UDC 340.132.6
DOI https://doi.org/10.32849/2663-5313/2022.4.11

Lyudmyla Luts,
PhD hab. (Law), Professor, Professor at the Department of Theory and Philosophy of Law, Ivan Franko National University of Lviv, 1 Universitska Street, Lviv, Ukraine, postal code 79000, Lutz.ludmyla@gmail.com
***ORCID**: 0000-0002-8182-2449*

Luts, Lyudmyla (2022). Argumentation in legal interpretation activity. *Entrepreneurship, Economy and Law*, 4, 63–76, doi: https://doi.org/10.32849/2663-5313/2022.4.11

ARGUMENTATION IN LEGAL INTERPRETATION ACTIVITY

Abstract. ***The purpose*** of the research is to identify the characteristic features of legal interpretation activity, legal interpretation acts; distinguish them from legal advisory acts; characterize the interpretative legal prescription as the main element of legal interpretation acts; determine the purpose of legal interpretation activity and argumentation in general, as well as their purpose and tasks at the stages of interpretation-clarification and interpretation-clarification; identify the main problems of argumentation in legal interpretation activity and methods of solving them. ***Research methods.*** The basis of the research methodology is the generic concept of legal interpretation as a legal activity, which is aimed at clarifying the content of the norms and principles of law and its clarification for the purpose of proper regulation of social relations, as well as the types, in relation to it, of legal interpretation activity (creation by authorized subjects of interpretative legal prescriptions and their objectification in legal interpretive acts). An important basis of the research is the activity approach, which allows us to characterize legal interpretation and argumentation as the activity of the relevant subjects. Thanks to the logical laws and methods of cognition and the general theoretical method, the nature of legal interpretation activity, its results ˘ legal interpretation acts, their primary element ˘ the interpretative-legal prescription, the definition of their concepts was formulated. Technical and legal analysis, in particular techniques and means of legal technology, allowed to characterize the main legal interpretation models, as well as the process of legal interpretation activity and argumentation, to identify problems that arise on the way to creating direct legal interpretation acts, to propose solutions thanks to the creation of a regulated procedure for their implementation, compliance with substantive and formal requirements relating to them. ***Results.*** In the course of the study, the nature of legal interpretation activity, legal interpretation act, interpretative-legal prescription was revealed and their definitions were formulated. A distinction is made between legal interpretation acts (official interpretation acts) and legal interpretive advisory acts. The purpose and task of argumentation both at the stage of interpretation-clarification and at the stage of interpretation-clarification are revealed. The process of objectifying the results of legal interpretation activity from the point of view of argumentation at its main stages is reflected. A method of argumentation is proposed. Methods of solving problems in legal interpretation activities in Ukraine are proposed. ***Conclusions***. The analysis of foreign and domestic literature, sources of law and legal practice made it possible to state that in modern conditions, a number of provisions of the theory of legal interpretation need updating, in particular, there is a need to distinguish legal interpretation activities (activities related to official interpretation). The analysis of this legal phenomenon made it possible to characterize it as the activity of authorized subjects regarding the creation and objectification of interpretative legal prescriptions (formally binding rules-explanations based on the judgment of a uniform understanding of the content of a norm or legal prescription). In the process of research, the purpose of both legal interpretation activity in general and argumentation in particular was revealed, the purpose and tasks inherent in the stages of interpretation-clarification and interpretation-clarification were established. The method of argumentation at each of the stages is proposed. Attention is focused on the fact that the result of legal interpretation activity at the first stage is the creation of a legal interpretation judgment and substantiation of its truth and objectivity, and at the second stage – the creation of an interpretative legal prescription and its objectification in legal interpretation acts. Identified problems of legal interpretation activity and argumentation in domestic practice: narrowing of the field of legal interpretation activity (official interpretation of law) only to the activities of the Constitutional Court of Ukraine ; lack of legal interpretation of the legislation of Ukraine and other sources of law; the need to distinguish between the concepts of «normative and legal judicial precedent» and «legal interpretation precedent»; the need

to expand the range of subjects of legal interpretation; the need to create rules of legal interpretation and argumentation, their formalization; the need to form requirements for subjects of legal interpretation in terms of their knowledge and skills in the implementation of legal interpretation activities with the use of argumentative techniques. This would contribute to increasing the effectiveness of legal interpretation activities, improving the quality of legal interpretation acts, creating conditions for the proper regulation of social relations, and the development of law in general.

Key words: legal interpretation, argumentation, legal interpretation activity, legal interpretation acts (acts of official interpretation of law).

1. Introduction

Research relevance. In the modern context, Ukraine is experiencing the transformation of all types of legal activity: law-making, law enforcement, and legal interpretation. This necessitates an in-depth analysis, in particular, of legal interpretation activity and updating the theory of legal interpretation. Within the framework of the modern theory of legal clarification, ideas of its nature, main types, incl. legal interpretation activity, its results – legal interpretation acts, their distinguishing from legal interpretative advisory acts are formed. Nowadays, there is an actualization of scientific research of argumentation in legal interpretation activity, the identification of its purpose and tasks at the stages of interpretation-identification and interpretation-explanation, its capacity for working out qualitative legal interpretation acts, finding the necessary ways to overcome deformations in legal interpretation activity and its outcomes.

All the above should contribute to creating a scientific basis for increasing the effectiveness of legal interpretation activities in Ukraine, formulating and formalizing argumentation rules and methods necessary for adopting high-quality legal interpretation acts that would assist in the proper ordering of social relations, and the development of law as a whole.

Literature analysis made it possible to clarify the state of scientific developments regarding legal explanation, legal interpretation and its results, and the possibilities of argumentation during its implementation. In legal literature, issues of legal interpretation have always been a focus of scientific attention, and the main conceptual provisions were formulated in the works by S. Alieksieiev, Zh.-L. Berzhel, Yu. Vlasov, R. David, N. Kartashov, I. Nastasiak, A. Piholkin, P. Rabinovych, O. Cherdantsev et al. They covered the concept of law interpretation, its main stages, methods of legal interpretation, and legal interpretation acts. Over time, positions on legal interpretation were expressed in legal literature, in particular, in the works by M. Voplenko, G. Christova, and others; in addition, the characteristics of legal interpretation acts was carried out, their nature was revealed, and classification was conducted in the works by V. Antoshkin, N. Lepish, A. Moscherad, I. Serdiuk, and others.

The papers by K. Karhin, O. Makieieva, M. Mikhalkin, et al. analyzed matters of the argumentation arising under legal interpretation. However, the following issues still require in-depth analysis: the nature of legal interpretation activity and its results (legal interpretation acts); the possibilities of argumentation at the stages of interpretation-clarification and interpretation-explanation to formulate qualitative legal interpretation acts, identify gaps in domestic legal interpretation and argumentation in modern conditions, as well as ways to solve them.

The purpose of the article is to establish the main features of legal interpretation activity, legal interpretation acts, and interpretative legal instructions; formulate their concepts; identify the possibilities of legal argumentation when implementing legal interpretation, shortcomings in domestic practice distorting the relevant activity and find ways to solve them, which will ensure the creation of high-quality legal interpretation acts contributing to the proper ordering of social relations.

2. Theoretical issues of legal interpretation

Although the theory of legal interpretation is generally formed, some provisions require focusing on its certain features and sometimes rethinking from the standpoint of modernity. As for conveying interpretation of law in the relevant literature, the following views are expressed: activities to clarify and render the content (meaning) of a legal act for its correct implementation and application (Rabinovych, 2017, p. 785); cognitive activities to define the rules of law that are objectified through the legal regulations of the relevant law sources for their adequate application and implementation (Luts, 2015, p. 316); activities aimed at clarifying and comprehending the actual content of the rules of law to facilitate their practical implementation, as well as the ensuing result which is mainly expressed in the legal interpretation act (Oleinykov, Khrystova, 2009, 419-420).

Such points of view quite often focus on two components of legal interpretation activity – identification and clarification of the content of the rules of law, which prompts the separation of two stages (elements, stages, forms,

etc.): interpretation-identification and interpretation-explanation (Luts, 2015, p. 318); elements – identification of the content of the rules of law and its clarification (Tsvik, Petryshyn, Avramenko, 2009).

However, it should be noted that interpretation is anyhow inherent in all types of legal activity: law-making, law-enforcement, enforcement, and law-interpretation. However, law-making, law enforcement or enforcement is only characterized by the stage of interpretation-clarification, which should ensure the formulation of high-quality regulatory and individual legal requirements or conditions for the proper direct exercise of the rights and obligations of participants in social relations, and the clarification of the content of the rules of law is a component of the mentioned types of legal activity. As for legal interpretation activity, it is characterized by both stages: clarification-identification and clarification-explanation, as it is aimed at creating interpretative legal instructions and their objectification in legal interpretation acts. The above is due to the need to render the content of law norms or principles for other subjects of social relations.

All of these things necessitate the separation of the generic concept of "legal explanation activity" and the specific concept of "legal interpretation activity" and their delimitation. It should be noted that some differences are traced between "explanation" and "interpretation".

According to language dictionaries, "to explain" means to clarify the content, find out the essence of something; give explanations, etc. (Novyi tlumachnyi slovnyk ukrainskoi movy, 1998,538-538); to elucidate in a certain way, to understand anything in a particular way; to convey (Akademichnyi slovnyk ukrainskoi movy). And "explanation" is an action in the sense of interpreting a text that contains a rendering, a representation of something (Akademichnyi slovnyk ukrainskoi movy).

The analysis of legal interpretation taking into account scientific developments allows naming the following main features of this phenomenon: legal explanation can be carried out not only by a specially authorized entity but also by other entities engaged in legal activity; it is a component or type of legal activity; it is aimed at clarifying the content of the norms and principles of law recorded in legal sources; its generic features are determined by the purpose and content of a particular type of legal activity (in law-making – ensuring compliance with the content of new norms; in law enforcement – ensuring an appropriate level of legal qualification; in legal interpretation – clarifying the content of the norm or principle of law, as well as the formation of the interpretation and legal prescription and its objectification in the legal interpretative act); in the law-making, law-enforcement and law-enforcement activity is carried out within one stage – interpretation and clarification (the result of which is a right-interpretative judgement, which is necessary for the formation of a normative or individual legal prescription, or the implementation of legal behavior by participants in social relations); in legal interpretation activity, it is carried out in two stages – interpretation-identification (the content of the norm or principle of law is clarified, and legal interpretative judgement is formed) and interpretation-clarification (interpretative legal prescription is formed – it is objectified in the legal interpretative act); its prospective purpose there is proper ordering of social relations, and the short-term one depends on the purpose of a particular type of legal activity.

Thus, legal explanation is a legal activity aimed at clarifying the content of norms or principles of law and rendering it to organize social relations properly. Consequently, this concept reveals the essence of the process of legal interpretation as a whole.

By the nature of the powers of legal entities, it is necessary to distinguish between legal explanatory advisory and interpretation activities.

First of all, it is necessary to define the word "interpretation". According to language dictionaries, "interpretation" means the clarification of the content of something, explanation, elucidation, and "to interpret" means to clarify the content of something, explain, elucidate (Novyi tlumachnyi slovnyk ukrainskoi movy, 1998, p. 195); or "interpretation" means the clarification, the clarification of the content of something (Skopnenko O. I., Tsymbaliuk T. V. (Eds.), 2006, p. 311); explanation, interpretation (Akademichnyi slovnyk ukrainskoi movy). At the same time, an interpreter is the one who interprets, explains something (Skopnenko O. I., Tsymbaliuk T. V. (Eds.), 2006, p. 311).

The analysis of legal interpretation activity allows characterizing it due to the following features: it is a type of legal explanation activity; can be carried out by specially authorized subjects; aimed at both clarifying the content of the norms and principles of law and forming an interpretative legal instruction; it is carried out by entities specially authorized for such activity; it is aimed at objectifying the interpretative legal instruction in the interpretive act; it should be carried out according to a regulated procedure; its short-term purpose is to create an interpretative legal instruction and its objectification, and the long-run one – the proper settlement of social relations as a whole.

Therefore, legal interpretation activity is the formulation of interpretive legal instructions by authorized subjects and their objectification in legal interpretation acts.

In legal literature, legal interpretation acts are usually referred to as acts of legal interpretation, acts of official interpretation of law, interpretative-legal or interpretative-juridical acts; they are conveyed as a legal act of an authorized entity explaining legal norms, which is the main purpose of its adoption (Khrystova, 2017, p. 195); an external manifestation of a formally binding rule established by the competent authorities for understanding the content (meaning) of a legal norm (Rabinovych, 2021, p. 230), et al.

The analysis of legal interpretation acts makes it possible to highlight their characteristics, as follows: they are legal acts-documents; are adopted by authorized entities according to a regulated procedure; have a legal form and legal force, which allow determining its place in the system of legal explanatory acts; are formally binding on subjects of law to whom an explanation of the content of the legal norm or principle is addressed, that is, they objectify the interpretative legal instruction.

Consequently, legal interpretation acts are acts-documents that are formulated by authorized entities, contain interpretative legal instructions on the same-type vision of the content of the norm or principle of law.

As for the classification of legal interpretation acts, legal literature teems with criteria and their types: by legal form; by subjects; by scope; by branch belonging; by the nature of the norms, etc. However, it should be noted they are always written in the form of external manifestation and are acts of official interpretation according to legal value (Luts, 2015, p. 320). It is also applied the criterion of the degree of binding nature, which allows the authors to classify legal interpretation acts into mandatory and advisory (Khrystova, Petryshyn, 2014, p. 295).

At the same time, following the nature of the powers of legal interpretation entities, it is possible to distinguish between legal interpretation acts (acts of official interpretation of law) and legal interpretative advisory acts (those containing explanations on the procedure for applying rules or principles of law). Their nature differs from the nature of legal interpretation acts, namely: they are formulated by the entities authorized to clarify the procedure for applying the rules of law; they are advisory in nature; they do not contain interpretative legal instruction but clarifications on the procedure for applying the rules or principles of law.

For example, pursuant to para. 3 of Art. 21 of the Law of Ukraine "On Committees of the Verkhovna Rada of Ukraine", committees with relevant competence are entitled to provide explanations on the application of the provisions of the laws of Ukraine. Such explanations do not have the status of an official interpretation (Zakon Ukrainy "Pro komitety Verkhovnoi Rady Ukrainy").

In addition, according to sub-para. 32 of para. 4 of the Regulation on the Ministry of Justice of Ukraine, the Ministry has following powers: to provide clarifications on issues related to the activities of the Ministry of Justice, its territorial bodies, enterprises, institutions and organizations, as well as in relation to the acts issued by them; according to sub-para. 80^5 of para. 4, it also provides recommendations and clarifications on the application of legislation on prevention and counteraction to the legalization (laundering) of proceeds from crime, terrorist financing and financing of the proliferation of weapons of mass destruction; according to sub-para. 83 of para. 4, it provides generalized explanations on the application of legislation on state registration, clarifications and recommendations on the enforcement of decisions (sub-para. $83m^{27}$, para. 4), etc. (Polozhennia "Pro Ministerstvo yustytsii Ukrainy").

It is also worth highlighting the explanatory guidelines that are created in the process of enforcement. For example, Art. 245 of the Economic Procedure Code of Ukraine provides for the explanation of the judgment, which is carried out on the application of the parties to the case, the state executor and has entered into force. Such explanation does not alter the content of the judgment and is allowed if the judgment has not been executed or the term for enforcing it has not expired. Clarification or refusal is recorded in the court order (Hospodarskyi protsesualnyi kodeks Ukrainy). Identical articles are recorded in the procedural codes of Ukraine, Art. 254 of the Code of Administrative Procedure of Ukraine and Art. 271 of the Civil Procedure Code of Ukraine. It is envisaged that on the application of the party to the case or the state executor, the court explains the pronounced judgment, which came into force without changing the content of the judgment, by ruling (Kodeks administratyvnoho sudochynstva Ukrainy, Tsyvilnyi protsesualnyi kodeks Ukrainy).

Moreover, only Art. 380 of the Criminal Procedure Code of Ukraine states that the ruling clarifies its judgment without changing its content if the judgment is incomprehensible (according to the application of the participants to litigation, enforcement authorities, the private executor) (Kryminalnyi protsesualnyi kodeks Ukrainy).

Thus, legal interpretative advisory acts of authorized entities do not include a formally binding rule-explanation, and their purpose is to clarify the procedure for applying the rules or principles of law. Such provisions are usually recorded in law enforcement acts and formed due to the specification of norms or principles of law, which require an in-depth specification of the procedure for their application or are necessary for the formation of individual legal requirements.

Consequently, one of the distinctive features of legal interpretation acts compared to other legal interpretative acts is their formally binding nature and the availability of an interpretative legal instruction, which is not inherent in legal interpretative advisory or other acts interpreting law.

In legal literature, the correlation of the concepts of "interpretative norms", legal provisions and legal positions was discussed quite actively. The discussion resulted in recognizing the advantages of the concepts of "legal provisions" and "legal positions".

As noted in Polish legal literature, it is interpretive rules that make it possible to establish the correct meaning of regulatory legal prescriptions (Stawecki, Winczjrek, 1999, 133).

However, these concepts do not allow solving some problems of legal explanation, and there is a need for the concept of "interpretative legal instruction" amidst modern legal interpretative practice. The analysis of such a phenomenon as an interpretative legal instruction marks the following features: it is formed by subjects authorized to render official interpretation in the prescribed manner; it is a rule-explanation, which is based on a logically and grammatically completed judgment that relies on the clarification of the content of the law norm or principle and its uniform understanding; it is objectified in such a legal form as a legal interpretative act; it should not contradict the current system of legal sources; it acts in unity with the regulatory legal instructions in the areas and within its validity; it does not have an independent meaning; it does not create and does not cancel the current regulatory legal prescriptions; its validity is limited by the effect of the regulatory legal prescription; it should have the structure established by legal sources.

Thus, an interpretative legal instruction is a formally binding rule-explanation based on a judgment about the same-type understanding of the content of a rule or principle of law.

Unfortunately, domestic legal literature did not give due attention to the issues of nature, structure, and concept of interpretative legal instructions that gives rise to many disputable and sometimes controversial positions or even the substitution of concepts. The issues of argumentation when implementing legal interpretation, which may reduce the quality of legal interpretative acts, were also ignored.

3. Argumentation in legal interpretation.

As noted in the author's previous works, argumentation is considered as an intellectual legal activity aimed at substantiating or refuting the authenticity of legal provisions using legal arguments for achieving legal effects, and legal argumentation is considered as an intellectual activity aimed at substantiating or refuting the authenticity of provisions using both legal and other arguments. At the same time, legal arguments are the means provided by the current system of legal sources, which are used in the process of legal argumentation, and the process of legal argumentation involves both legal arguments and other means that are intended to create conditions for the occurrence of legal effects. In addition, the structure of argumentation remains unchanged: the argumentator, the addressee, the thesis (the position, the veracity of which must be argued), the argument (the means which prove or refute the thesis's veracity), demonstration (the sequence of thinking from arguments to the thesis – the process of argumentation) (Luts, 2020, 168–173).

Argumentation should follow the entire process of legal interpretation, which, as already noted, should consist of two stages: interpretation-identification and interpretation-explanation. Moreover, the subject authorized for legal interpretation should take into account the long-term purpose of legal interpretation – the proper settlement of social relations due to a uniform understanding of the content of the norms or principles of law, and carry out its activities pursuant to the short-term goal – the creation and consolidation of the rule-explanation (interpretative-legal prescription) in the interpretative legal act.

In addition, each stage of legal interpretation has its own goals and objectives, which are also the goals of argumentation. Thus, the interpretation-explanation stage is characterized by the goal of clarifying the content of the norm or principle of law, which in turn contains two components: a) identification of the will of the subject of law fixed in the norm or principle of law; b) clarification of the possibility of their implementation in real social relations.

In the context of achieving the goal, the subject of legal interpretation must solve the following tasks: 1) establish the circumstances that lead to the legal interpretation, justify their availability and a need for interpretation; 2) find the necessary methods of interpretation-identification, substantiate the most appropriate ones for the interpretation of the relevant rule or

principle of law; 3) clarify the content of the rule or principle of law, support it using the relevant method of interpretation; 4) justify the veracity of the legal interpretative judgment.

At the same time, it is crucial to pay regard to such considerations as J.-L. Bergel pointed out: interpretation is most often construed as one of the sources of law formation or given law, and its influence has always been more significant in those systems which lacked organized and structured system of law (Berzhel, 2000, p. 131).

Domestic legal literature quite widely covers the elements of the main methods of interpretation-identification, which include philological (grammatical), logical, systematic (system), historical, teleological (target), functional, special-legal, etc. (Luts, 2015, 316-319; Petryshyn (Eds.), 2015, pp. 285-288; Koziubra (Eds.), pp. 247-263).

Moreover, there is still no methodology for their application when drafting legal interpretation acts, in particular, at the stage of interpretation-identification, which should result in a legal-interpretive judgment, the veracity of which should be substantiated.

It is worthwhile to pay attention to the positions expressed in foreign legal literature. Thus, in the English legal system, the Law "On Rules of Interpretation" (1978) is in force; courts also interpret the laws by relying on the presumptions of interpretation (the presumption of prohibition of fundamental changes in common law based on assumption), special rules, and canons of interpretation (grammatical, logical, historical under the law "On Human Rights", 1998), etc. (Romanov, 2010, *206-232)*.

In France, important ways of interpretation involved target (in the context of ascertaining the will of the legislator), historical methods, and since the end of the 19th century – the method of social purpose, sociological, etc. Similar methods are used in Germany, i.e., the so-called "functional interpretation" (or dynamic), which is associated with the emergence of new life circumstances (Lezhe, 2011,82-84).

If Western legal systems consolidate the methodology of application of methods of interpretation and the process of legal interpretation activity in sources of law or, at least, in other official documents, in the domestic one (as well as any other post-Soviet legal system), these are the rules created by legal science. But for some reason, in some authors' opinions, they can be the criteria for the authenticity and correctness of the legal-interpretative judgment (Cherdantsev, 2003, p. 278). However, among the criteria, the author also names universal practice and such more specific criteria as language, logic, and legal practice (Cherdantsev, 2003, p. 274). Probably, the above position is based on the hope that such practice, according to the theory of argumentation, is "genuine".

At the same time, it should be emphasized that the veracity of the legal interpretive judgment is determined in accordance with the laws of logic, language, social laws, correlation with current sources of law (that is, according to substantive technical and technological requirements that should apply to legal interpretative acts).

As for the second stage, its short-term goal is the formation of a rule-explanation (interpretative-legal instruction) and its objectification in a legal interpretation act. This stage involves solving the following tasks: 1) to form an interpretative legal instruction, to substantiate its content; 2) to establish its compliance with formal and substantial technical and technological requirements (authority for the relevant activity in the subjects of interpretation, the implementation of activities under the procedure established in sources of law or other official documents; compliance with structural and essential parameters, in particular, the legal form of the legal interpretative act); establishment of a correlation with the current system of sources of law; 3) to objectify the interpretative legal order in the legal interpretative act.

Legal literature states that the issues of substantiation of legal interpretation acts were omitted; in particular, it refers to strengthening the justification of the decision of the constitutional justice bodies and formalization of the requirements for the argumentation of such decisions, namely: openness of the court to the arguments of the participants in the process, the use of relevant methodological means of argumentation, taking into account the particularities of the constitutional text (Uroshleva, 2019; Uroshleva, 2021).

It is also discussed the influence of the features of a particular type of legal activity, the nature of the legal thinking of authorized entities on the parameters, style of argumentation or even argumentation strategies, in particular, the influence of procedural characterisitcs on the style of constitutional and judicial argumentation (Chyrnynov, 2020).

It would be desirable to consolidate the methodology for the implementation of legal interpretation at the second stage, as well as at the first (if not in the sources of law, then at least in the regulatory act). This would allow avoiding legal interpretation errors, discussions on legal interpretative court precedents, which are baselessly endowed with legal force or the nature of legal sources, although our legal system has no entity authorized to create them.

Therefore, domestic legal literature contains considerations that the acts of official interpretation of the Constitutional Court of Ukraine are of a source nature (that is, they are sources of law), since they can be binding on subjects of social relations. Such a position seems doubtful given the above, because both law-making and legal interpretative activities should be carried out only by an authorized subject.

This rule is decisive even for common law. In particular, K. Osakwe specified that the creation of a judicial precedent is the prerogative for those courts that are authorized to deal not only with law enforcement but also with law-making, that is, the highest domestic courts. For example, in the context of the American federal system, that kind of court is exclusively the Supreme Court of the United States (Osakve, 2008, p. 187).

According to para. 1 of Art. 7 of the Law of Ukraine "On the Constitutional Court of Ukraine", the CCU's powers include the official interpretation of the Constitution of Ukraine (Zakon Ukrainy "Pro Konstytutsiinyi Sud Ukrainy"). At the same time, the CCU is not endowed with law-making powers.

Consequently, decisions on the official interpretation of the Constitution of Ukraine cannot be sources of law but can be a kind of judicial ones.

Attention should be paid to the positions of legal scholars who hold that ensuring the effectiveness of justice, law enforcement as a whole, sustainability and uniformity of judicial practice is carried out, in particular, due to the activities of authorized entities, which focus on the formation of typical models of qualification and/or interpretation of law. The outcome of legal unification is precedents that contain typical models of interpretation of law – as reflected in the legal positions of a judge (other authorized subject) and an objectified model in judicial acts, which includes rules-explanation of the content of the rule of law, arguments about the possibility of its application and provides similar enforcement (Holovatyi, 2017).

Legal interpretation precedents are highly sought in any legal system, as they allow for proper ordering of social relations or, according to some authors, allow lawyers to predict the development of law (Cownie, Bradney, Barton, 2010, p. 98).

At the same time, the concept of "legal interpretation precedent" should not be replaced by the concept of "source of law", because, as noted, the nature and purpose of these phenomena are different.

Unfortunately, in modern Ukraine, the scope of such precedents is narrowed, since the CCU is no longer empowered to interpret the laws of Ukraine, and they are not delegated to another subject. It seems that such powers should be devolved on the Supreme Court or the Verkhovna Rada of Ukraine as the current laws require not only an explanation of the procedure for their application, but also their content. Such a similar understanding of the content of legislative prescriptions is important not only for proper enforcement but also for arguing the content of any other legal acts of Ukraine.

It is crucial to fix the provisions on the methodology for legal interpretation, in particular, arguing, at least in the regulatory act.

If one analyzes the Law of Ukraine "On the Constitutional Court of Ukraine", there is evident that some provisions that contain formal requirements for a legal interpretation act are recorded. As a rule, there are no substantial requirements, in particular, for argumentation without which it is impossible to argue that the rule-explanation of the norm of the Constitution of Ukraine is based on a true judgment and formed in line with legal interpretation and legal argumentation methodology. Otherwise, it should be understood that such decisions of the CCU are regarded "at face value" in terms of the rule-explanation objectified in the legal interpretation act. However, this can cause latent "deformation" of law enforcement and be an obstacle to the proper exercise of rights and obligations by participants in social relations.

Thus, Art. 7 of the Law of Ukraine "On the Constitutional Court of Ukraine", as already noted, contains a provision on the CCU powers of in the context of official interpretation of the Constitution of Ukraine, and Art. 35 states that the issue of the official interpretation of the Constitution of Ukraine is considered by the Grand Chamber of the CCU (Zakon Ukrainy "Pro Konstytutsiinyi Sud Ukrainy").

Art. 51 of the mentioned Law determines the form of appeal for the official interpretation of the Constitution of Ukraine – constitutional request, and para. 4 of Art. 51 records the provision that the constitutional request for the official interpretation of the Constitution of Ukraine indicates specific provisions of the Constitution of Ukraine that require an official interpretation and justification of the grounds that caused the need for interpretation (Zakon Ukrainy "Pro Konstytutsiinyi Sud Ukrainy"). In other words, the requester shall name the grounds (circumstances) that caused the need for interpretation of the norm of the Constitution of Ukraine and justify them.

Article 69 of the Law of Ukraine "On the Constitutional Court of Ukraine" envisages ensuring the case's completeness: demanding relevant documents, involvement of experts, specialists,

etc. (Zakon Ukrainy "Pro Konstytutsiinyi Sud Ukrainy"), but it does not envisage specific procedural actions of judges at the stages of interpretation-identification and interpretation-explanation, as well as in terms of reasoning. Art. 84 entails the adoption by the Grand Chamber of a decision on the official interpretation of the Constitution of Ukraine, and Art. 89 – formal requirements for the decision of the Court: introductory, descriptive, motivational, and operative part (Zakon Ukrainy "Pro Konstytutsiinyi Sud Ukrainy"). As for content-related requirements, they are mentioned only in para. 2 of Art. 89, in particular, the descriptive part specifies the requirements of the constitutional request; para. 3 refers to the motivational part naming the provisions of the Constitution of Ukraine under which the Court justifies its decision; sub-para. "б" of para. 4 refers to the operative part indicating the official interpretation of the provision of the Constitution of Ukraine, in respect of which the constitutional request was submitted – in the case of the official interpretation of the Constitution of Ukraine; sub-paras. "в" and "г" – the decision of the Court is binding, final and cannot be appealed; and regarding the source which should publish the decision (Zakon Ukrainy "Pro Konstytutsiinyi Sud Ukrainy").

It is worthwhile to draw attention to the provisions recorded in Art. 92 of the Law of Ukraine "On the Constitutional Court of Ukraine" regarding the legal position of the Constitutional Court, which is set out in the motivational and/or operative part of the decision, and part 2 of Art. 92 , which covers the option of developing and specifying the legal position of the Court in its subsequent acts, amendments under altering the regulatory framework, if there are objective grounds – the need to improve the protection of constitutional rights and freedoms given the international obligations of Ukraine and subject to the justification of such an alteration in the Court's act (Zakon Ukrainy "Pro Konstytutsiinyi Sud Ukrainy").

If one considers Art. 92 of the Law of Ukraine "On the Constitutional Court of Ukraine" in combination with para. 3 of Art. 89 of the Law, it is evident that the motivational part deals with the formation of a legal position by substantiating the decision (although Art. 92 provides for the possibility of conveying the legal position and in the operative part). It seems that the formation of the judgment and the justification of its authenticity and reliability should be carried out in the motivational part. However, it should render the judgment through the rule-explanation in the operative part (by forming an interpretation-legal prescription, which should have a well-defined structure provided by the law or regulatory act). Unfortunately, there are no such provisions in the laws of Ukraine or other official documents.

These provisions, incl. the content-related requirements for legal interpretation and argumentation, should be available in the CCU Rules of Procedure. The current regulation does not contain all necessary provisions.

Thus, § 39 of the Regulations of the CCU provides that the constitutional request in form and content must meet the requirements of Arts. 51, 52 and part 1 of Art. 74 of the Law of Ukraine "On the Constitutional Court of Ukraine". The preparation of a preliminary conclusion on the presence or absence of grounds for initiating constitutional proceedings is carried out by the Secretariat of the CCU (§ 42). Formal requirements for the study and preparation of materials by the reporting judge for consideration (request of documents, involvement of specialists, commissioning of expert studies, etc.) are recorded in § 42. To clarify the circumstances that are relevant to the case and require special knowledge, commissioning of expert studies can be conducted (§ 62) (Postanova Konstytutsiinoho Sudu Ukrainy "Pro Rehlament Konstytutsiinoho Sudu Ukrainy").

According to para. 6 of § 63, the expert may be asked questions about the use of methods and theoretical developments, the sufficiency of the information the conclusion was based on; the scientific substantiation and methods on which the expert relied, and questions concerning the reliability of the conclusion (Postanova Konstytutsiinoho Sudu Ukrainy "Pro Rehlament Konstytutsiinoho Sudu Ukrainy"). The expert's conclusion, in addition to other data (provided by § 64 of the CCU Rules), should contain questions and answers to them (Postanova Konstytutsiinoho Sudu Ukrainy "Pro Rehlament Konstytutsiinoho Sudu Ukrainy"). Unfortunately, the Rules lack requirements for the reporting judge, who conduct legal interpretation and argumentation, as well as for the Court's decision, in particular, in terms of the reliability and authenticity of the rule-explanation objectified and its structure. There are no provisions that define the role and capacity of the reporting judge in the formation of the interpretation-legal prescription, at least the same as, for example, for the expert. Since the Law of Ukraine "On the Constitutional Court of Ukraine", the Rules of the CCU and other documents do not contain such requirements, one can only assume that the reporting judge has relevant knowledge and skills, or he forms an interpretative legal prescription arbitrarily by relying on expert conclusions, etc. In such a case, the perception of the content of the rule-explanation objectified in the legal interpretation act occurs

"at face value", not as one that meets the established requirements provided for in sources of law or other official documents.

This, in turn, determines the status and content of legal interpretative acts, in particular, the CCU decision on official interpretation.

Analysis of the CCU decisions for the period from 2017 to 2022 allowed finding only one decision of the Grand Chamber of the CCU regarding the official interpretation of the Constitution of Ukraine No. 11-p/2019 (case on the request of 49 People's Deputies of Ukraine regarding the official interpretation of the provisions of Art. 152² of the Constitution of Ukraine). In the context of the tasks of legal interpretation and argumentation following the stages of legal interpretation, this allows stating that the text of the decision does not clarify whether the court independently checked the circumstances that led to the interpretation or only agreed with the arguments of the requesters that the need for interpretation is caused by legal uncertainty, since the legislator did not explicitly indicate the list of decisions that can be appealed; in particular, the Constitutional Court did not substantiate the existence of circumstances that caused such a need, as it did not justify the need for official interpretation. It also did not determine the method of interpretation (although the decision text makes the use of the systemic method evident) and did not justify its relevance for interpretation of Art. 152² of the Constitution of Ukraine. For substantiation, the CCU also referred to the legal positions set out in previous decisions, but it did not substantiate their nature, necessity of application and significance; there is no legal interpretative judgment, the veracity of which should also be argued. As for the second stage, there is no provision that would correspond to the concept of "interpretative legal prescription" (rule-explanation, which is based on legal interpretive judgment formed due to the specific way of interpretation).

The operative part of the decision as well as other parts meet the formal requirements for this type of legal act, but do not meet the content-related requirements, since the fixation that the provisions of Art. 152² of the Constitution of Ukraine should be understood as follows: the CCU decisions, irrespective of their legal form, adopted on issues of exclusively constitutional powers cannot be appealed. It seems that this decision lacks interpretative legal prescription (although the formal requirements for the CCU decision, as already noted, are met). The structure of such a prescription, which is blurred by the formal requirements for the content of the interpretative act as a whole, also requires attention.

The main legal arguments are as follows: reference is made to the norms of the Constitution of Ukraine. As for the previous decisions of the CCU, their use needs argumentation from the Court and justification of expediency for specific cases.

As for the selective analysis of the CCU decisions of until 2017 regarding the official interpretation of the Constitution of Ukraine, it demonstrates the poor substantiation of decisions, limitation to legal arguments (as the rules of law); lack of references to the method of interpretation, justification of its use; substitution of interpretation methods. The most demanded is the systemic way of interpretation, although the text of decisions shows the need for other ways of interpretation: philological, logical, teleological, historical, special legal, etc.

However, a clear idea of the interpretative legal prescription to be a logically and grammatically completed judgment on the understanding of the content of the norm or the principle of law is the most important. There are no such prescriptions in acts of official interpretation, the provisions of which are formed arbitrarily (most often in the form of a description). It would be necessary to record the interpretative legal prescription in the resulting part of the CCU decision on the official interpretation of the Constitution of Ukraine.

For such a type of legal interpretation acts as the CCU decision, it is important to apply not only legal but also other arguments that may acquire legal significance in the process of legal interpretative activities and objectification of interpretative legal prescription. Moreover, the CCU shall justify significance before its fixation in the decision on the official interpretation of law.

The formulation of rules for the implementation of legal interpretation, the use of argumentation (methods of its implementation) would not only overcome the deformations of legal interpretation, guarantee its effectiveness, in particular, in the context of using argumentation options, but also create high-quality legal interpretative acts (legal acts as a whole) that would correspond to modern realities and would solve new, even global, problems (Luts, Nastasiak, Karmazina, Kovbasiuk, 2021).

4. Conclusions

The above allows stating that the domestic theory of legal explanation needs to be reconsidered in modern conditions. First of all, this refers to clarifying the understanding of law explanation – legal activity aimed at specifying the content of norms or principles of law and its elucidation to properly organize social relations. This activity can be carried out by both an authorized entity and other entities.

The activity comprises two stages: explanation-identification and explanation-clarification. At the same time, explanation-identification is inherent in law-making, law enforcement, and enforcement activities and results in the formulation of a legal interpretive judgment, which is the basis for high-quality regulatory, individual legal prescriptions or acts of direct law enforcement. Therefore, legal interpretation activity is characterized by two stages: interpretation-identification and interpretation-explanation, since it should be aimed at formulating interpretive legal prescriptions and their objectification in legal interpretative acts.

Characteristic features of legal interpretation activity are as follows: it is an independent type of legal activity; it is carried out by specially authorized entities; it is aimed at clarifying the content of the norm or principle of law and the formulation of a legal interpretive judgment, as well as the formation of an interpretative legal prescription and its objectification in an interpretative legal act; it should be conducted in two stages: interpretation-identification and interpretation-explanation according to a regulated procedure; the short-term goal is to create an interpretative legal prescription and its objectification in a legal interpretative act, and the long-term one – proper ordering of social relations.

Thus, legal interpretation activity is the formulation of interpretive legal prescriptions by authorized subjects and their objectification in legal interpretative acts.

Legal interpretation acts are characterized by the following features: they are legal acts-documents; are adopted by authorized subjects according to a regulated procedure; have a legal form and legal force, which allow determining its place in the system of legal explanatory acts; are formally binding on subjects of law to whom an explanation of the content of the legal norm or principle is addressed, that is, they objectify the interpretative legal prescription.

In terms of the nature of the powers of the subjects of legal interpretation, among law explanation acts, in addition to legal interpretative ones, it is necessary to highlight legal interpretative advisory ones towards the establishment of the procedure for applying the rules and principles of law. Interpretative advisory acts are created by entities authorized to clarify the procedure for applying the rules of law; they are usually objectified in law enforcement acts; they may fix provisions on the specification of regulatory or individual legal instructions in the context of clarifying the procedure for applying the rule or principle of law; do not contain interpretative legal instructions.

At the same time, the characteristic features of interpretative legal instructions are that they are formulated by entities authorized to create them in accordance with the procedure established by law; are a rule-explanation – a logically and grammatically completed judgment, which is based on the clarification of the content of the norm or principle of law; the legal form of its objectification is a legal interpretative act; it should not be contradictory with the system of law sources; it does not have independent significance and can only act in unity with the regulatory legal instruction in the spheres and within its validity; it does not create and does not cancel the current regulatory legal instructions; its validity is limited to the effect of the regulatory legal instruction under interpretation; it must have a prescribed structure.

Consequently, the interpretive legal instruction is a formally binding rule-explanation based on the judgment of the same-type understanding of the content of the norm or the principle of law.

The entire process of legal interpretation (both at the stage of interpretation-identification and at the stage of interpretation-explanation) is accompanied by legal argumentation

The long-term goal – the proper settlement of social relations due to the same understanding of the content of the norm or the principle of law, as well as the short-term one – the creation and objectification of the interpretative legal prescription, is definitive for both legal interpretation and argumentation. Each stage has its own goals and objectives. At the stage of interpretation-identification, the following goal is achieved: clarification of the content of the norms or principles of law (due to the clarification of the will of the subject of rule-making recorded in the source of the law or the opportunities for their implementation in specific conditions actually existing for the period of their application). In the context of achieving this goal, it is necessary to solve the following tasks: to establish the circumstances that lead to the right explanation; to substantiate their availability and need for interpretation; to identify the necessary ways of interpretation-identification, to substantiate the most appropriate ones for the interpretation of the relevant norm or principle of law; to clarify their content and justify it using the chosen methods; to substantiate the veracity, objectivity of the right interpretation judgment.

In Western legal interpretative practice, the methodology for applying methods of interpretation-identification is formalized in sources of law or other official documents, and in domestic practice such a methodology is not fixed in the relevant documents (including regulatory

acts). Such rules are usually reflected only in scientific sources.

The purpose of the second stage of legal interpretation is the formation and objectification of the interpretative legal instruction, and the tasks (including argumentation) are as follows: formation of the interpretative-legal prescription and justification of its content; establishment of its compliance with formal technical and process design requirements (the availability of powers in the subject of legal interpretation; compliance with the regulated procedure – the procedure for the implementation of legal interpretation, structural and essential parameters) and content (compliance with the current system of law sources); objectification of the interpretative legal prescription in the legal interpretation act. The content of the argumentation largely depends on the peculiarities of a particular type of legal activity (in particular, procedural features). It seems that the issue of argumentation, as well as the process of legal interpretation activities as a whole, should be enshrined in sources of law (or, at least, in regulatory acts). This would prevent some deformations and substitute the concepts of "judicial regulatory precedent" (source of law) and "judicial legal interpretation precedent".

First of all, attention should be paid to the fact that any type of legal activity is carried out by authorized entities, in particular, entities of law-making or legal interpretation. If the subject of legal interpretation does not have legal authority, it cannot create sources of law. The beforementioned also applies to judicial regulatory precedents, but it can create legal interpretative precedents. They may contain typical models of interpretation of law reflected in interpretative legal instructions. Thus, the legal positions of judges can be arguments when considering similar cases.

In Ukraine, the scope of such precedents is currently limited, since the CCU is only vested with legal interpretation powers. It carries out the official interpretation of the norms of the Constitution of Ukraine. However, according to the preceding Law of Ukraine "On the Constitutional Court of Ukraine", it also carried out the official interpretation of the laws of Ukraine. Currently, no entity has the authority to interpret laws or other sources of law officially. Consequently, the provisions of normative legal acts (except for the Constitution of Ukraine) or other sources of law cannot be officially interpreted by any subject pursuant to domestic legislation. But they may be subject to unofficial interpretation or clarification of the procedure for the application of the rules of law, or causal interpretation in the process of law enforcement.

The legislator, narrowing the powers of the CCU on the official interpretation of the laws of Ukraine, should delegate them to another subject, e.g., the Supreme Court, or determine the order of authentic official interpretation of law.

It should be noted that the Law of Ukraine "On the Constitutional Court" and the CCU Rules largely contain formal requirements for the procedure for implementing legal interpretation and the formulation of legal interpretative act, but there are no content-related requirements, in particular, for argumentation. This negatively affects the legal interpretation practice, which is characterized by insufficiently reasoned decisions; the lack of provisions on the methods of interpretation, which facilitate the justification of the rule-explanation; or the substitution of interpretation methods; reduction to a systemic method of interpretation and legal arguments; the lack of understanding of the interpretative legal instruction as a logically and grammatically completed judgment on the same-type understanding of the content of the norm or the principle of law; the lack of understanding of its structure. It seems that the official interpretation of the CCU norms of the Constitution of Ukraine is based on the legal consciousness of judges.

Another problem of legal interpretative activity is its narrowing only to the application of legal acts and the lack of understanding of legal arguments in a broad sense. In particular, legal positions in the context of domestic legislation could be currently used as arguments in similar cases, but provided that the court will argue the appropriateness of their use for legal interpretation, justify their veracity and objectivity, and thus they will be able to acquire the nature of legal arguments.

The above and other issues require further conceptualization both from the standpoint of the general theory of law and branch legal science and practice.

References:

Akademichnyi slovnyk ukrainskoi movy [Academic dictionary of the Ukrainian language] (Vols. 1-11). Retrieved from http://sum.in.ua/ (in Ukrainian).

Berzhel Zh.-L. B. (2000). Obshchaia teoryia prava [General theory of law]. Moskva: Yzdatelskyi dom NOTA BENE (in Russian).

Cherdantsev A.F. (2003). Tolkovanye prava y dohovora [Interpretation of law and contracts] Moskva: Yunyty-Dana (in Russian).

Chyrnynov A. M. (2020). Vlyianye protsedurnыkh osobennostei konstytutsyonnoho kontrolia na styl arhumentatsyy: sravnytelnoe yssledovanye. [The Influence of Procedural Features of Constitutional Review on Argumentation Style: A Comparative Study]. *Pravo y polytyka*. 9, 33-46; DOI: 10.7256/2454-0706.2020.9.33730 URL: https://e-notabene.ru/plp/article_33730.html (in Russian).

Cownie F, Bradney A, Barton M. (2010). English Legal system in context. Oxford: University press. (in English).

Holovatyi V. Ya. (2017). Unifikatsiia sudovoi praktyky: zahalnoteoretychna kharakterystyka. [Unification of ship practice: a deep-theoretical characteristic]. Extended abstract of candidates thesis. Lviv (in Ukrainian).

Hospodarskyi protsesualnyi kodeks Ukrainy [Economic Procedural Code of Ukraine]. (n.d). zakon.rada.gov.ua. Retrieved from https://zakon.rada.gov.ua/laws/show/1798-12#Text (in Ukrainian).

Khrystova H. O. (2017). Interpretatsiino-pravovyi akt. Velyka ukrainska yurydychna entsyklopediia. (Vols. 1-2). [Interpretive legal act. Great Ukrainian legal encyclopedia] Kharkiv: Pravo (in Ukrainian).

Khrystova H. O., Petryshyn O. V. (2014). Tlumachennia pravovykh aktiv. Teoriia derzhavy i prava. [Interpretation of legal acts. Theory of the state and law] Kharkiv: Pravo (in Ukrainian).

Kodeks administratyvnoho sudochynstva Ukrainy [Administrative Judicial Code of Ukraine]. (n.d). zakon.rada.gov.ua. Retrieved from https://zakon.rada.gov.ua/laws/show/2747-15#Text (in Ukrainian).

Koziubra M. I. (Eds.). (2015) Zahalna teoriia prava [General theory of law] Kyiv: Vaite (in Ukrainian).

Kryminalnyi protsesualnyi kodeks Ukrainy [Criminal Procedure Code of Ukraine]. (n.d). zakon.rada.gov.ua. Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text (in Ukrainian).

Lezhe R. (2011). Velykye pravovыe systemы sovremennosty: sravnytelno-pravovoi podkhod [Great Legal Systems of Modernity: A Comparative Legal Approach] Moskva: Volters Kluver (in Russian).

Luts L. A. (2015). Zahalna teoriia derzhavy i prava. [General theory of the state and law.] Kyiv: Atika (in Ukrainian).

Luts L. A. (2020). Arhumentatsiia u pravotvorchii diialnosti [Argumentation in law-making activity]. Pidpryiemnytstvo, hospodarstvo i pravo. 9, 168–173 (in Ukrainian).

Luts, L., Nastasiak, I., Karmazina, S., Kovbasiuk, S. (2021). Prospects for the development of modern interstate legal systems in the context of globalization challenges. Amazonia Investiga, 10 (40), 233–243. DOI:/10.34069/AI/2021.40.04.23/

Novyi tlumachnyi slovnyk ukrainskoi movy (1998) [A new explanatory dictionary of the Ukrainian language], (Vols. 4), Kyiv: Akonit (in Ukrainian).

Oleinykov S.M., Khrystova H.O. (2009). Tlumachennia norm prava. Zahalna teoriia derzhavy i prava. [Interpretation of legal norms. General theory of the state and law] Kharkiv: Pravo (in Ukrainian).

Osakve K. (2008). Sravnytelnoe pravovedenye: skhematycheskyi komentaryi [Comparative Law: A Schematic Commentary]. Moskva : Yuryst (in Russian).

Petryshyn O. V. (Eds.). (2015). Teoriia derzhavy i prava [Theory of the state and law] Kharkiv : Pravo (in Ukrainian).

Polozhennia «Pro Ministerstvo yustytsii Ukrainy» [Regulation «On the Ministry of Justice of Ukraine»]. (n.d). zakon.rada.gov.ua. Retrieved from https://zakon.rada.gov.ua/laws/card/228-2014-%D0%BF (in Ukrainian).

Postanova Konstytutsiinoho Sudu Ukrainy «Pro Rehlament Konstytutsiinoho Sudu Ukrainy» [Resolution of the Constitutional Court of Ukraine About the Regulations of the Constitutional Court of Ukraine]. (n.d). zakon.rada.gov.ua. Retrieved from https://zakon.rada.gov.ua/laws/show/v0001710-18#Text (in Ukrainian).

Rabinovych P. M. (2017). Tlumachennia pravovykh norm. Velyka ukrainska yurydychna entsyklopediia. (Vols. 1-2). [Interpretation of legal norms. Great Ukrainian legal encyclopedia] Kharkiv: Pravo (in Ukrainian).

Rabinovych P. M. (2021). Osnovy teorii ta filosofii prava. [Basics of theory and philosophy of law] Lviv: Medytsyna i pravo (in Ukrainian).

Romanov A.K. (2010). Pravo y pravovaia systema Velykobrytanyy [Law and the legal system of Great Britain] Moskva: Forum (in Russian).

Skopnenko O. I., Tsymbaliuk T. V. (Eds.). (2006). Suchasnyi slovnyk inshomovnykh sliv [Modern dictionary of foreign words] Kyiv: Dovira (in Ukrainian).

Stawecki T., Winczjrek P. (1999). Wstep do prawoznawstwa. Warszawa: Wydawnictwo C.H. Beck (in Polish).

Tsvik M. V., Petryshyn O. V., Avramenko L. V. (2009). Zahalna teoriia derzhavy i prava. [General theory of the state and law] Kharkiv: Pravo (in Ukrainian).

Tsyvilnyi protsesualnyi kodeks Ukrainy [Civil Procedure Code of Ukraine]. (n.d). zakon.rada.gov.ua. Retrieved from: https://zakon.rada.gov.ua/laws/show/1618-15#Text (in Ukrainian).

Uroshleva A. S. (2019). Osnovanye reshenyi orhanov konstytutsyonnoho pravosudyia: «na podstupakh» k rytorycheskomu podkhodu [Basis of decisions of bodies of constitutional justice: «on the approaches» to the rhetorical approach]. Sravnytelnoe konstytutstonnoe obozrenye.5 (132), 55- 57, DOI: 1021128/1812-7686-2019-5-55-71 (in Russian).

Uroshleva A. S. (2021). O spetsyfyke reshenyi orhanov konstytutsyonnoho pravosudyia v kontekste yurydycheskoi arhumentatsyy. [On the specifics of decisions of constitutional justice bodies in the context of legal

argumentation]. Konstytutsyonnoe y munytsypalnoe pravo.12, 62-69; DOI: 10.18572/1812-3767-2021-12-62-69 (in Russian).

Zakon Ukrainy «Pro komitety Verkhovnoi Rady Ukrainy» [Law of Ukraine About Committees of the Verkhovna Rada of Ukraine]. (n.d). zakon.rada.gov.ua. Retrieved from https://zakon.rada.gov.ua/laws/show/116/95-%E2%F0#Text (in Ukrainian).

Zakon Ukrainy «Pro Konstytutsiinyi Sud Ukrainy» [Law of Ukraine About the Constitutional Court of Ukraine]. (n.d). zakon.rada.gov.ua. Retrieved from http://zakon5.rada.gov.ua/laws/show/2136-19 (in Ukrainian).

Людмила Луць,
доктор юридичних наук, професор, професор кафедри теорії та філософії права, Львівський національний університет імені Івана Франка, вул. Університетська, 1, м. Львів, Україна, індекс 79000, Lutz.ludmyla@gmail.com
***ORCID**: 0000-0002-8182-2449*

АРГУМЕНТАЦІЯ У ПРАВОІНТЕРПРЕТАЦІЙНІЙ ДІЯЛЬНОСТІ

Анотація. ***Мета*** дослідження – виявити характерні ознаки правоінтерпретаційної діяльності, правоінтерпретаційних актів; відмежувати їх від правотлумачних рекомендаційних актів; охарактеризувати інтерпретаційно-правовий припис як основний елемент правоінтерпретаційних актів; визначити мету правоінтерпретаційної діяльності та аргументації загалом, а також їхню мету та завдання на етапах тлумачення-з'ясування і тлумачення-роз'яснення; виявити основні проблеми аргументації в правоінтерпретаційній діяльності та способи їх розв'язання. ***Методи дослідження.*** В основі методології дослідження – родове поняття правотлумачення як юридичної діяльності, що спрямована на з'ясування змісту норм та принципів права і його роз'яснення з метою належного впорядкування суспільних відносин, а також видове стосовно нього – правоінтерпретаційна діяльність (створення уповноваженими суб'єктами інтерпретаційних правових приписів та їх об'єктивація у правоінтерпретаційних актах). Важливим підґрунтям дослідження є діяльнісний підхід, який дозволяє охарактеризувати правоінтерпретацію та аргументацію як діяльність відповідних суб'єктів. Завдяки логічним законам і прийомам пізнання та загальнотеоретичному методу було виявлено природу правоінтерпретаційної діяльності, її результатів – правоінтерпретаційних актів, їхнього первинного елементу – інтерпретаційно-правового припису, сформульовано визначення їх понять. Техніко-юридичний аналіз, зокрема, прийоми та засоби юридичної техніки дозволили охарактеризувати основні правотлумачні моделі, а також процес здійснення правоінтерпретаційної діяльності та аргументації, виявити проблеми, які виникають на шляху створення якісних правоінтерпретаційних актів, запропонувати способи розв'язання завдяки створенню регламентованого порядку їх здійснення, дотримання змістових та формальних вимог, що ставляться до них. ***Результати.*** У ході дослідження виявлено природу правоінтерпретаційної діяльності, правоінтерпретаційного акта, інтерпретаційно-правового припису та сформульовано їх дефініції. Розмежовано правоінтерпретаційні акти (акти офіційного тлумачення) та правотлумачні рекомендаційні акти. Виявлено мету та завдання аргументації і на етапі тлумачення-з'ясування, і на етапі тлумачення-роз'яснення. Відображено процес об'єктивації результатів правоінтерпретаційної діяльності під кутом зору аргументації на основних її етапах. Запропоновано методику аргументування. Запропоновано способи розв'язання проблем у правоінтерпретаційній діяльності в Україні. ***Висновки.*** Аналіз зарубіжної та вітчизняної літератури, джерел права та юридичної практики дав змогу констатувати, що у сучасних умовах низка положень теорії правотлумачення потребує оновлення, зокрема є потреба виокремлення правоінтерпретаційної діяльності (діяльності щодо офіційного тлумачення права). Аналіз цього правового явища дозволив охарактеризувати її як діяльність уповноважених суб'єктів щодо створення та об'єктивації інтерпретаційно-правових приписів (формально-обов'язкових правил-роз'яснень, заснованих на судженні однотипного розуміння змісту норми чи принципу права). В процесі дослідження виявлена мета як правоінтерпретаційної діяльності загалом, так і аргументації зокрема, встановлена мета та завдання, притаманні етапам тлумачення-з'ясування та тлумачення-роз'яснення. Запропонована методика здійснення аргументації на кожному з етапів. Акцентована увага на тому, що результатом правоінтерпретаційної діяльності на першому етапі є створення правотлумачного судження та обґрунтування його істинності й об'єктивності, а на другому етапі – створення інтерпретаційно-правового припису та його об'єктивація у правоінтерпретаційних актах. Виявлені проблеми здійснення правоінтерпретаційної діяльності та аргументації у вітчизняній практиці: звуження сфери правоінтерпретаційної діяльності (офіційного тлумачення права) лише до діяльності Конституційного Суду України (далі – КСУ); відсутність правоінтерпретації законів України та інших джерел права; необхідність розмеж-

ування понять «нормативно-правовий судовий прецедент» та «правоінтерпретаційний судовий прецедент»; необхідність розширення кола суб'єктів правоінтерпретації; необхідність створення правил правоінтерпретаційної діяльності та аргументації, їх формалізація; необхідність формування вимог до суб'єктів правоінтерпретації в частині наявності у них знань та навичок здійснення правоінтерпретаційної діяльності із застосуванням аргументаційних методик. Це б сприяло підвищенню ефективності правоінтерпретаційної діяльності, покращенню якості правоінтерпретаційних актів, створенню умов для належного впорядкування суспільних відносин, розвитку права загалом.

Ключові слова: правотлумачення, аргументація, правоінтерпретаційна діяльність, правоінтерпретаційні акти (акти офіційного тлумачення права).

The article was submitted 13.06.2022
The article was revised 04.07.2022
The article was accepted 25.07.2022