

Interpreting law through legislative intent: balancing the spirit and the letter of the law within the rule of law

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Abstract

This article examines legislative intent as a method of legal interpretation aimed at addressing legislative gaps and normative conflicts within contemporary legal systems. For the purposes of this study, the concept of "legislative intent" is used in a broad sense, encompassing the actual intention of any competent law-making authority (both legislative and executive branches of government) during the development and adoption of a legislative act. Special attention is paid to the relationship between the spirit and the letter of the law in the context of establishing the rule of law and ensuring justice, especially in conditions of dynamic social changes, technological challenges and crisis situations.

It further examines the concept of legislative intent and analyzes the tools for its identification, in particular by taking into account the content of travaux préparatoires for the drafts of relevant legislative acts (explanatory notes, transcripts of discussions, conclusions of specialized committees, etc.) and the preambles of adopted acts. These materials are regarded as key sources for reconstructing the historical context of the adoption of the act and clarifying the original legislative intent.

The article argues that a systematic analysis of these supporting documents allows us to go beyond the purely linguistic (textual) meaning of a legal norm, to identify real social problems that the relevant act is aimed at solving, and to understand the socio-political and economic goals that the law-making authority had. The author substantiates that it is this approach that helps to overcome gaps and resolve conflicts through the interpretation of legal norms.

A separate section of the article is devoted to the analysis of judicial practice, based on which a conclusion is drawn about a constant tendency for the Constitutional Court of Ukraine and the Supreme Court to use travaux préparatoires for the purpose of interpreting norms based on the concept of legislative intent.

Based on a comparative analysis of the practice of the European Court of Human Rights, the importance of using travaux préparatoires for the proper interpretation of legal norms, which contributes to the harmonization of law enforcement, is argued.

The article also provides an assessment of the risks of excessive judicial discretion and abuse of judicial activism, on the basis of which the author defines the criteria for the admissibility of the limits of using the spirit of the law to interpret legal norms, taking into account the rule of law and the principle of separation of powers. It is demonstrated

that the primary criterion is ensuring a balance between strict adherence to the letter of the law and understanding its real, relevant purpose in specific historical conditions.

Keywords: interpretation of the law; teleological interpretation; legislative intent; the spirit and letter of the law; the rule of law; legal certainty; gaps and conflicts in legislation; case law; travaux préparatoires.

The correlation between the spirit and the letter of the law is one of the problems of jurisprudence, which has become especially acute in the conditions of dynamic social changes, technological challenges and crisis situations. In view of this, the legal doctrine and law enforcement practice have raised the question of whether a judge or other law-applying authority is limited only to the textual (literal) meaning of a legal norm or whether, during interpretation in the process of law enforcement, the relevant subject should also take into account the spirit of the law, which is hidden in the actual will and intentions of the law-making authority.

In this context, it is important to emphasize that in the modern legal field, where the fundamental principle is the rule of law, the content of which is not limited to the requirement of compliance with the law, but also includes other elements, in particular, ensuring justice, good faith, as well as legal certainty, it is teleological interpretation (interpretation according to legislative intent) that acquires special importance. At the same time, the use of such a method of interpreting the law on the basis of broad judicial discretion may cause a violation of the balance between legal certainty and other elements of the principle of the rule of law; lead to judicial arbitrariness or, conversely, to excessive formalism, which neutralizes the original legislative intent. In view of this, there is a need to conduct a thorough study devoted to the systematic analysis of scientific approaches to understanding the concept of the teleological method of interpreting the law, as well as judicial practice of applying this method of interpreting legal norms.

Research Aim and Objectives. This article aims to provide a comprehensive and systematic analysis of the concept and essence of the teleological method of interpreting legal norms, which is based on clarifying the real will and intentions of the relevant law-making authority. To implement this goal, the following tasks were set and solved in the article: 1) the relationship between the spirit and the letter of the law was determined and the importance of achieving an optimal balance for establishing the rule of law and ensuring justice was outlined; 2) the essence of such an approach to interpreting a legal norm as clarifying legislative intent was established and applied methods of its identification were determined (preparatory materials, preamble, etc.); 3) an analysis of the practice of the Constitutional Court of Ukraine (hereinafter - the CCU), the Supreme Court (hereinafter - the SCU) and the European Court of Human Rights (hereinafter - the ECHR), as well as the institutions of the European Union (hereinafter - the EU) in the field of application of the teleological method of interpreting legal norms was conducted; 4) an assessment of the possible risks of excessive judicial activism when applying the teleological method of interpreting legal norms is provided and clear criteria for the admissibility of interpreting the law, based on clarifying legislative intent, are proposed.

Research status. Certain issues of the problem of interpreting a legal norm through the prism of clarifying the original legislative intent and the relationship between the spirit and the letter of the law were studied by such scientists as V. K. Antoshkina, M. Bilak, D. Luspenyk, A. M. Miroshnychenko, O. Tkachuk, O. M. Yukhymyuk, and others. Some aspects of this problem were raised in the works of the author of this article, in particular in the study of the criterion of the quality of the law [1], determining the grounds for non-application by the court of a law that contradicts the Constitution of Ukraine when resolving a case [2; 3], the evolution of the principles of administrative justice from a formal approach to a modern human-centric paradigm [53], as well as the analysis of the implementation of the principles of the rule of law and legal certainty in the conditions of digitalization of justice, in particular in connection with the use of artificial intelligence tools [54].

A review of scientific works in this area shows that some scientists (for example, V. K. Antoshkina) focused on general theoretical issues, noting the absence of a single, established approach to determining specific methods and rules for clarifying the content of legal norms and combining them into classical methods of interpretation, which confirms the debatability of the methodological tools, to which teleological interpretation also belongs [4].

Other scholars, in particular O. V. Kaplina, in turn, have carried out a more narrowly focused study, focusing on the teleological interpretation of the norms of criminal procedural law. The work of this scholar is important for understanding how this method is applied in one of the most sensitive areas to legal certainty, where the limits of judicial discretion must be particularly strict [5].

The problem of achieving a balance between legality and judicial discretion when interpreting legal norms was thoroughly studied by A. M. Miroshnychenko, focusing on critical aspects of judicial error and judicial arbitrariness through the prism of the legal responsibility of judges. This direction is of great importance, since it directly outlines the risks of excessive or unjustified use of the spirit of the law, which can lead to the usurpation of legislative powers by the judicial branch of power [6]. Continuing the raised issues, some scholars (for example, O. Tkachuk and D. Luspenyk) analyze the relationship between the rule of law and the traditional principle of legality. The indicated conclusions confirm the possibilities of implementing the concept of the spirit of the law into the philosophy of the rule of law, where legality should be understood not only as compliance with the letter, but as ensuring the legitimate purpose of the norm [7].

Investigating the limits of interpretation of legal norms by the court, M. V. Bilak in her work emphasizes the inextricable link between interpretation and constitutional control. The scientist argues that courts have an imperative duty to analyze the norms of the law for compliance with the Constitution of Ukraine, especially when the norm is outdated, incomprehensible or contains conflicts. At the same time, in cases where the law does not fulfill its function, judicial activism is justified to overcome gaps, resolve conflicts and carry out interpretation as much as possible in favor of the Fundamental Law of Ukraine. Thus, the researcher establishes that the ultimate limit of legitimacy for the spirit of the law is its compliance with the spirit of the Constitution of Ukraine and the principle of constitutional supremacy [8].

In turn, O. M. Yukhymyuk conducted a comparative analysis, studying teleological interpretation in the practice of the Court of Justice of the EU, emphasizing the importance of lengthy preambles in EU legal acts for laying the foundations of case law [9].

At the same time, despite significant achievements in the field of research into various approaches to the interpretation of legal norms, a number of important issues remain insufficiently disclosed and require further study. In particular, some practical problematic issues regarding the interpretation of legal norms by clarifying the original legislative intent, in particular on the basis of an analysis of judicial practice, are poorly studied in modern legal science. Although courts actively use explanatory notes and transcripts, as well as other tools when interpreting and applying legal norms to clarify the will of the relevant law-making authority, there is still no consensus in legal doctrine and practice regarding their official status as a source of information or only as an auxiliary tool of interpretation, which is especially relevant in view of cases when the content of the explanatory note contradicts the final text of the law or its purpose is political, not exclusively legal.

In addition, the relationship between the legitimate legal purpose of the law and the political or economic expediency traced in the travaux préparatoires requires further analysis in order to eliminate the risk of courts using political motives to justify their decisions.

Analysis. Legal doctrine distinguishes a whole system of methods of interpreting a legal norm, which are necessary to ensure the effectiveness of law enforcement. In scientific literature, such methods are usually referred to as: grammatical (linguistic analysis of the text of the norm), systemic (analysis of the norm in the structure of the act and the legal system), historical (taking into account the conditions of adoption) and teleological - clarification of the true goal that the legislator sought to achieve [10].

1. The concept and essence of teleological interpretation of legal norms in the aspect of the concept of legislative intent

The necessity for interpretation, especially the appeal to the teleological method, is due to two determinants, namely, the deficiency of the criterion of the quality of the law as an important component of the principle of the rule of law and the dynamic change of legal relations, which often outpaces the legislative process. It is in cases of ambiguity, gaps or conflicts in the law or other regulatory legal act that interpretation in favor of the person is applied, as well as clarification of the original legislative intent.

At the same time, the clarification of the original legislative intent is a methodologically difficult task for the court. As A. Miroshnychenko notes in this regard, when interpreting the content of the linguistic formula of the law, unlike a personal appeal to the author, there is no possibility of obtaining an unambiguous explanation. According to the scientist, the problem is not semantic (to clarify the true meaning), but interpretative in nature (to find the "best

interpretation"), since even an explanatory note or transcripts do not guarantee the detection of a consensus will, because not all members of parliament could be guided by those considerations [6].

In turn, R. Zippelius emphasizes that interpretation is always based on the possible meaning of a word and moves within its generally accepted meaning. The subject of interpretation, according to the scientist, must not only find the meaning, but also argue his choice by weighing the reasons and grounds that justify giving this or that meaning, that is, interpretation has the character of a discourse, the result of which is the choice of the most convincing and justified option [11].

Thus, from the position of R. Zippelius, the main thing in the process of law enforcement is the search for a legitimizing justification that follows from the functional understanding of law, namely, ensuring the adoption of consistent, fair and useful decisions that satisfy the interests of the participants in the relationship. Based on this, the scientist concludes that interpretation should take into account the distribution of power functions and, above all, implement the regulatory functions established by the legislator, since it is this approach that corresponds to the teleological criterion, according to which the interpretation of legal norms should be carried out taking into account the legislator's normative competence and his understanding of the goals and purpose of the rule enshrined in the norm [11].

In support of this approach, R. Zippelius notes that the legislator, as a representative of the will of society, determines forms of behavior to achieve certain goals, applying his discretion regarding the appropriateness of the chosen legal means. Therefore, according to the scientist, the one who interprets the law should be guided by the goal to which the legislator could or should come as a bearer of consensual ideas [11].

It should be taken into account that the "legislative intent" is not a mechanical set of opinions of individual authors of the project, but is an institutionalized intention that has undergone a procedure of discussion and adoption. The explanatory memorandum in this context is considered not as a private view of the initiator, but as part of the objectified will of the regulatory body, which legitimizes the final text of the act.

Within the framework of this study, the goal (purpose) of the norm is considered as an objectified result of norm-making activity, legislative intent as a source of formation of this goal, and the spirit of the law as an interpretative result of its clarification in the light of the principles of the rule of law and a specific historical context. Accordingly, the spirit of the law does not constitute an autonomous source of law and does not stand in opposition to its letter; rather, it functions as an interpretative lens through which the normative meaning of the provision is clarified.

Thus, ascertaining the original legislative intent (teleological interpretation) is a methodologically complex interpretative discourse that goes beyond the search for unambiguous content, requiring the court or other law enforcement body to weigh the arguments and choose the most convincing justification that corresponds to the functional purpose of the law and the principle of separation of powers.

When studying the question of the essence of the teleological method of interpreting a legal norm, it should be taken into account that the application of this method in the conditions of martial law, which has been in effect in Ukraine since February 24, 2022 [12], requires special attention to the social context. At the same time, the spirit of the law must correspond to the objective legitimate goal, and not only to the subjective political motives of the relevant law-making authority. For example, in a study devoted to the legitimacy of restricting certain social rights of citizens in the conditions of martial law, T. Fuley notes that the analysis of transcripts regarding the introduction of a one-time payment before May 5 showed that its goal was not exclusively social, but also political (a form of voter bribery), which contradicts the principles that the law should ensure [13, p. 267].

Considering that the issue of applying the teleological method of interpreting legal norms is directly related to the principle of legality as one of the elements of the rule of law, and also serves as a criterion for limiting judicial lawmaking and judicial activism, respectively, in a state in which the principle of separation of powers is established, the law-applying authority, in particular the court, must take into account the exclusive competence of the legislator and his understanding of the goals and purpose of the relevant legal norm, which corresponds to the traditional teleological criterion of interpretation. In this aspect, the expression: "Salus populi suprema lex esto" [14; 15].

After all, as stated in the Venice Commission Report "On the Rule of Law" No. 512/2009, adopted at the 86th plenary session on 25-26 March 2011, the rule of law is one of the fundamental values of the Council of Europe and

aims to ensure consistent, fair and effective decisions [16]. In view of this, the interpretation of the law through the prism of legislative intent should serve this very purpose, ensuring that the regulatory function of the law is implemented in accordance with its spirit and letter [17, p. 23].

Therefore, teleological interpretation of a legal norm is a way of clarifying the true goal of a legal norm (the spirit of the law), which the legislator sought to achieve when adopting the relevant act, by analyzing the travaux préparatoires of the draft act and the context, which is necessary to overcome gaps and resolve normative conflicts, as well as to ensure the rule of law.

2. Tools of teleological interpretation of legal norms

In the scientific literature, it is noted that the guide for determining the true purpose of adopting a law (legislative intent) is usually: the history of the law's publication and information about the state of affairs "before the law" (historical criterion); materials on its development (substantiation and discussion minutes), containing motives that reflect the goals of legal policy; the text of the law itself (preamble or other context) [11].

Moreover, ambiguity in the interpretation of the powers of public authorities can be avoided by referring to the preamble of the relevant legislation or to the preparatory documents prepared for its adoption, provided that this is permitted by national legislation [18, pp. 12-13].

Important aspects of the issue under study are already regulated in the Law of Ukraine "On Law-Making Activity", which entered into force and will be put into effect one year from the date of termination or abolition of martial law in Ukraine (clause 1 of Section XIV "Final Provisions").

Thus, in accordance with Article 30 of this Law, the subject of the law-making initiative assesses the impact of the draft regulatory legal act on public relations and sets out in the explanatory note, in particular, the relevance and importance of the problem that requires settlement by adopting (issuing) the act, as well as the most optimal way to solve the problem with an explanation of the cause-and-effect relationship between the chosen path and the expected impact on public relations of the draft regulatory legal act [19].

Thus, it is the explanatory note to the law that is one of the most important documents and, accordingly, interpretation tools that make it possible to understand the original legislative intent.

Prior to the entry into force of the above-mentioned Law of Ukraine "On Law-Making Activity", the content and meaning of the explanatory note and other travaux préparatoires on the draft regulatory legal act (in particular, minutes, meeting transcripts, etc.) are determined by separate acts of legislation.

In particular, in accordance with Part 1 of Article 91 of the Law of Ukraine "On the Rules of Procedure of the Verkhovna Rada of Ukraine", a draft law, a draft of another act is submitted for registration together with an explanatory note, which must contain: 1) justification of the need to adopt the draft law, its goals, objectives and main provisions and place in the legislative system; 2) justification of the expected socio-economic, legal and other consequences of the application of the law after its adoption; 3) other information necessary for consideration of the draft law, including information on analytical materials of lobbying entities if they are provided [20].

In addition, according to Part 1 of Article 54 of the same Law, the plenary session of the Verkhovna Rada is recorded in minutes, and Article 55 states that the relevant session is also stenographically recorded. It is determined that the stenographic bulletin of the plenary session additionally includes, in particular, the conclusions of committees, temporary special commissions, temporary investigative commissions on issues, if they were provided to people's deputies; texts of unspoken speeches of people's deputies; text of separate opinions of people's deputies on laws, resolutions, and other acts of the Verkhovna Rada adopted by the Verkhovna Rada [21].

Also, regarding the regulatory legal acts of the President of Ukraine, it should be noted that, according to the Decree of the President of Ukraine "On the Procedure for Preparing and Submitting Draft Acts of the President of Ukraine", the explanatory note to the draft act of the President of Ukraine must contain a justification for the need to issue the act, a description of its main provisions, information on the regulatory regulation of the relevant issue, a forecast of the expected political, socio-economic, and legal consequences of its implementation, as well as information on the impact of issuing the act of the President of Ukraine on the expenditure and revenue parts of the state budget [22].

In addition, in accordance with the Decree of the President of Ukraine "On Approval of the Regulations on the Procedure for Working with Draft Laws and Other Documents Submitted by the President of Ukraine for Consideration by the Verkhovna Rada," draft laws prepared for submission to the Verkhovna Rada of Ukraine at the initiative of the President of Ukraine are accompanied by an explanatory note, which must contain a justification for the need to adopt the draft law, as well as the expected socio-economic and other results of its application [23].

When developing a draft act of the Cabinet of Ministers of Ukraine on the basis of Part 1, § 50 of the Regulations of the Cabinet of Ministers of Ukraine, the following shall be attached to it: 1) an explanatory note containing financial and economic calculations; proposals based on the results of a public anti-corruption and/or public anti-discrimination examination of the draft act (if conducted); a report on a strategic environmental assessment, certificates of consultations with executive bodies and public discussion; reference and other information and analytical materials substantiating the need to adopt the act (if necessary); 2) a certificate of approval of the draft act; 3) a protocol of agreement on positions (if necessary); 3 -1) conclusions of the Ministry of Finance, the Ministry of Economy and the Ministry of Digital Economy; 4) a conclusion of the Ministry of Justice; 4 -1) a certificate specified in Clause 3, § 35 of these Regulations (to draft acts specified in Clause 1, § 35 of these Regulations); 4 -2) opinion of the European Commission (if available); 5) comparative table (if the draft act provides for amendments to other acts of the Cabinet of Ministers) [23].

Thus, the regulation of requirements for explanatory notes, transcripts and other travaux préparatoires in the legislation of Ukraine creates a regulatory basis for the use of these travaux préparatoires as an official source of clarification of the purpose, objectives and justification of acts, which is key to the application of teleological interpretation and avoidance of uncertainty in law enforcement practice.

It is worth noting that, unlike the law enforcement practice of the 1990s and the early 2000s, when travaux préparatoires were physically inaccessible to judges and participants in the case, the processes of digital transformation of the state have changed the methodological possibilities of teleological interpretation. The openness of electronic registers of draft laws, online archives of transcripts of plenary sessions, and the publication of explanatory notes in open data format allow the law-applying authority to promptly reconstruct the genesis of the norm. This transforms the teleological method of interpretation from a theoretical abstraction into an accessible and verified tool of judicial argumentation.

In terms of studying the tools of the teleological method of interpreting legal norms based on clarifying legislative intent, it is important to pay attention to the fact that the Supreme Court has already formed a certain practice regarding the issue raised, in particular, in the resolutions of November 19, 2018 in case No. 820/1835/18 [24], January 30, 2019 in case No. 820/4521/18 [25] and March 30, 2020 in case No. 820/1645/18 [26]. According to the position of the Supreme Court set out in these resolutions, when applying a rule of law, it is necessary, taking into account the letter of the law, to clarify: the actual legitimate purpose of the relevant law, which is established, in particular, through the analysis of the explanatory note to the draft law, transcripts of plenary sessions of the Verkhovna Rada of Ukraine (the speech of the rapporteur on this draft during its consideration in the first reading), conclusions of profile committees and structural units of the parliamentary apparatus that carried out expert and legal analysis of the draft law, etc.); study of the genesis of the development of the relevant legislative changes; study of the true essence of the problem that was to be resolved at the level of adopting the law.

The Supreme Court, for example, in the aspect of providing an interpretation of Part 2 of Article 8 of the Law of Ukraine "On Court Fees", according to which the court is granted the right to reduce the amount of the court fee or exempt it from payment on appropriate grounds [27], it was clarified that in the Explanatory Note to the draft law, the need for its adoption is justified by the fact that the proposed changes are aimed at normalizing the issue and optimizing the amount of the court fee that must be paid for filing an appeal or cassation complaint with the court against a court decision that was made during the period when there was no limit in the legislation on the payment of the court fee. Such proposals were perceived by the public ambiguously, given that they are designed mainly to reduce the financial burden for individual entities [28].

Thus, the use of travaux préparatoires for drafts of relevant legislative acts (explanatory notes, transcripts of discussions, conclusions of specialized committees, etc.) and preambles to adopted acts is recognized as a fundamental tool for revealing the original legislative intent and clarifying the spirit of the law, which allows effectively

going beyond the textual (literal) interpretation, identifying the true socio-political goals of the relevant act to overcome gaps and resolve normative conflicts.

3. Taking into account the spirit of the law when interpreting legal norms in the practice of the Constitutional Court of Ukraine and the Supreme Court

An analysis of the legal positions of the Constitutional Court of Ukraine set forth in its decisions, as well as judicial practice, shows that the court of constitutional jurisdiction and the Supreme Court have repeatedly applied a teleological approach to interpreting a legal norm to clarify the spirit of the law (legislative intent) in order to establish the rule of law and overcome legislative shortcomings and normative conflicts.

In particular, the Constitutional Court of Ukraine actively uses in its law enforcement practice the tools outlined in the previous part of the article. As noted in this regard in the Decision of December 13, 2011 No. 17-rp/2011 of the Constitutional Court of Ukraine, with reference to the provisions of Article 2 of the Law of Ukraine "On the Constitutional Court of Ukraine", the task of the Court is to guarantee the supremacy of the Constitution of Ukraine as the Fundamental Law of the state throughout the territory of Ukraine, given that the content of the decisions of the Constitutional Court of Ukraine and its legal positions should be aimed at strictly adhering to the spirit and letter of the normative provisions of the Constitution of Ukraine and its state-forming doctrine, reflected in the text of the preamble [29].

In addition, in its Decision No. 6-p(l)/2023 of September 6, 2023, the Constitutional Court of Ukraine examined the Explanatory Memorandum to the draft Law of Ukraine of June 15, 2018 (Registration No. 8488), approved as Law No. 2612, establishing that the purpose of adopting the draft law is to regulate the issue of importing vehicles into the customs territory of Ukraine, to ensure effective control over the movement and use of vehicles placed under the customs regime of temporary import, and to strengthen the liability of citizens for violating customs rules. In view of this, the Constitutional Court of Ukraine concluded in this Decision that the relevant amendments to the Customs Code of Ukraine comply with the Constitution of Ukraine, since the introduction of a mechanism for controlling the movement of goods to or from the customs zone, as well as the regulation of the import of vehicles into the customs territory of Ukraine, were carried out with the aim of strengthening liability for violating customs rules [30].

Also, in Decision No. 2-r/2018 of February 28, 2018, the Constitutional Court of Ukraine examined specific materials (the transcript of the plenary session, data from the State Border Service, the results of the roll-call vote, etc.) and concluded that violations of the constitutional procedure for considering and adopting the draft Law "On the Principles of State Language Policy" during its adoption as a whole at the evening plenary session of the Verkhovna Rada of Ukraine were systemic and significantly influenced the final result of the adoption of this law [31].

In addition, in its Decision No. 9-r/2018 of November 7, 2018, the Constitutional Court of Ukraine, based on a systemic analysis, in particular the explanatory note to the draft Law of Ukraine "On Preventing Financial Catastrophe and Creating Prerequisites for Economic Growth in Ukraine," concluded that the contested provisions of this Law were adopted in order to implement measures for the economical and rational use of public funds, prevent losses to the State Budget of Ukraine, and ensure social support for citizens based on the financial capabilities of the state [32].

Other examples of the application of teleological interpretation of legal norms by the Constitutional Court of Ukraine are the Decision of December 23, 2022 No. 3-r/2022, in paragraph 2.3.4 of the motivational part of which the Court noted that, according to the Explanatory Note to the Draft Law of Ukraine "On Amendments to the Law of Ukraine "On Civil Service" (Regarding the Receipt and Procedure for Recalculating Pensions)" (Registration No. 1295), the need to introduce recalculation of the size of civil servants' pensions was motivated by the fact that the norms regulating the pension provision of civil servants do not contain provisions on the recalculation of pensions. Thus, an increase in the level of remuneration of working civil servants does not cause corresponding indexations of previously assigned pensions to civil servants, which creates inequality in the conditions of social protection of citizens of Ukraine in old age and depends on the time of a person's retirement [33].

Also, in the case regarding the compliance with the Constitution of Ukraine (constitutionality) of a separate provision of paragraph two of part one of Article 204-3 of the Code of Ukraine on Administrative Offenses, in the Decision of October 12, 2022 No. 8-p(l)/2022, the Constitutional Court of Ukraine proceeded to analyze the Explanatory Note to the Draft Law of Ukraine of June 17, 2015 (Registration No. 2109a), which noted that the purpose of adopting the

draft law is to introduce a mechanism for controlling the movement of goods to or from the area of the anti-terrorist operation, identifying violations of the procedure for their movement, illegal schemes for evading the established control procedures, persons who committed them, and bringing to justice those guilty of such violations [34].

A similar approach to interpreting the rule of law has been repeatedly used by the Supreme Court in its resolutions.

Thus, the Grand Chamber of the Supreme Court (hereinafter referred to as the Grand Chamber of the Supreme Court) in its resolution of September 21, 2021 in case No. 910/10374/17 drew attention to the fact that the interpretation of legal norms by the court is an integral part of law enforcement, since any application of a norm is impossible without clarifying its content. Accordingly, courts of general jurisdiction, when applying the law, are obliged to reveal its true content [35].

In addition, in the above-mentioned resolution, the Supreme Court of Ukraine, when considering the issue of the terms for the execution of an executive inscription by a notary, referred to the direction of legislative intent, which was confirmed by the subsequent amendments to the Law "On Notaries" of 2020. These amendments, as established by the Supreme Court of Ukraine, eliminated conflicts and determined a single three-year term, which confirmed the legislator's initial intention to establish the same terms for notarial protection of rights as for judicial protection [35].

In another resolution dated July 16, 2022 in case No. 160/3364/19 of the Supreme Court carried out an analysis of the explanatory note to the draft Law of Ukraine No. 101-IX of September 18, 2019 "On Amendments to the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine to Reduce Pressure on Business" to establish the goal of humanizing criminal liability and eliminating the erroneous practice of using verdicts on fictitious entrepreneurship as prejudicial evidence in tax disputes [36].

In addition, during the consideration of case No. 825/506/18, the Supreme Court of Ukraine, in its resolution of October 23, 2023, examined the explanatory note to the draft Law of Ukraine No. 76-VIII "On Amendments and Recognition of Certain Legislative Acts of Ukraine as Invalid" dated December 28, 2014, to substantiate the legality of the delegation of powers to the Cabinet of Ministers of Ukraine regarding the recalculation of pensions to employees of the prosecutor's office, which was due to the need for economical and rational use of public funds. From the specified Explanatory Note, the Supreme Court of Ukraine established that the adoption of this Law was due to the need to implement measures for the economical and rational use of public funds and bring the provisions of certain laws of Ukraine into line with the financial capabilities of the state, create conditions for stabilizing the financial condition of the state and improving certain provisions of social policy [37].

It is also necessary to pay attention to the resolution of January 20, 2021, in which the Supreme Court of Ukraine, considering case No. 800/162/14, confirmed the key role of travaux préparatoires in legitimizing parliamentary decisions. The court established that the motives, purpose and historical context of the adoption of the Resolution of the Verkhovna Rada of Ukraine No. 775-VII (on the dismissal of judges of the Constitutional Court of Ukraine) were properly set out in the preamble to it and in the explanatory notes to its draft. Referring to these documents made it possible to establish the true intention of the legislator, which was expressed in the desire to take measures to renew the composition of the Constitutional Court of Ukraine in order to eliminate the negative socio-political and legal consequences caused by the previous decision [38].

Thus, the Supreme Court of Ukraine used teleological interpretation to reveal legislative intent, stating that due to the presence of motives in the preamble and explanatory notes, the plaintiff's right to proper justification of the parliamentary decision adopted against her was not violated. This approach demonstrates that in Ukrainian judicial practice, explanatory notes and preambles are not just additional documents, but important interpretative sources for clarifying the spirit of the law and confirming the legitimacy of the adopted political and legal act.

It should be emphasized that some bodies, in their decisions, when providing interpretations or assessments of legal norms, also use the provisions of the explanatory notes to drafts of such acts.

In the Advisory Opinion on Draft Law No. 3730, approved by the decision of the High Council of Justice dated July 9, 2020 No. 2075/0/15-20, the latter refers to the Explanatory Note to Draft Law No. 3730. Based on the provisions of this note, the High Council of Justice established that the purpose of adopting the specified act is to equalize the workload between the judges of the Cassation Administrative Court within the Supreme Court; in the opinion of the subjects of the legislative initiative, the way out of this situation is to regulate the workload of judges of different

judicial chambers by evenly distributing all cases, regardless of their category, among all judges of the Cassation Administrative Court within the Supreme Court and providing the opportunity to decide on the issue of creating specialized chambers to the assembly of judges in accordance with the norm of part four of Article 37 of the Law of Ukraine "On the Judiciary and the Status of Judges". Such an approach, according to the conclusion of the High Council of Justice, will ensure the effective and timely conduct of judicial proceedings by the court of cassation" [39].

However, it should be noted that the legal significance of travaux préparatoires for draft legislative acts remains debatable in judicial practice. There is a position that the explanatory note to the draft law does not belong to the official sources that the court can apply, since according to Article 7 of the Code of Civil Procedure of Ukraine, the court should be guided only by sources of law. From this point of view, the purpose of the norm, according to the Court, should be determined in accordance with the preamble of the adopted law, and not previous working documents [40]. Similar arguments were used, in particular, in cases of non-payment of a single contribution [41].

In view of this, judicial practice also finds an approach to interpreting legal norms based on the study of the preamble of the law. In particular, the preamble to the Constitution of Ukraine, which was supplemented by the Law of Ukraine of February 7, 2019, in particular with provisions on the European identity of the Ukrainian people and the irreversibility of Ukraine's European course, was referred to by the Supreme Court in its resolution of May 31, 2021 during the consideration of case No. 640/8656/19 [42].

In addition, in practice, access to some preparatory documents, such as transcripts of meetings of the Cabinet of Ministers of Ukraine, is limited, as they may be marked "For official use", which is confirmed by court decisions.

For example, having considered the claim of the information requester to the Secretariat of the Cabinet of Ministers of Ukraine in case No. 826/19156/15, the District Administrative Court of Kyiv decided that the refusal to provide information was lawful, as it was based on the clear provisions of the Law of Ukraine "On the Cabinet of Ministers of Ukraine". The decision of the court of first instance was left unchanged by the court of appeal. The Supreme Administrative Court of Ukraine refused to open cassation proceedings on the requester's cassation appeal [43]. A similar position regarding limited access to transcripts of Government meetings was taken by the District Administrative Court of Kyiv in case No. 640/22384/18 [44].

4. The position of the European Court of Human Rights and other institutions of the European Union on the issue of teleological interpretation of legal norms

The ECHR and other EU institutions also confirm the importance of analyzing preparatory documents for draft laws to provide a correct interpretation of legal norms based on the identification of the original legislative intent (the spirit of the law).

The case law of the ECHR is particularly instructive in this regard. In the judgment in the case of "Hopital local Saint-Pierre d'Oléron and Others v. France" (application no. 18096/12), the ECHR considered a situation where the applicants wanted to take advantage of technical shortcomings in the wording of the law (the letter of the law) in order to obtain reimbursement of social contributions. Instead, the legislature intervened and adopted a new law that clarified its content, replacing imprecise expressions with more precise ones in order to confirm the true intention of the legislator – to exempt from contributions only assistants working in the private homes of individuals, and not in collective institutions. The ECHR recognized that: the formal purpose of the interference was to correct a technical defect and clarify the content of the law; the applicants could not rely on technical shortcomings without the legislature having the right to correct such shortcomings in the interests of justice and the spirit of the law [45].

This decision confirms that in the practice of the ECHR, the spirit of the law (the original legitimate intention) prevails over the letter of the law when the latter is used to circumvent the objectives of the regulation.

Also in the decision in the case of "Ukrkava, TOV v. Ukraine" ("Ukrkava, TOV v. Ukraine", application No. 10233/20, pp. 43-44), the ECHR noted that national authorities, and in particular courts, must interpret national legislation and resolve problems of interpretation of national legislation; a court will not substitute its own interpretation for its own in the absence of arbitrariness. This applies, in particular, to the interpretation by courts of rules of a procedural nature, such as the time limits governing the submission of documents or the filing of appeals.

In this connection, the Court also stressed that the right to a fair trial must be interpreted in the light of the Preamble to the Convention, which proclaims the rule of law as part of the common heritage of the Contracting States. One of

the fundamental aspects of the rule of law is the principle of legal certainty, which, inter alia, guarantees a certain stability of legal relations and contributes to public confidence in the courts. On the other hand, the constant existence of contradictory judicial decisions may create a state of legal uncertainty, which may reduce public confidence in the judicial system, while such confidence is clearly one of the essential components of a State based on the rule of law. Furthermore, it would be contrary to the principle of legal certainty enshrined in the Convention if national courts were able to take decisions contrary to the law and thus interpret provisions of national law in an unpredictable manner, based on an abstract statement outside the scope of any reasonable judicial discretion [46].

A similar approach to the analysis of explanatory notes to laws was used by the ECHR in the case of *Svit rozvagtov and others v. Ukraine*, application no. 13290/11 and 2 others, paragraphs 8, 147 [47].

The Venice Commission also criticizes in its conclusions initiatives that do not contain convincing reasons in the explanatory notes, or when the content of the note does not correspond to the content or purpose of the draft law itself (for example, on reducing the number of Supreme Court judges without substantiating the reform), which emphasizes the European standard according to which the legitimacy of legislative changes requires their clear teleological justification in the preparatory documents [48].

It is also important to note that the Explanatory Memorandum to the Bordeaux Declaration on Judges and Prosecutors in a Democratic Society is an official document of the Council of Europe, accompanying the declaration itself, adopted on 18 November 2009 in Brdo (Slovenia) by the Consultative Council of European Judges (CCJE) and the Consultative Council of European Prosecutors (CCPE). The declaration and the Explanatory Memorandum were prepared jointly by the CCJE-GT and CCPE-GT working groups during a meeting in Bordeaux (France) [48].

Thus, an analysis of the practice of the ECHR and the EU institutions suggests that teleological interpretation through the prism of preparatory documents is a key mechanism for ensuring that the application of the law is consistent with its true purpose and the principles of the rule of law, preventing both arbitrary interpretation and abuse of technical shortcomings in the law.

5. Criteria for the admissibility of the interpretation of the law based on the clarification of legislative intent

Teleological interpretation, as a way of clarifying the spirit of the law, is a tool for ensuring justice, but it carries significant risks of excessive judicial discretion and abuse of judicial activism. The establishment of the rule of law requires the establishment of clear limits to this discretion.

According to the Venice Commission, the discretion of public authorities and law enforcement agencies should be limited by the letter and purpose of the law that grants them the power, as well as by other elements of the rule of law. The key challenge for all stakeholders remains to ensure compliance with the letter and spirit of the law, which promotes consistent and uniform application of the law and prevents arbitrariness [16].

For judicial practice, this principle is transformed into a methodological guideline: not to apply the law in accordance with its letter if this would lead to a violation of the legitimate objectives of the law [50]. Clarifying the true objectives of the law from the preamble, explanatory memorandum, transcripts and analysis of the problem the act is intended to solve allows the court to give the norm the correct interpretation. This, in turn, contributes to the predictability of court decisions and the uniform application of legislation, which is one of the key requirements of the principle of legal certainty. An important safeguard here is the foreseeability test: teleological interpretation is permissible as long as it does not create a situation of "unforeseeable burden" for an individual, that is, it does not lead to the imposition of obligations that could not be deduced from the text of the norm even taking into account its objective.

This approach is universal and is confirmed by international law. Thus, Article 31 of the Vienna Convention on the Law of Treaties establishes that a treaty must be interpreted in good faith in the light of its object and purpose, taking into account the context (including the preamble). The travaux préparatoires (Article 32) can be used as additional means of interpretation to confirm the meaning or eliminate ambiguity, absurdity or unreasonableness of the results to which textual interpretation leads [51].

In this regard, the position of the US Supreme Court set out in the decision in the case "*US v. Two Hundred Barrels of Whiskey*", is correct, according to which the court's duty is to study the entire law, its real content, spirit, purpose, wording and to use its obvious and natural meaning to read the act for this purpose in a way that will best reflect the purpose of the legislator; the legislative purpose is a guide for proper judicial interpretation [52].

Clarifying legislative intent also serves to comply with the principle of separation of state powers. The court, using teleological interpretation, must implement the regulatory functions established by the legislator, and not create new norms, appropriating to itself the norm-making competence. Otherwise, there is a risk of the court not applying the law, which can lead to systemic violations. This tension is especially noticeable in social disputes (for example, regarding a one-time cash benefit "until May 5"), where the court balances between the protection of social rights and the need to respect the discretion of the legislator in determining the financial capabilities of the state.

Ultimately, the interpretation of the law must be inextricably linked to the rule of law. As the ECHR notes, this principle does not have a single definition, but is evolutionary, situational and includes a multitude of components: the quality of legislation, legal certainty, equality before the law and the avoidance of excessive judicial activism. The Constitutional Court of Ukraine, in turn, emphasizes that the content of its decisions must be aimed at strictly adhering to the spirit and letter of the normative provisions of the Constitution of Ukraine and its preamble (for example, in matters of the status of the Ukrainian language) [7].

Thus, teleological interpretation is legitimate and necessary, but its limits lie where the spirit of the law begins to contradict the principle of separation of powers or leads to a violation of other components of the rule of law. Compliance with the letter and spirit of the law through the analysis of its purpose ensures the validity, predictability of judicial decisions, as well as their compliance with the legitimate goal of state policy, and not with the subjective intentions of individual subjects of interpretation.

However, the application of the spirit of the law requires a balanced and critical approach and adherence to clear methodological boundaries, as it should not replace the legislator, go beyond the possible semantic load of the norm (*contra legem*) or violate the principle of separation of powers and legal certainty, which can lead to excessive judicial discretion and abuse of judicial activism. In conditions of social transformations, when the spirit of the law is dynamic, courts bear a special responsibility for ensuring a dynamic balance between the strict letter of the law and its relevant, reasonable purpose, which is the key to justice, predictability and the establishment of the rule of law.

Conclusions

Travaux préparatoires for drafts of relevant legislative acts (explanatory notes, transcripts of discussions, conclusions of specialized committees, etc.) and preambles of adopted acts are an effective tool for reconstructing the historical context of the adoption of a legislative act and clarifying the original legislative intent or other law-making authority (the spirit of the law). Systematic analysis of these documents allows us to go beyond the purely linguistic (textual) meaning of a legal norm, identify the social problems that the act was aimed at solving, and understand the deeper socio-political and economic goals pursued by the relevant law-making authority. Such an approach is critically important for overcoming gaps and resolving normative conflicts through the interpretation of relevant legal norms.

Analysis of the practice of the Constitutional Court of Ukraine and the Supreme Court indicates a constant tendency to use explanatory notes and other travaux préparatoires to substantiate the interpretation of norms on the basis of a teleological (purposeful) approach, which confirms the evolution of interpretation from a textual (literal) to a value-oriented approach, which gives preference to clarifying the true intention (will) of the legislator. Appeal to comparative analysis, in particular the practice of the ECHR, confirms the universal importance of using travaux préparatoires for correct interpretation, contributing to the harmonization of law enforcement.

Clarifying legislative intent during the interpretation of the law is an effective mechanism for overcoming gaps and resolving conflicts in the legislation, which is especially important in conditions of imperfection of the legislative drafting, the presence of internally contradictory or unclear formulations in a specific legal norm. This approach ensures the compliance of law enforcement practice with the actual goals of the legislative act and the fundamental principles of the rule of law, minimizing the risks of ambiguous application of legal norms and contributing to the realization of legitimate expectations of participants in legal relations.

The use of travaux préparatoires to clarify the spirit of the law requires a critical approach and adherence to clear methodological boundaries, since in the process of such interpretation the court should not replace the relevant subject of norm-making. Going beyond the actual text of the norm (*contra legem*) threatens compliance with the principles of legal certainty (predictability and stability of regulatory regulation). At the same time, teleological

interpretation through recourse to travaux préparatoires should be considered as a means of compensating for defects in the quality of the law (vagueness or ambiguity of the text), which allows the court to ensure predictability where the literal text creates legal uncertainty. It should be taken into account that travaux préparatoires do not always reflect the consensus will of the legislative body and may contain the positions of only individual drafters, and therefore they cannot automatically be identified with the legitimate purpose of the law. Given this, the spirit of the law should be derived not from declarative or politically motivated intentions, but from the objective legal purpose of regulation, consistent with the principles of the rule of law.

In conditions of significant social changes, when the spirit of the law can undergo dynamic changes under the influence of various factors, interpretation through legislative intent requires special responsibility on the part of law enforcement entities. In such cases, the priority becomes adherence to the principles of good faith and reasonableness, as well as avoidance of excessive formalism, which may harm national security, public interests and human rights. Courts and law enforcement agencies must ensure a balance between strict adherence to the letter of the law and understanding its real, relevant purpose in specific historical conditions in order to avoid deformation of the essence of the law and its separation from social needs.

Interpretation of the law through the prism of the will of the relevant law-making authority, combined with textual analysis, systemic and other methods of interpretation, and also based on general principles of law, should serve to establish the rule of law and is designed to ensure fairness, reasonableness, predictability of judicial decisions and the realization of legitimate expectations of participants in legal relations, transforming the spirit of the law into an effective instrument of justice that does not replace, but complements the letter of the law, ensuring the integrity and value capacity of the legal system. At the same time, teleological interpretation will be effective only on condition that it remains predictable for the subject of the relevant legal relations and does not create new obligations or restrictions that cannot be deduced from the text of the legislative act even taking into account its purpose.

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