**УДК 340.130.5; 342.4**
**DOI** 10.24147/2542-1514.2017.1(1).19-27

**Grigoriy A. Vasilevich,**
***Belarusian State University***

# INTERPRETATION (EXPLANATION) OF NORMATIVE LEGAL ACTS (THEORY AND PRACTICE)

The legal theory and practical problems of interpretation (explanation) of adopted acts are analyzed in the article. The author researches Belarusian legislation, theory of law and legal acts of public authorities.

The article gives a detailed description of the types of interpretation, such as authentic, casual, - with examples from Belarusian legislation.

Attention is drawn in the article to existing shortcomings, in particular, liability of organizations and individuals when they act in accordance with the official response, abolished by superior authorities.

The author offers comprehension of the problems associated with contradictory practice of promulgation the adopted acts of interpretation, disputes regarding the list of authorities, who are able to clarify such act.

The author emphasizes that if the explanation given to one requesting applicant, previously formulated rule must have the power at emergence of a similar situation concerning another requesting applicant. The author believes that the taxpayer or other applicant should have possibility to claim into the court if he disagrees with personal answer given by relevant authority (an official).

The author speaks about the necessity of recognition of precedent as source of law. Judicial and other precedent are at the core of law enforcement practice, the guarantor of a uniform enforcement practice.

In conclusion it is emphasized the necessity of improving existing legislation, the proposals are introduced.

*Keywords: interpretation (explanation), types of interpretation, the effects of the interpretation, the inadmissibility of the act of giving retroactive effect, the responsible official.*

***Article info:***
Received – 2016 October 30
Accepted – 2016 December 03
Available online - 2017 March 20

One of the most important constitutional obligations of the state is to take all measures to create the domestic and international order necessary for the full enjoyment of the rights and freedoms of citizens of Belarus, provided by the Constitution. State bodies, officials and other persons who have been entrusted to exercise state functions shall, within their competence take the necessary measures to implement and protect the rights and freedoms of the individual. These bodies and persons responsible for actions violating the rights and freedoms (Article 59 of the Constitution of the Republic of Belarus). The creation of a proper legal order allows citizens, people in general to carry out its will.

The problem of interpretation (explanation) of normative legal acts is actual in the modern period. The need to streamline this work, solving a number of controversial and ambiguous implemented in practice, is the issue raised by representatives of active economic entities, experts, citizens who have had to face with the enforcement of legislative acts. They drew attention to the fact that the representatives of state bodies (officials) very often give answers on

received requests, as well as legal entities and physical persons are acting in accordance with the explanations received, but superior organization and supervisory bodies disagree with the explanation and bring legal or natural person to responsibility for failure of legislation act. All of these issues are very important for practice, since defects in solving them generate a lot of controversy elements of instability, undermining confidence in the rule-making bodies, law enforcement instances, involve property and other responsibility.

It should be noted that the public authorities generally seek to clarify the provisions of regulations, when there is uncertainty, differences and even contradictions. There is a legal basis for it. Of course, the common, fundamental approaches contained in the Constitution as well as in laws "On normative legal acts of the Republic of Belarus", "On citizens and legal entities," Tax and other codes, Presidential Decree of 15.10. 2007 № 498 and other acts. The basic rules of the official interpretation of normative legal acts are provided in Art. 70 of the Law "On normative legal acts of the Republic of Belarus". So, in case of uncertainties and differences in the content of the normative legal act, as well as the contradictions in its practical application standard-setting body (official) that adopted (issued) the act, or, unless otherwise provided by the Constitution of the Republic of Belarus, authorized body carry official interpretation of those rules by the adoption (publication) of the normative legal act. In the interpretation of the normative legal act the content of its legal provisions, determined by their place in the legislation is explained or clarified, as well as functional and other ties with the other regulations governing the various aspects of the same kind of public relations. Amendments and (or) additions to legal acts during interpretation of normative legal acts are not permitted.

Interpretation is an activity of defining of containing of the legal act for its pratical implementation. It is necessary because the act cannot be used automatically and should be understood by law enforcers and citizens. [1, s.290]. Bodies authorized for official interpretation should express the purpose and true thought of the legislator. In these cases it is required specify the formulation of the appropriate rule of law [2, p.117].

E.V. Vaskovskiy states that each norm is the expression of the legislator’s idea [3, p.8]. Interpretation of the acts can be classified according to various criteria: a) official interpretation (carries imperious character and is obligatory); b) unofficial (is not obligatory, i.e. the position of a scientist).

Official interpretation is a clarification of the true meaning of the law given by state authorities. Official interpretation is divided into normative interpretation and causal interpretation. Normative interpretation has a general nature and is obligatory for some kinds of cases; casual interpretation is obligatory in a special situation.

Normative interpretation is a clarification given in order to eliminate errors and of understanding of the act and assuming its consolidated application. There are several kinds of normative interpretation: authentic interpretation and legal interpretation (when the competent authority interprets the norm). For example, according to Article 82 of the Tax Code, the tax authorities and their officials are obliged to give a written explanation for the payers (other obliged persons) on the application of tax legislation acts, also in coordination with the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus or its territorial authorities.

In accordance with the Law of the Republic of Belarus of May 10, 2007 "On Advertising" the Council of Ministers November 12, 2007 adopted a resolution Nr. 1497 "On implementation of the Law of the Republic of Belarus" On Advertising". In this case the right to give explanations on the application of the mentioned resolution is delegated to the Ministry of Commerce. As you can see, delegated legislation is quite common and has a right to exist. Another thing is that the

interpretation (explanation) of the legal norm given in the order of delegation has a lower legal force than authentic interpretation. An exception can be made only for the Constitutional Court when it has the right to check on the constitutionality of the law on the interpretation of the Constitution. Thus, the delegated interpretation can be provided by various actors (ministries executive committees, etc.).

The authentic interpretation is an explanation of the regulation by the body which has adopted the act. All representative bodies issued the relevant act have the right of interpretation.

Jurisdictional bodies (the Constitutional Court, Supreme Court, (formerly also the Supreme Economic Court) play a special role in ensuring of uniform enforcement practice. Decisions of the higher courts could solve many problems that arise in practice. And their decision is obvious, but because of the lack of authoritative reinforcement they are not implemented. For example, there is an axiomatic approach, according to which any doubt is interpreted in favor of a citizen or a legal entity. And the courts could bring it into practice. However, it was necessary to adopt the Directive of the Head of State 31.12.2010 N4 "On the development of entrepreneurship and stimulating business activity in Belarus" to ensure that inherent to any modern state rule, according to which in case of ambiguity or vagueness of regulations acts of law courts, other state bodies and other public organizations and officials make decisions in favor of entrepreneurs and citizens. Soviet jurisprudence noted that the explanations given by jurisdictional bodies are normative in nature [1, s.310; 4, p.134] .

Attention is paid to to unadmittable mixing of the acts of authentic interpretation and ordinary legislative acts. It is shown in the fact that interpretation acts: 1) have a return force; 2) do not contain anything new (they explain the existing rules) [5, p.70]. In our view, all this is also characteristic of other types of interpretation acts. In addition, an act of normative interpretation (of authentic or delegated one) is characterized by all the five attributes that are inherent in the regulatory legal acts, among which will be called, in particular, universal validity. Specificity of the interpretation act is also in fact that it is inseparable from the act under interpretation, that they are united, they are in a relationship. According to article 116 of the Constitution the control over the constitutionality of normative legal acts is entrusted to the Constitutional Court. Therefore, it is obliged to carry out a check of the constitutionality of the act. It certainly should be done in the context of compliance with the Constitution and with the interpreted act. The latter may also be declared unconstitutional.

Given the mixed system of constitutional control in our country (such a conclusion can be made on the basis of Article 112 of the Basic Law of the analysis), the courts of general jurisdiction in specific cases in the event of doubt of the constitutionality of the act of interpretation are required to take a decision in accordance with the Constitution and set the question of the constitutionality of the act of interpretation and of the interpreted act [6].

As it follows from our legislation, a different procedure is necessary to verify the legality (constitutionality) of the act or the casual interpretation. Paragraph 2 of the Decree N 498 approved the list of public bodies and other organizations responsible for considering appeals on the merits of specific areas of the population. We believe that the taxpayer or other person may apply to the court about his disagreement with the personal response by the relevant body (official). In general, we share of the Constitutional Court's position expressed in its decision of 10 December 2009 N R-383/2009 "On judicial review on taxation decisions of public bodies (explanation of tax legislation). According to the Constitutional Court, the decisions of higher tax authorities, taken on the appeals related to the explanation of tax legislation, regulations are non-normative, are designed for single use and have individual character.

However, there are different opinions. Unlike normative interpretation casual interpretation is provided when applying law by the resolution of the certain case. It should be borne in mind, that casual interpratation is not only a direct explanation; it can be done in a hidden form, for example, the court decision [1, s.311]. But here it is necessary to pay attention to the following aspects. The Constitution enshrines the equality of all before the law (in the broad sense of the word, ie, before any regulatory legal act) and the courts. Therefore, even if an explanation is given in the address of one of the subject addressed in the event of a similar situation in another subject in relation thereto shall also act previously formulated rule. Essentially, we are talking about a precedent rule. Courts have an important place in the legal regulation. At the same time, there are different views on the role of judicial decisions, whether they have precedent, what is the difference precedent, if it is recognized in international law, from judicial practice. Judicial precedent is an act of the court in a particular case, the rationale for the position of the court in which it becomes the rule to be followed by courts in similar cases. As noted by V.I. Vasilyev, not only the legislator, adopting laws, promotes clarification of the meaning of the Constitution, but the judge adjudicating for the first time, clarifies the meaning of the normative legal act [7, p.7]. Note the distinction between judicial precedent and jurisprudence precedent, as already mentioned, it is the decision of a particular case, and jurisprudence - is a set of decisions on specific cases uniform, taken during a certain period of time [8, p.51]. Litigation was seen as "all judicial activity, perceived in its typical manifestations. In this respect, the jurisprudence and covers the average terms of consideration of cases in courts, and adopted the formalities in writing judgments and decisions or the conduct of court records, and the prevalence of the use of certain sanctions, etc. "[9, p.121] .

In practice there are disputes about whether a judicial legal provisions formulated as a one solution or if there is a need of a few relevant decisions, which are defined as an established judicial practice. As rightly pointed out by L. Wildhaber, one great thing can be the same compelling precedent as that the whole group of smaller cases [10, p.7]. French authors Malory F. and L. Aynes define jurisprudence as "a set of judgments, from which the rule of law is derived, since the decision is made in a single logic constantly at one and the same legal issues". [11, p.102]. The difference between the judicial practice and the precedent is that the practice can shape new trends in case of need. According to P. Sandevuar "the task of the courts is to complement, clarify or replacement underdeveloped, vaguely formulated or non-existent rule of law; In addition, courts may upgrade the long-standing rule of law". The judge is obliged to justify its decision to references to the text of the law, which contributes to the transparency of the decision [11, p.102].

In recognition of the precedent there is a huge resistance from some practitioners. We recognize that in the literature there is no unanimity regarding recognition of precedent as a source of law. However, if we wish to ensure that the action of the above constitutional principle, we can not do without the recognition of precedent as a source of law. Judicial precedent and some are at the core of law enforcement practice, the guarantor of a uniform enforcement. However, we are convinced that not only judicial but also administrative precedent, should be legally recognized. It's not even so much in their legal recognition, but in compliance with the constitutional principles and standards, which are mentioned vyshe.

The Constitutional Court, in order to implement the constitutional right of everyone, including taxpayers, to judicial protection, recognized the need to be able to appeal against decisions higher tax authorities, taken on the appeals related to taxation issues (clarification of tax legislation). At the same time, the Constitutional Court, in our view, could differentiate the procedure of judicial protection in its decision, pointing out that the normative act of interpretation is the subject of consideration by the Constitutional Suda.

Art. 938 of the Civil Code provides that the State is responsible for the actions of not only the public authority, but any official. We believe is overdue adoption of a special act of law, in which the complex would have been resolved issues of state responsibility in the field of governance, including justice. Thus it could be put on a solid legal basis for the State to the universal obligation of the state to create adequate domestic and international order for the purpose of sex tion provided by the Constitution of the rights and freedoms of citizens. This law must be secured (and the most important thing to realize then in practice), the following rules (they are in the Russian Constitution): "Everyone has the right to state compensation for damages caused by unlawful actions (or inaction) of bodies of state power or their officials. The rights of victims of crime and abuse of power are protected by law. The state guarantees the victims' access to justice and compensation for damage". The adoption of a special law will strengthen the confidence of citizens in the state, as the full and timely compensation for the damage caused will be provided. The responsibility of the Government as the executive body for the essence of the subject, executing the budget law, implies responsibility, regardless of the guilt of the individual civil servants.

Among the first acts adopted in modern Belarus and aimed at protecting against unlawful actions of the state, was adopted June 16, 1993 the Supreme Council of the Resolution approving the Regulations on the reimbursement I damage caused by economic entities by unlawful actions of state bodies and their officials persons. It now remains valid legislation. According to paragraph 3 of the Regulation applied to economic entities damage to be compensated in the following cases:
compliance with acts of public authority or control, duly recognized as invalid;
execution of the officials instructions of state authorities and management not compliant with the law;
the implementation of illegal instructions of officials of the bodies of state power and control, as well as of provisions contained in the acts of these bodies, and other bodies, enterprises, organizations, institutions;
non-performance or improper performance of public authorities and management, their officials duties conferred upon them by law, against business entities.

The act of official interpretation must be accepted in the same form as the act under interpretation. As for the causal interpretation, it takes the form for which the body has the authority.

The Constitution can provide differences in giving of legal force for such acts. Referring to Article 67 of the Law "On normative legal acts of the Republic of Belarus, adopted and developed article 104 of the Constitution of normative legal act is not retroactive, ie do not covers the relations which have arisen before its entry into force, except in cases when it mitigates or revokes the responsibility of citizens, including individual entrepreneurs, and legal persons, or when the legal act or the act of putting it into effect is expressly provided that it covers the relations arising before its entry into force.

Giving of retroactive power to normative legal act is not allowed if it provides the introduction or enhancement of responsibility of citizens, including individual entrepreneurs, and legal persons for actions that at the time of its commission was not attracted said liability or responsibility entailed softer. Normative legal acts, otherwise worsening the situation of the citizens, including individual entrepreneurs and legal entities (imposing additional (increased) compared to the pre-existing obligations or limiting the rights or deprive existing rights), are not retroactive, unless otherwise provided legislative acts of the Republic of Belarus.Sozdanie act of normative interpretation must take into account the actions of all legislative process.

The interpretation of the Constitution should be systematic. As rightly noted by B.S. Ebzeev, interpretation of the meaning of the constitutional norms and the explanation of the known Constitutional Court of the meaning and content of the constitutional norm is, in fact, one of the ways of concretization of the Constitution [12, p. 7]. The Constitutional Court of the Republic of Belarus has the right of casual interpretation. Legal positions of the Constitutional Court of the Republic of Belarus are fundamental to realization of law and understanding of the meaning and of the spirit spirit of the Constitution.

Provedenny analysis shows that there are problems in the area give explanations, answers in connection with the uncertainty of the normative legal acts. One of the ways to improve the situation would be the adoption of the decision of the Government of the Republic of Belarus, aimed at regulating the practice provide explanations of the the normative legal acts by executive bodies subordinating to the Government.

***References:***

1. Alekseev S.S. General theory of law. In 2 v. V. II. Moscow, Juridicheskaya literatura, 1982. 360 p. (In Russ.).

2. Kirichenko M.G. Constitutional principles of the judicial system in the USSR. Moscow, Juridicheskaya literatura, 1979. 142 p. (In Russ.).

3. Vaskovsky E.V. Guide to the interpretation and application of laws. Moscow, Izd. br. Nashmakov, 1913. 158 p. (In Russ.).

4. Pigolkin A.S. Interpretation of normative acts in the USSR. Moscow, Gosyurizdat, 1962. 166 p. (In Russ.).

5. Voplenko N.N. The official interpretation of the law. Moscow, Juridicheskaya literatura, 1976. 119 p. (In Russ.).

6. Vasilevich G.A. maintenance of the constitutional legality in the state the overall responsibility of the judicial system. *Justitsia Belarusi,* 2016, no. 1 (166), pp. 20-26. (In Russ.).

7. Vasiliev V.I. The Municipal reform: status and prospects. *Zhurnal rossiiskogo prava*, 2014, no. 6, pp. 5-14. (In Russ.).

8. The constitutional basis for the validity of legal norms in time. *Zhurnal rossiiskogo prava,* 2003, no. 5, pp. 40-53. (In Russ.).

9. Belkin A.A. Sources of law and judicial practice in the Russian Federation. *Uchenye zapiski*, vol. 8, ed. by A. A. Liverovskiy, SPb, 2001, pp. 4-11. (In Russ.).

10. Wildhaber L. Precedent in the European court of human rights. *Gosudarstvo i pravo,* 2001, no. 12, pp. 5-17. (In Russ.).

11. Khomyakova N. P. The role of the French judicial practice as a source of norm-setting. *Gosudarstvo i pravo,* 2011, no. 1, pp. 101-103. (In Russ.).

12. Ebzeev B. S. Constitution Interpretation by the Constitutional Court of the Russian Federation: theoretical and practical problems. *Gosudarstvo i pravo,* 1998, no. 5, pp. 5-12. (In Russ.).

***Information about the author***

Grigoriy A. Vasilevich,
Doctor of law, professor,
Honoured Lawyer of the Republic of Belarus,
Head of Chair of Constitutional Law,
Belarusian State University,
8, Leningradskaya ul., Minsk, 220030, Belarus,
AuthorID: 596200.

***Bibliographic description***
Vasilevich G.A. Interpretation (explanation) of normative legal acts (theory and practice). *Pravoprimenenie = Law Enforcement Review*, 2017, vol. 1, no. 1, pp. . –
DOI: 10.24147/2542-1514.2017.1(1).19-27. (In Russ.).