

Spiritual Sense of the Right in the Legal Hermeneutics

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Abstract: In research philosophical and legal aspects of the legal hermeneutics are analyzed, the spiritual sense of the right in the context of the hermeneutic and communicative paradigm comes to light. In this research methods of the philosophical and legal analysis of legal reality, the idea of the philosophical hermeneutics, the concept and theory of philosophy of science, the epistemology are applied. Besides, in study researcher rely on achievements of modern psychology, the legal axiology and anthropology. In this study, the analysis of the legal hermeneutics relies on the following special circumstances and the principles. The author pays attention that right roots in the spiritual life of the personality that without love for the neighbor, without sacrifice neither communication, nor sense of justice is impossible. In the essence of the right the love for the neighbor, sacrifice and spirituality lies. The impossibility of separation of the right and moral locates in the study. The conclusion that the narrow understanding of the legal hermeneutics negatively affects the development of jurisprudence, in general, theories and legal philosophies in particular is drawn. Recognition of Another is the cornerstone also of humility and love for the neighbor. Without at least some share of humility and love for the neighbor neither communication with Another, nor a legal relationship with it, recognition and therefore and legitimacy of the right and law and order is impossible. In such context the communicative essence of the right doing possible social life of the person, its coexistence with other people is accurately shown, the right is mortgaged in the certain mode of human life, lives of the human person when it aims to balance the behavior are more exact, following the logic of communications in society. Approve the behavior with other people means to reconcile and the psychology convinces us: participation of each person in general forms of intellectual activity does possible formation of original thinking and he afterward opportunity to be the member of human communication, communication. Philosophical and legal value of hermeneutic approach to the right leads to thought that right roots at all not in fall of the person, not in initial perversity of the person egoism and in spiritual life of the personality in the nature of the conceiving and communicating person.

Key words: Legal hermeneutics, philosophy, right, value is right, sense of justice

INTRODUCTION

In modern science, the legal hermeneutics is perceived, most often, not as communicative legal philosophy, the legal theory or right understanding and as the theory of interpretation of the right, science of comprehension of a sense of the right, first of all of the positive law. Such narrow understanding of the legal hermeneutics negatively affects the development of jurisprudence in general, legal philosophies in particular.

Literature review: As the main postulate of the hermeneutics is recognized that the understanding of any result of human activity relies on understanding as the guess, the hypothesis of a sense of the act, the fragment of the text, study. It is necessary to start the process of comprehension of sense (Ovchinnikov *et al.*, 2015;

Aleinikov and Maltseva, 2016). Preunderstanding it is the premises of understanding that is defined by tradition. Therefore, it shall act as one of understanding conditions Berger and Lukman. Set of the prejudices caused by tradition makes that Gadamer in the works calls “the understanding horizon” Gadamer. The number of conclusions follows from these reasoning’s of the philosophical hermeneutics for philosophy and the legal theory about which we wrote earlier (Ovchinnikov *et al.*, 2015). First of all, it is the conclusion about the open nature of the right. Approximately such definition is given by Polyakov: “the right can be defined as the open order of the relations based on socially recognized and mandatory regulations that participants interact by the implementation of the rights and duties” Polyakov. Opponents of the hermeneutics of the right insist that the “right be that speak about it” position

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conducts to subjectivity and the valuable relativism that then develops into the inconsistent behavior of the law enforcement official Crude. Their position is reduced to legal positivism Kozlikhin. The boundary of subjects, legal hermeneutics as we know in respect of the philosophical and legal concept goes back to the philosophical hermeneutics of Heidegger who defined “understanding” as the main form of the human existence and Gadamer who developed this idea to philosophical methodology Gadamer. The legal hermeneutics is critical from legal convergence (Lyubashits *et al.*, 2015) and also political conservatism (Lyubashits *et al.*, 2015).

MATERIALS AND METHODS

First, it is the principle of historicism. “I understand, therefore, I exist”. From here “hermeneutics” stops being the common set of rules of interpretation of texts and becomes philosophical doctrine about the person and history. In its rich life of each person. Therefore, the understanding, in essence, represents creative process of application of the acquired concepts, words and meanings to individual life. Life, life is represented as a permanent creative understanding of the world, others and themselves in this world. As it is impossible to live in society, without making efforts of mutual understanding, owing to dialogue with others the approved perspective of interpretation is reached and there is possible the society Mordovcev *et al.* (2015) in which the important role is played by “merge of the horizons” of individual interpretations, availability of the general semantic field recognized for truth. The merge of the horizons is steadier, the society, therefore, the tradition is the base of society is stabler and stronger.

Secondly, the principle of sociocultural traditionalism Lyubashits *et al.* (2015) because the right is the social phenomenon. In the hermeneutic paradigm the legal thinking is not considered as reflection external anymore to the person of social and legal reality in which the subject of knowledge occupies the passive role, suppressing all subjective, recognized as the hindrance to objective knowledge and it is represented as the active mental activity designing this reality (Mordovcev *et al.*, 2015).

In the hermeneutic paradigm the emotional and strong-willed, sensual sphere, consciousness, thinking, human nature, his concepts and representations are considered as the sociocultural variable. “Human nature” does not exist in the sense of the various biologically fixed substrate or some keeping in the development of the person. The person designs the own nature or in other words, the person creates himself Berger and Lukman.

Sociocultural-defines both right understandings and sense of justice and the right. However, there is the epistemological problem. If the interpretation of the right has no universal importance if it is limited to civilization and cultural borders of language and mentality, the general concept of the right does not exist. Moreover, if exists, approximately in such type: “the right-set of the regulations and values recognized in society as obligatory”.

RESULTS AND DISCUSSION

The understanding is possible only where there is the refusal of some part of the subjectivity. One of characteristic ontological features of the personality consists in potential readiness to go beyond nature to refuse its part. “Communication of human persons becomes possible only as the exit out of own limits: the exit towards to God and the exit towards to the neighbor. Moreover, therefore to recognize God as the personality and the person as the personality it is possible, having only appeared in “the sphere personal”. However, same means that communication is possible only by the personal self-belittling victim and also fight against chaos and illusion of own egotistical possession, own self-sufficiency” Rozhkovsky.

The understanding of Another, communication with it is possible only in the situation of conscious derogation of, the I, indulgences to the living world of another person. In Orthodoxy such indulgence is called lowliness, it is possible more simply-humility. Humility is also the first step on the way to spiritual perfection, at which top divine Love for the neighbor that was shown to the world by Jesus Christ. As A.V. Polyakov fairly emphasizes: “only the love is the cornerstone of original human communication” Polyakov.

The elderly person could understand only language legal, “you to me-I to you,” “the crime-punishment”. Maria could agree or refuse freely the offer to become the Mother of God and all ancient history of the world long, difficult and complete of take-off and falling of human society depended on this easy answer of the person. “The common consent of the Maiden allowed the word to become the flesh” Losskij.

Here pertinently to remember that at one time the recognition moment was considered as the pivotal moment of any right and legal relationship. The tradition of understanding of the right as recognitions was theoretically issued in legal philosophy of Hegel.” Be the person and respect others as persons” Hegel. In other words, recognize yourself as free and therefore and the responsible person who is independently choosing and preferring values and recognizing another.

The recognition is the important moment, the base and the principle of a sense of justice. Ilyin pointed to this moment: “the person should not have a sense of justice; everyone who understands has it that except it, other people” Ilyin. As we see and the moment of conditionality of acts with the fact of the existence of other carriers of values is emphasized here is more exact acts of recognition of and Others as capable subjects. Alekseev distinguishes the legal and moral subject on the basis of commission of acts of recognition, later more than half a century one of the largest philosophers of the second half of the 20th century, the founder of one of the modern hermeneutic directions Paul Riker considers its capability as one of the main characteristics of the person of law to recognize and be recognized (Riker, 1996).

The first step in communication with another is recognition of its otherness. As well right before correlating the behavior to any law and order, it is necessary to recognize its value for a start. Recognition appears the same step and in the understanding of Another in communication with it and in a legal relationship with another. However, recognition is also the necessary element of unconditional love to the neighbor.

In the dostoyevsky’s creativity communication of the right with spirituality of another is especially accurately shown. The essence of the right in its legal concept is defined by reciprocity of recognition but not imperativeness of instructions. The great writer could catch and reflect in the works of the situation of legal interaction as experiences of the meanings turned to the person of law. It allows to define the right as the existential communication based on proper recognition of the spiritual value of “another” as the subject of proper communication. The right in its concept is possible only as recognition of the spiritual value of another as without such recognition the right is impossible. The act of such recognition is possible only in the course of the overcoming of the egoism and in compassion to another. The love in this case is not opposed to the right and enters the act of recognition, spiritually justifying the (Baranov *et al.*, 2015).

Capability to become from another point of view, to reckon with interests of other people, to follow social norms, normative regulation of human activity in general is even more often considered as the factor that caused and causing the formation of human thinking, logic and language that is the personality. For example, in researchers Zh. Piaget is marked out that transition from the stage of the egocentrism of children’s thinking at which lack of ability to distinguish the points of view and to coordinate them causes, so-called, preoperational thinking level to the stage of logical thinking is closely connected with possibility of the child to form the social

relations of cooperation “recognition of others “I”, ability to distinguish the points of view of other people with simultaneous awareness of own subjectivity, i.e., with the advent of the reflection. “The child aims to avoid contradictions out of the duty before others” Piaget. It is possible to tell that we have the opportunity to think thanks to the transition that is made in the childhood from the egocentrism to cooperation from individual to the general.

Therefore, the right thinking and consciousness in the basis have humility and aspiration to coordination of individual sense of the outside world, the internal integrity of sense with valid with thinking of other beings similar to the aspiration to be the witness. Formally this expressiveness materializes in the specific purpose of right thinking-to the approval of interests of the personality and society. “Will of the person who will be confirmed with thoughts, decisions that we make, reckoning with desires of other people, also let know clearly that all our spiritual existence in the root of social character” Jelinek. A not accidentally great person is suffering from arrogance and vanity, egoism most often is lonely and not capable of communication with an undeveloped sense of justice.

It is represented that from here the right accelerated in individual consciousness Baranov absolutely is in a new way visible (Baranov *et al.*, 2015 a, b; Kobersy *et al.* (2015, 2016). The right is the tool of the forthcoming adaptation and approval of interests: “the good consists in that with everyone another was considered and handled as the free person” (Hegel *et al.*, 1986). At the same time difference of others from own “I” which is the preliminary stage of coordination and cooperation at Piaget is impossible without individualization without an understanding of own “voting power”, without differentiation between ego and alter.

CONCLUSION

The conclusion that the narrow understanding of the legal hermeneutics negatively affects the development of jurisprudence in general, theories and legal philosophies in particular is drawn.

Both at the heart of the right and at the heart of communication, communication recognition of another lies. Recognition of Another is the cornerstone also of humility and love for the neighbor. Without at least some share of humility and love for the neighbor neither communication with another, nor a legal relationship with it, recognition and therefore and legitimacy of the right and law and order is impossible.

In such context the communicative essence of the right doing possible social life of the person, its

coexistence with other people is accurately shown. The right is mortgaged in the certain mode of human life, lives of the human person when it aims to balance the behavior are more exact following the logic of communications in society. Approve the behavior with other people means to reconcile.

Communication, knowledge acquisition, need to influence other people has a huge impact on the genesis of thinking to convince and induce them to certain actions, capability to understand these actions in a word, communication. The psychology convinces us: participation of each person in general forms of intellectual activity does possible formation of original thinking and the afterward opportunity to be the member of human communication, communication.

Philosophical and legal value of hermeneutic approach to the right leads to thought that right roots at all not in fall of the person, not in initial perversity of the person egoism and in spiritual life of the personality in the nature of the conceiving and communicating person.

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