MODERN LEGAL HERMENEUTICS AS A MECHANISM OF INTERPRETATION OF PRINCIPLES AND VALUES IN LAW

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Abstract

The purpose of the article: the reflection of legal hermeneutics as one of the main mechanisms for the interpretation of the principles and values of law. The research methodology is based on a complex combination of general scientific (analysis, synthesis, analogy, etc.), philosophical (hermeneutical) and special legal (regulatory and analytical, comparative legal) methods. The scientific novelty of the work in the disclosure of consists in revealing the significance of legal hermeneutics as one of the main mechanisms for interpreting the principles and values of law, as well as the study of the possibilities of applying legal hermeneutics in reformed legal systems. Conclusions. The need to apply hermeneutical practices in law arose due to the discrepancy between the concepts of «legal act» and «law». Statutory instrument is considered only as a guide on the road to living law. At the same time, while awarding judgement, the judge must understand what the legislator has invested in the content of the law and how to interpret it in a particular case. Thus, it is obvious that the legal hermeneutics expressively demonstrates the essence of law as a pure legal, natural one. Legal hermeneutics acquires a new axiological level, which opens up a new way to the perception of a person, his rights and freedoms by the highest social values. The absence of a legislative monopoly on lawmaking makes it possible to take into account the significance of legal values and principles at all stages of the creation and application of law.

Keywords

Hermeneutics – Legal hermeneutics – Hermeneutic circle – Legal culture

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Introduction

The peculiarity of law in the states of the Roman-German and Anglo-American legal families is that it consists not only of the legal norms created by the legislator, but also covers their interpretatiis the role of modern lawyers. The starting point of any legal thinking is the statutory instruments. However, in general, they are only the basis, the foundation of legal structures, the content of which must be expanded by interpretation.

The introduction of modern digital technologies into legal practice strengthens the formalism of many legal actions (digital contract templates, standard verification and other computer procedures, and etc). However, the whole variety of newly emerging and already existing legal procedures cannot take into account a huge amount of human`s socio-economic activities. This, in turn, requires the establishmentn of a hermeneutic link between legal schemes and practical actions of subject of law.

The ability to correctly and adequately interpret legal texts is one of the manifestations of the high legal culture of a lawyer. In this regard, interpretation takes the leading place in modern legal science and practice, this creates the need to show with concrete examples how it affects the content, in particular, of criminal law.

Literature Review

The interpretation of legal texts is subject of focus of many scholars. Thus, the Russian researcher Marina Bayteyeva adresses to the problem of understanding legal texts from the standpoint of Gadamer's hermeneutics. In her opinion, the main problem of the interpretation of texts of law is to bridge the gap between the general (normative text) and the special (legal case). In this regard, she considers the idea of Gadamer to solve the problem with the help of the philosophy of Aristotle. Such an understanding of the text connects such components in interpretation as the history of the text, the traditions of its perception and the life experience of the interpreter. This operation, the scientist concludes, ensures the success of both the interpretation of the text and the application of “general” statements to “special” cases, and also shows the relationship between the independence of one’s own understanding of things by the interpreter and their semantic description in the text[1].

The Chinese scholar Ch.-S.Yang refers to the specifics of the interpretation of legal texts by judges based on Gadamer's philosophy. Legal hermeneutics, the scholar writes, postulates that judges actively intervene in the process of interpreting laws based on “prejudice” and “hermeneutic circle”, which is contrary to the traditional legal syllogism. According to legal hermeneutics, the process of interpreting laws is not a process of perceiving or discovering existing laws, but a process of creating new acts. Legal hermeneutics, says Yang, was mainly formulated in German jurisprudence in the 1970s, accepting and theorizing philosophical hermeneutics and, in particular, the philosophical and ontological hermeneutics created by Hans-Georg Gadamer. In this regard, the Chinese philosopher analyzes the philosophical and ontological hermeneutics created by Gadamer in order to understand the philosophical foundations of legal hermeneutics. According to his theory, the philosophical and ontological hermeneutics of Gadamer can be summarized as

[1] M. V. Baiteyeva “Application of the “general” to the “special” from the standpoint of hermeneutics”. News of higher educational institutions, Jurisprudence, num 3 (2013): 34-49.

follows. Gadamer does not advocate that hermeneutics is understood as the methodology of the humanities just as Wilhelm Dilthey. This is because hermeneutics does not accept epistemological characteristics, but rather ontological characteristics. Gadamer, according to the scientist, justifies this, based on the “prejudice” that any unfinished has already had. This prejudice adopts the “preliminary structure of understanding” established by Heidegger. In addition, prejudices are based on "authority" and "tradition." Meanwhile, Gadamer argues that the ontological-hermeneutical understanding is considered through the historically extended fusion of the horizon in relation to the theory of the hermeneutic circle. Gadamer quotes it as “wirkungsgeschichtliches Prinzip.” Nevertheless, Gadamer argues that wirkungsgeschichtliches Prinzip is not only limited to humanitarian areas, but even applied in areas of natural science, using languages as a medium. Taking this into account, the researcher from China continues, ontological hermeneutics is literally asserted as a universal ontology. The philosophical and ontological hermeneutics formulated by Gadamer later produced many sensations. However, such a feeling was not limited to humanitarian fields, such as literary critics, the interpretation of history or classical philosophy. Gadamer's hermeneutics had a great influence on laws, social sciences and even natural sciences. At the same time, Yang writes, there was also a criticism of Gadamer's hermeneutics. For example, Jurgen Habermas, speaking with Gadamer in the debate on hermeneutics, criticizes that philosophical and ontological hermeneutics may be distorted by ideology, but this is ignored[2].

The specificity of legal hermeneutics is focused on the research of Brazilian scientists É. R. Messias and V. M. Do Karmo. They write that at present, legal hermeneutics has specific characteristics, since, due to vague legal concepts, a judge must play a very constructive role in the semantic content of the statements being analyzed, which contributes to the emergence of judicial activity[3].

The influence of the teachings of Paul Ricoeur on legal hermeneutics is analyzed by the Czech philosopher M. Piyenyazek, noting that Ricoeur developed a comprehensive theory of interpreting two seemingly distant phenomena: literary texts and human actions. By linking these questions, it becomes possible, based on the work of Ricoeur, to build a unified theory of the interpretation of legal texts and legally significant human actions. In this theory,continues Piyenyazek, for jurisprudence there is an opportunity to formulate a comprehensive theory of the application of law, which has proved itself well in the ontology of the recipient of a legal text. It should be emphasized, the Czech scholar believes that the benefits obtained as a result become especially noticeable when they viewed against the background of the methodological flaws of legal positivism regarding the interpretation of law[4].

The work of the Brazilian philosopher A. Y. Krell is devoted to the contribution of M. Heidegger to the subject under study. According to his views, Martin Heidegger, one of the most influential philosophers of the 20th century, is the theoretical reference point for an increasing number of authors in the legal doctrine of Brazil, especially in the field of

[2] Yang Chun Soo, “A Study on the Philosophical Bases of Legal Hermeneutics - Focused on Gadamer’s philosophical-ontological hermeneutics”. Kangwon Law Review, num 49 (2016): 825-867.
[3] V. M. Do Carmo y E. R. Messias, “Post-modernity and legal principiology: The judicial activism and its validity in the context of the Democratic State of Law”, Revista brasileira de direito, num 3 (2017): 189-205.
[4] M. Pieniazek, “The Application of Paul Ricoeur's Theory in Interpretation of Legal Texts and Legally Relevant Human Action”, International journal for the semiotics of law-revue internationale de semiotique juridique, num 3 (2015): 627-646.

hermeneutics, interpretation and application of the law. This contribution, according to Krell, hardly concerns objections that were directed against the ideas and theories of Heidegger. His use of the language, which is filled with mystical and poetic elements, has already been sharply criticized by several authors, who question their consistency and utility for confronting theoretical and practical problems. In fact, according to a Brazilian researcher, Heidegger's ideas on hermeneutics in the field of law lead to a reassessment of understanding at the expense of explanations and reasoning. His idiomatic creations go beyond rationality, reflecting a rather subjective experience. At the same time, Krell concludes, his "hermeneutics of factuality" can hardly be used in the legal sphere, where rational communication should prevail to provide a better understanding of the key elements of the interpretation of the law, allowing even its criticism and control[5].

At the same time, recognizing the importance of hermeneutics for law, the authors are not always ready to recognize it as one of the main mechanisms of interpretation in legal science and practice.

The purpose of the article is the reflection of legal hermeneutics as one of the basic mechanisms for interpreting the principles and values of law, which allows not only the legislator, but also judges to create law, as well as the study of the possibilities of using legal hermeneutics in reformed systems of law.

Presentation of the main material

It is known that the methodological basis of legal hermeneutics is philosophical hermeneutics[6]. Therefore, it is necessary to refer to the original concept. Initially, hermeneutics (from the Greek germeneo - explain, interpret) understood the art of interpreting texts (ancient, legal, the Bible, and others) in order to search for their meaning; teaching about the principles of interpretation. In the late XIX - early XX century hermeneutics received the status of the doctrine of "understanding" and was often used as a methodological basis for the humanities (as opposed to "explanation" in the natural sciences)[7].

The founder of modern philosophical hermeneutics is the German philosopher, a student of Martin Heidegger, Hans Georg Gadamer. Gadamera hermeneutics is a philosophy of understanding, which is the basic concept of hermeneutics. It is the category of "understanding" that is a universal characteristic of the totality of human knowledge about the world and the existence of man in it, as the philosopher writes in detail in the article "Language and Understanding"[8].

In traditional hermeneutics, "understanding" is realized through interpretation and is a sign that a person understands a certain thing, knows how to see and highlight what is essential in it. Thus, understanding is a unique way of knowing, the ability to think, the ability to reason. A necessary prerequisite for understanding is the gained knowledge. They

[5] A. J. Krell, "The ontological hermeneutics of Martin Heidegger, His use of language and ITS importance for thelegal area", Revista brasileira de estudos politicos, num 113 (2016): 101-147.
[6] A. E. Pisarevsky, Legal hermeneutics. Socio-philosophical methodology of interpretation and interpretation of legal norms. Extended abstract of PhD's thesis (Krasnodar: Krasnodar Academy of the Ministry of Internal Affairs of the Russian Federation, 2004).
[7] P. Ricoeur, Conflict of interpretations. Essays on hermeneutics (Moscow: Medium, 1995).
[8] G. G. Gadamer, The relevance of the beautiful (Moscow: Art. 1991).

precede any understanding and constitute its initial basis. Thinking without such a basis would be fiction. The Russian researcher E. A. Nikitina adderes to a similar point of view. In her opinion, "understanding is achieved on the path of movement from the external language form of thinking to the internal essence of thinking, in which the psychological and grammatical methods help the researcher. Understanding the text meant getting used to the world of its author and reconstructing the past" [9].

The starting point of philosophical hermeneutics is the hermeneutic circle, that is, a feature of the process of understanding, combined with its cyclical nature. Various modifications of the hermeneutic circle are connected with the understanding of the interdependence of explanation and interpretation, on the one hand, and understanding, on the other; in order to understand something, this phenomenon needs to be clarified, and vice versa.

In traditional hermeneutics, the hermeneutic circle is considered as the interaction of a whole and a part: to understand a whole, it is necessary to understand its individual parts, but to understand parts it is necessary to have an idea of the content (meaning) of the whole.

Thus, the goal of hermeneutics is not to break the hermeneutic circle, but to enter it and understand its specificity. The problem of the hermeneutic circle was central to the philosophy of Martin Heidegger, who interpreted it in his own way. In contrast to the positivist-oriented philosophers who defended the position that knowledge is unconditioned by understanding, Heidegger regards understanding as the initial, necessary and essential basis of any process of knowledge. The basis of understanding, in his opinion, is the backbone of all human knowledge. It precedes knowledge, forms an ontological basis (way of being), on the basis of which a secondary understanding and scientific knowledge in general are built. If a researcher seeks to understand the essence of a phenomenon, act, deed, it is necessary, first of all, to understand the state of society as a whole (politics, economics, morality, law, etc.) in relation to which one can know the meaning of a certain phenomenon. This is the hermeneutic circle: the conditions of understanding in it are the comprehension of the state of society in general, and the understanding itself is the awareness of a certain phenomenon.

Modern philosophical hermeneutics (E. Betty, J. Habermas, P. Ricoeur, G. Gadamer) is also based on Heidegger`s ideas. G. Gadámer, in particular, shares Heidegger's views on the problem of the basis of understanding. He also believes that "understanding always incorporates the basis of understanding"[10]. At the same time, he makes adjustments to the Heideggerian doctrine regarding the basis of understanding, based on the fact that it is conditioned by the tradition on which each researcher relies. If M. Heidegger wanted to rethink the traditional philosophy, then Gadamer, on the contrary, calls to pay attention to the tradition, including the philosophical, as such, which causes not only the basis of understanding a person, but also the way of his being. The Gadamera hermeneutic circle means such an understanding, which is the interaction of the "movement of tradition and the interpreter". As Gadamer stresses, "the work of a germeneut is not to develop an understanding procedure, but to clarify its conditions"[11].

[9] E. A. Nikitina, "The problem of understanding in philosophical hermeneutics". Prospects for science and education, num 5 (2015): 9-14 y V. M. Leibin, Freud, psychoanalysis and modern Western philosophy (Moscow: Political literature, 1990).

[10] P. Ricoeur, Conflict of interpretations…

[11] V. M. Leibin, Freud, psychoanalysis and modern Western philosophy…

Thus, Gadamer advocates recognition of the crucial role of tradition in the historical process and in human cognitive activity. Awareness and conquest of tradition, in his opinion, a necessary condition for any understanding.

Modern Western jurisprudence makes extensive use of the philosophical doctrine of understanding and the hermeneutic circle. For example, based on the fact that philosophical hermeneutics is a general doctrine of understanding (interpretation), hermeneutic natural law is defined as rules of behavior that are formed on the basis of the anthropologically understandable nature of human. The means of anthropological understanding are phenomenology, existentialism, personalism, psychoanalysis, structuralism, utilitarianism, and religious phenomenology. Modern legal hermeneutics is the application in the law of existential-phenomenological hermeneutics, first of all, M. Heidegger, G. Gadamer and P. Ricoera.

From the point of view of supporters of legal hermeneutics, law is not identical with the legal act. Traditionally, it is interpreted as justice, which is the result of freedom and civil-political equality. The very same “freedom arises and affirms in the world in a somewhat invisible, but clearly designated form of law: in the form of law and order, responsibility, permits and prohibitions, offenses”[12]. The legislator is not the supreme interpreter of justice. Such interpreters in the state are judges, whose main task is the interpretation of legislation with a view to a fair resolution of a legal conflict. Here it is necessary to emphasize the independence of the judiciary from the legislative branch.

A modern Western judge, a follower of hermeneutics, is guided by the richness of the content of daily life events, which give rise to the present “living” (and not “written”) law. It cannot be outlined by abstract legal norms; therefore, the judge should “find”, “extract” this law from the social content of the case under consideration, guided by reason, conscience, and ideas about the fair in modern life. This is the hermeneutic legal circle, which should be a lawyer. Regulations (codes, laws) are considered primarily as a kind of guidebooks in search of a fair solution, and not as strict rules, orders, to interpret and decide in a certain way. Western hermeneutics lawyers see in codes, laws, not a system of norms, but, rather, more or less clear boundaries of legal constructions that need to be filled with interpretation. What the legislator has not prescribed, the court may add. Codes, therefore, are only starting points, and not the completion of legal regulation of relations.

This state of affairs means that the law in the states of the Anglo-American legal family consists not only of the legal norms formulated by the legislator, it also covers their interpretation by the judges. Decisions made by the judge due to the interpretation of legal norms are the source of law, that is, the judge acts as the creator of the legal norm.

It should be noted that the Anglo-American legal hermeneutics is fundamentally different from the approach of lawyers of the Romano-Germanic legal family to the interpretation of legal texts. The latter are trying to understand what the legislator wanted to say, and representatives of the Anglo-American hermeneutics determine the objective content of the text, regardless of the position of the legislator. This is possible using the methodology of the hermeneutic circle. A lawyer should apply this methodology with the deep conviction that only on the basis of hermeneutic interpretation can be made a fair decision in any given situation. At the same time, he should operate well with factors of

[12] O. G. Danilyan; A. P. Dzeban; Y. Y. Kalinovsky; E. A. Kalnytskyi y S. B. Zhdanenko, “Personal information rights and freedoms within the modern society”, Informatologia, num 51 (2018): 24-33.

understanding, among which are the circular nature of thinking, the background of experience and the relativity of judgment about the content of the subject, highlighted by V. Dilthey and analyzed taking into account modern views by Russian scientist A. E. Bochkarev[13].

Recall that the starting point of the hermeneutic circle is a condition for understanding; it is the basis of all human knowledge. In jurisprudence, the method of understanding the legal act is a preliminary understanding of the nature of personality. In European universities, such a preliminary understanding of the legal act is called “pre-law”. The pre-law precedes purely legal knowledge and forms the ontological basis (way of being) on the basis of which a secondary understanding is built.

A secondary understanding is a definite decision of a judge, and a fair decision of a judge is impossible without his understanding of the conditions for understanding the essence of the legal act.

Thus, according to the terms of the hermeneutic circle, on the one hand, the judge must be well aware of the condition of understanding the legal act (the nature of the person and the economic, political, ethical side of the case associated with it), and on the other, make a decision (secondary understanding of law) based on the conditions of understanding the legal act. The decision of the judge is the final point at which the law is disclosed in its specific completeness.

Obviously, legal hermeneutics expressively demonstrates the essence of law as being above legal. In order to know such an entity, it is necessary to leave the boundaries of the jurisprudence itself and begin to learn from the anthropological foundations. It is not by chance that the idea that “natural law exists not for limited people, but for those who are able to think” is common in Europe[14].

Thus, the hermeneutic concept of the differences between law and legal act is inherent in the original way of finding the law. The “real” law, according to the interpretation of the hermeneutics supporters, unites in itself the complementary elements of the essence (justice as a natural state of a person) and existence (exhibition). Hermeneutics explores law in the development, concretization, unification of essence and existence (act, event) in the hermeneutic circle. This process is not limited to the level of legislation and, mainly, is carried out at the level of legal proceedings. According to the deep conviction of supporters of legal hermeneutics (A. Kaufman, X. Lommpart, O. Heffe, L. Fuller), a legal solution cannot be obtained in the final form only by deduction from the norm, jurisdiction is not just “application of the legal act”. The legal act is only a sample of the decision that is proposed to the judge, it is not a sufficient source of a specific decision. The legal norms and specific situation given to the judge are only “raw materials” for the birth of a “real” law.

The well-known German hermeneous law A. Kaufman believes that the hermeneutic method gives an understanding of “real” law, since the basis of its hermeneutic finding is something “ontological” (freedom as the natural state of a person) that cannot be removed directly from the abstract legal norm and that the judge does not can "dispose of at its

[13] A. E. Bochkarev, “On understanding factors as a condition of interpretation”, Questions of cognitive linguistics, num 1 (2009): 103-106.

[14] M. Gibney y S. Deitsev, “Approach to the teaching of law at US universities”, State and law, num 3 (1993): 125 - 132.

discretion," is a "thing-law." What the judge cannot “dispose by his own discretion” (here A. Kaufman adheres to the views of X. Gadamer), the ontological “thing-law” is not something “material and substantial”, but the law is that which belongs to him in this relationship as a “person”. “Person” is what explains the essence and content of legal discourse (finding the law through communication)[15].

It is easy to see that the legal hermeneutics of A. Kaufman is also based on the hermeneutic circle: the “person” (legal personality) and a definite court decision in a particular case are its constituent parts.

Legal hermeneutics, Kaufman notes, opposes the “false belief” that all legal phenomena can be reflected in general terms, and then the legal reality can be seen as a manifestation or application of the content of these concepts in individual cases. In fact, the regulation can not determine the decision of the judge, and the judge is able to become "wiser than the legislator." Supporters of hermeneutics in law also stressed that today the legislator offers the judge “poor-quality samples of decisions”, so only justice can now implement justice in real life[16].

As noted above, in Western countries the law consists not only of legal norms, but also incorporates their interpretation by judges. From the point of view of followers of legal hermeneutics, interpretation is more than a scientific activity, it is a manifestation of wisdom. The goal of hermeneutic lawyers is to reduce the law to wisdom, and not to science[17].

Numerous facts of the interpretation of natural law as supra-legal principles of justice can be found in the legal theory and practice of Germany, the United States and a number of other countries. For example, in the Federal Supreme Court of the Federal Republic of Germany, the principle is the formula: “when the injustice of the legal act becomes intolerable, it must retreat before justice”. In particular, the decision of this court of December 14, 1968 states: “legal regulations cannot be recognized as valid law if they are so contrary to the fundamental principles of justice that a judge who wanted to apply them, instead of a law, would formulate the wrong”[18].

It represents an interest and recommendations to the judges formulated by the Federal Constitutional Court of the Federal Republic of Germany: “A judge cannot ignore a possible conflict of norms with the ideas of material justice in an altered society, referring to the fact that the literal text of the law has remained unchanged; the judge needs to more freely apply the rule of law if he does not want to deviate from his task of speaking ”[19].

The requirement of a “correct” interpretation of the legal act is also reflected in the official statement of the US Supreme Judges Marshall and Hughes: “If, arguing that the Constitution today attributes the same things as during its adoption, they want to say that great articles of the Constitution should be interpreted as part of , which its creators (on the condition of their time and their worldview) have invested in them, then such a judgment carries in itself a refutation. In other words, the purpose of interpretation is not to find in the

[15] V. A. Chetvernin, Modern concepts of natural law (Moscow: Nauka, 1998).
[16] V. A. Chetvernin, Modern…
[17] R. David y K. Joffre-Spinozi, Basic legal systems of modernity (Moscow: International Relations, 1999).
[18] V. A. Chetvernin, Modern …
[19] V. A. Chetvernin, Modern …

legal act what the legislator says in the text, but to reveal its general ideal, which the legislator aspired to "[20].

The fact that lawyers are given broad powers regarding the interpretation of legal norms can explain the absence of detailed legal regulation in the Roman-German and Anglo-American legislation. Such practice, for example, is applied even in the criminal legislation of a number of countries where, it would seem, there is a need for clear, not double-digit legal formulas that would deprive a practicing lawyer of their broad interpretation. So, in the criminal law of England there is no concept of "crime". According to British lawyers, it is impossible to formulate a concept that would satisfy everyone and cover all acts that are criminal in nature. The most general description of this concept is given in the commented book of English legislation of Helsbury: "Usually, crime means evil, which affects the security and prosperity of society, so that the public is interested in strangling it. Often this is moral evil, that is, behavior harmful to the moral state of the whole society"[21].

Absent in the legislation of England and the definition of guilt and its forms. Doctrine and judicial practice is considered the main form of guilt motive. It is generally recognized that the motive does not require proof itself, since there is a presumption that wrongful acts committed by the defendant and a reasonable person are always an act of will. A person is free to violate or comply with the law[22].

This interpretation of guilt is based on Kant's philosophical understanding of free will as the individual's intelligible ability to moral self-determination. Based on this understanding, the conclusion is made: a person is free in the choice of motives, therefore he can be condemned for having committed a criminal act, although he had another possibility.

Thus, English law considers a crime as sufficient evidence of the existence of a "criminal state of the will". It is assumed that any normal adult person foresees the natural consequences of their behavior. English legislation does not define the purpose of punishment. Legal practitioners believe that the main goals of punishment are victory of justice, correction of a criminal, protection of society, retribution[23].

A similar situation is observed in the French criminal law, in which the general characteristic of crimes in the Criminal Code is also absent. It also lacks the concept of guilt and its forms, extreme necessity, the goals of punishment, the institution of non-convictions is quite superficially regulated, and so on. The Criminal Code divides criminal acts into three classes: crimes, misdemeanors, offenses, based on the nature of the punishment. All what, according to the legal act, is punishable by a painful punishment, or somethimg that disgrace, defame, is a crime; what correctional education is appointed for is an offense, a police officer is a violation. Thus, the main feature of all types of crime is wrongfulness[24].

The fundamental doctrine of a criminal act in European science is German legislation. The Criminal Code of Germany is officially called the "Criminal Code of May 15,

[20] V. A. Chetvernin, Modern …
[21] I. S. Vlasov; N. A. Golovanova y V. N. Eremin, Crime and punishment in England, USA, France, Germany, Japan: General part of criminal law (Moscow: Legal literature, 1991).
[22] I. S. Vlasov; N. A. Golovanova y V. N. Eremin, Crime …
[23] I. S. Vlasov; N. A. Golovanova y V. N. Eremin, Crime…
[24] I. S. Vlasov; N. A. Golovanova y V. N. Eremin, Crime …

1871, as amended on January 1, 1975". The Criminal Code of 1871, known as the Criminal Code of the German Reich, was based on the philosophy of Kant and Hegel, declared democratic legality and was quite liberal. It is precisely under the influence of the classical philosophical and legal doctrine that the norms of the Criminal Code contain many appraisal norms, "ethical" elements such as "good custom", "decency", "legal good", "untruth". The interpretation of these elements is carried out according to the rules of doctrine and practice. The concept of "legal good" as an object of protection is interpreted not only as human life and health, but also as home comfort, freedom, night silence, property, rental right, wedding, intimate life, and the like.

The new version of the Criminal Code of the Federal Republic of Germany rejected the general characteristic of a crime and a criminal offense. Signs of this institution are "scattered" according to individual norms and chapters of the General Part of the Criminal Code. Thus, Chapter II of the first section, "Explanation of Terms," states: 1) offenses are unlawful acts, for the commission of which is provided at least one year's imprisonment of more than one year; 2) misconduct is unlawful acts, for which punishment is provided at least in the form of short-term imprisonment or a fine. From here you can deduce signs of crimes and misdemeanors: firstly, this act (deed), secondly, it is illegal, thirdly, punishable by imprisonment or a fine. The expression "corpus delicti" is not used in the criminal law of the Federal Republic of Germany; always refers to the "composition of the act (action)."

The criminal code of 1871 interpreted the notion of "unlawfulness" as criminal unlawfulness, that is, a contradiction only in criminal law. Modern criminal law of Germany interprets wrongfulness as a contradiction to the legal state in general. It is emphasized that wrongfulness means a contradiction not only of criminal law, but also of civil law, and not only "written", but also general.

Like the criminal law of England and France, in the German Penal Code, the sign of guilt is not mentioned in the characteristics of crime, offense and malicious inaction. The absence of a special rule on wine is determined by the generally accepted lawyers' teaching doctrine of classical philosophy of free will. In itself, a crime is considered sufficient evidence of the presence of "evil will", which is the concept of guilt that is traditional for European criminal law. Thus, it is not the law, but the court in each particular case that determines the legal nature of the act. In particular, any deliberate or careless act can be recognized by the court as not criminal if it finds justifiable circumstances that preclude the unlawfulness of the legal order in general.

The US criminal law is characterized by its incompleteness, inexpressiveness, and even lack of regulation of individual issues or entire institutions (for example, the institution of guilt, the general concept of a crime, the definition of punishment, and so on). All these questions are submitted to the doctrine and judicial practice.

Conclusions

The flexibility of human thinking, not subject to the technical means of servicing a person's life, allowing one to interpret all the positive aspects of human behavior in the prism of basic legal values brings legal hermeneutics to a new axiological level. In itself, this direction allows us to realize the person, his rights and freedoms of the highest social values.

In search of real law, European lawyers have been given greater powers regarding the interpretation of legal norms formulated by legislation. This circumstance explains the

importance of philosophical hermeneutics in matters of modern legal thinking, rule-making and law enforcement. Depriving the legislator of a monopoly of law-making allows for the importance of legal values and principles to be taken into account at all stages of the creation and application of law.

For a practicing lawyer (judge) the ability to interpret competently legal norms is one of the manifestations of a high professional level of legal culture.

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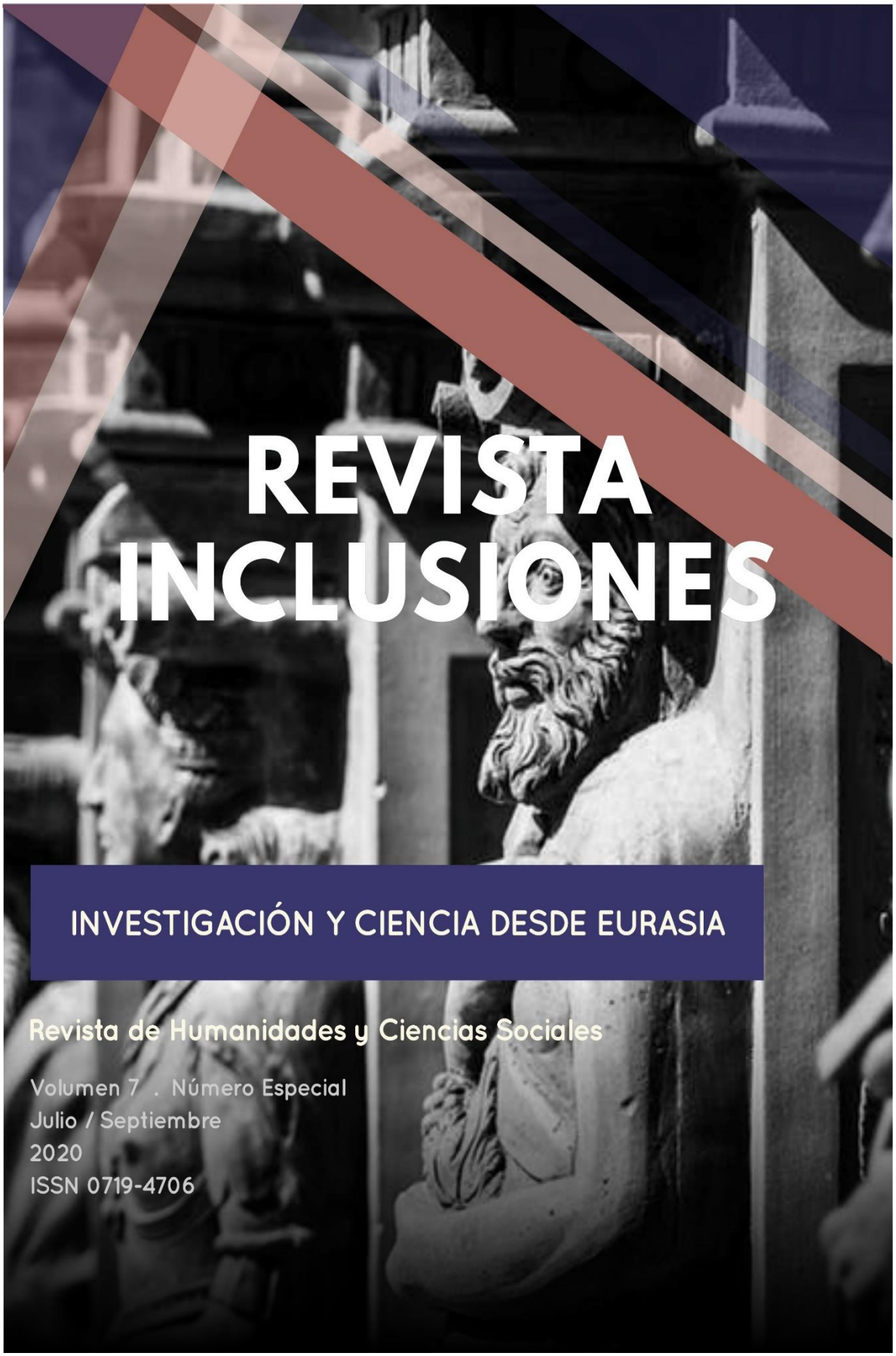

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