sections 137, 140, 197, 351, 367, 382, 402, 403 of CC of Ukraine), "неповідомлення (non- notification)" (part 3, section 243, section 285 of CC of Ukraine), "невжиття (non-usage)" (part 1, section 244 of CC of Ukraine).

Another problematic issue is polysemy, i. e. the use of polysemantic words or phrases for denomination of the same concept. The words "акт (act)", "орган (authority or agency)", "установа (institution)" and others have the most active polysemy. For example, the word "акт (act)" in the lawmaking has over fifteen meanings: "legitimate act", "legislative act", "commercial act", "intercourse" etc. However, the use of polysemy is a reasonably acceptable norm in lawmaking.

Synonymy is an identical definition. A synonym is a word close or identical in meaning to another but different in the sound form. The general rule of lawmaking is a tendency to minimize synonyms that is claimed by accuracy of the content. In legal regulation synonymy plays an important pragmatic role, it specifies, details the lawmaker's will if it is a condition of accuracy of thinking. Most often (but not always) synonym words are placed at once in brackets after the words (sentences) that are specified by them. For example, part 1, section 185 of CC of Ukraine, "the secret abduction of another's property (theft)". However, while using synonyms it is not desirable to use so-called "quasi-synonyms" which are concepts similar in meaning but not identical from a legal point of view: "набуте (something acquired)" and "придбане (something purchased)".

Conclusions. As a basic method of interpretation, linguistic interpretation is completed in the process of all other interpretations. The analysis of different methods of interpretation of criminal law shows that each of them surely contains a linguistic element to determine the content of the law. The smallest inaccuracy, the lack of commas, the wrong case can significantly distort the content of the normative act and lead to errors in the process of its use.

Thus, it seems to be appropriate to use the definition "linguistic interpretation". We believe that exactly this definition is the most appropriate because it includes all necessary methods and rules for applying interpretation: both lexical and grammar that are necessary to clarify the content of criminal law rules.

Summary

The article investigates the problematic issues of linguistic interpretation of law on criminal liability. The author's position regarding the title of this method of interpretation with the following argumentation is adduced.

Анотація

У статті досліджуються проблемні питання лінгвістичного тлумачення закону про кримінальну відповідальність. Запропонована авторська назва способу тлумачення, що розглядається, з наступною аргументацією.

Literature:

1. Васьковский Е.В. Цивилистическая методология. Учение о толковании и применении гражданских законов / Е.В. Васьковский. – М. : АО «ЮрИнфоР», 2002. – 508 с.
2. Великий енциклопедичний юридичний словник / за ред. Ю.С. Шемшученка. – 2-е вид., переробл. і доповн.. – К. : Юридична думка, 2012. – 1020 с.
3. Кочерган М.П. Вступ до мовознавства : [підручник] / М.П. Кочерган. – К. : Видав. центр «Академія», 2002. – 368 с.
4. Кримінальне право України: Загальна частина : [підручник] / [Ю.В. Баулін, В.І. Борисов, В.І. Тютюгін та ін.] ; за ред. В.В. Сташиса, В.Я. Тація. – 4-те вид., переробл. і допов. – Х. : Право, 2010. – 456 с.
5. Люблинский П.И. Техника, толкование и казуистика уголовного кодекса : [пособие к практ. занятиям по уголов. праву] / П.И. Люблинский. – Петроград : Типо-литогр. Романова, 1917. – 270 с.
6. Недбайло П.Е. Применение советских правовых норм / П.Е. Недбайло. – М. : Госюриздат, 1960. – 511 с.
7. Новий словник іншомовних слів: близько 40 000 сл. і словосполучень / [Л.І. Шевченко, О.І. Ніка, О.І. Хом'як, А.А. Дем'янюк] ; за ред. Л.І. Шевченко. – К. : АРІЙ, 2008. – 672 с.
8. Прадід Ю.Ф. У царині лінгвістики і права / Ю.Ф. Прадід. – Сімферополь : Ельнію, 2006. – 256 с.
9. Прадід Ю.Ф. Юридична лінгвістика та деякі актуальні проблеми правознавчої науки / Ю.Ф. Прадід // Наук. пр. Одес. нац. юрид. акад. – 2003. – Т. 2. – С. 147–152.
10. Практичний курс тлумачення правових актів : [навч. посіб. для суддів і канд. на посади суддів] / [І.Л. Самсін, В.Г. Ротань, А.Г. Ярема та ін.] ; за ред. І.Л. Самсіна. – Х. : Право, 2014. – 484 с.
11. Таганцев Н. С. Русское уголовное право. Часть общая: лекции : в 2 т. – М. : Наука, 1994– . – Т. 1 / Н.С. Таганцев ; сост. и отв. ред. Н.И. Загородников. – 1994. – 380 с.
12. Українське кримінальне право. Загальна частина : [підручник] / за ред. В.О. Навроцького. – К. : Юрінком Інтер, 2013. – 712 с.
13. Фарбер И.Е. Вопросы толкования советского закона / И.Е. Фарбер // Ученые зап. Саратов. юрид. ин-та. – 1956. – Вып. 4. – С. 43–52.
14. Шляпочников А.С. Толкование уголовного закона / А.С. Шляпочников. – М. : Госюриздат, 1960. – 240 с.