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HISTORICAL INTERPRETATION IN LAW: CONTENT AND TYPES

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The subject of the study is historical method of interpretation in law, its capacities and types. Despite the recognition of historical interpretation by legal science, there are no specialized works and there is no consensus on the content of this method of interpretation. Historical interpretation is considered both as an interpretation based on a previous rule of law, as an interpretation considering the conditions for the adoption of the norm, and as an interpretation based on the practice of applying the interpreted norm.

The purpose of the study is to substantiate the authors' hypothesis that historical interpretation in law is an intellectual activity that involves clarifying the content of a legal prescription, achieved based on identifying legal and non-legal factors that both precede the creation of the norm and accompany its adoption. In addition, the authors set the task to identify those factors that should be taken into account in historical interpretation, as well as to classify the types of historical interpretation.

The analysis of historical interpretation is made using scientific methods: induction and deduction, formal legal, comparative legal synchronous and diachronic methods.

The main results, scope of application. Historical interpretation considers political, economic, social, and legal factors. Legal factors include the rules of law that preceded the interpreted norm, repealed acts, official and unofficial documents of law-making entities, draft laws, acts and the norms contained therein that accompanied the interpreted regulation, i.e. were adopted simultaneously with the interpreted norm, as well as other factors, such as the level of development of legal science and legal technique.

The authors suppose that historical interpretation cannot be considered as a homogeneous way of interpretation. In reality, the historical interpretation in law can be carried out using different techniques and methods, in relation to heterogeneous legal prescriptions, and carried out by subjects with different legal status. Therefore, several grounds for classifying historical interpretation are proposed. First, it is a classification that considers the connection of historical interpretation with the other ways of interpretation. According to this criterion, it is possible to divide it into a proper historical and a complex historical interpretation. Complex historical interpretation includes historical-systematic, historical-functional, historical-teleological, historical-legal, and historical-linguistic interpretation. Second, the basis may be the sources of law that contain the rules of law. On this basis, historical interpretation is divided into the interpretation of prescriptions of normative legal acts, legal customs, normative contracts, etc. Third, it is possible to classify the historical interpretation, depending on whether the rule of law is valid or not, into the historical interpretation of the rules that have lost their legal force and the historical interpretation of the rules of the current law. The latter, in its turn, is divided into the interpretation of the current legal norms of the current content and those legal norms that have not lost their force but are outdated in content. The fourth classification is based on subjects and includes historical official interpretation and historical unofficial interpretation.

Conclusions. Correct approach to the concept and process of historical interpretation of the content of legal norms, as well as the choice of the type of historical interpretation helps in law enforcement, allows you to put forward scientific hypotheses, predict the further development of law based on historical knowledge of the interpreted norm, assess the possibility of reviving canceled acts in recurring socio-economic and political-legal situations.

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1. Introduction

The question of the historical interpretation of legal regulations has long been in the field of view of Russian jurisprudence, but it has not received full and comprehensive consideration.

Russian lawyers of the late XIX – early XX centuries distinguished the historical method of interpretation, but did not consider it the main one, equal to other methods of interpretation.

Thus, N.M. Korkunov distinguished two elements in the interpretation: general and specifically legal. He attributed grammatical and logical methods of interpretation to the general element, and systematic and historical interpretation to the legal one. He saw the difference between these methods in the fact that the first pays attention to simultaneously existing norms, and the second to the norms that consistently exist one after another in time [1, p. 416-418]. E.N. Trubetskoy, adhering to the same classification, generally used the phrase "so-called historical interpretation" in relation to the method of interpretation that interests us [2, p. 137-138]. E.V. Vaskovsky singled out only verbal and real interpretation, and mentioned historical interpretation only with reference to other authors [3, p. 93-95].

In the Soviet period, the emphasis was not just on historical, but on historical and political interpretation [4, p. 91; 5, p. 477-479; 6, p. 495; 7, p. 247].

Soviet and modern Russian researchers (S.S. Alekseev, N.A. Vlasenko, T.V. Kashanina, V.V. Lazarev, L.A. Morozova, T.Ya. Nasyrova, V.S. Nersesyants, V.A. Petrushev, A.S. Pigolkin, N.A. Pyanov, A.V. Smirnov, A.G. Manukyan, V.M. Syrykh, F.N. Fatkullin, A.F. Cherdantsev, A.S. Shaburov, etc.) call historical interpretation among other ways of interpretation, but there is not a single monographic or dissertation research, the subject of which is precisely historical interpretation in law. Some few articles do not fully solve the whole complex of problems existing both in the general theory of law and in legal practice.

The purpose of this study is to establish and substantiate what is meant by historical interpretation in law, as well as what factors need to be taken into account in historical interpretation.

In addition, the historical method of interpretation in all studies acts as a homogeneous, uniform method, whereas in reality the historical interpretation combines several different sets of techniques and means. Therefore, it is important to study the question of the types of historical interpretation in law.

Based on this, the problem of historical interpretation, its content and classification in law requires a more complete and comprehensive analysis based on scientific methods: induction and deduction, formal legal, comparative legal synchronous and diachronic methods.

2. The concept and content of historical interpretation in law

The question of what is meant by historical interpretation in jurisprudence is among the debatable.

This method of interpretation, called historical or historical-political, stands out in many scientific studies. However, the question of what is meant by historical interpretation is still being ambiguously resolved in scientific and educational literature.

It should be remembered that some researchers treat historical interpretation as a secondary type, and the interpretation itself appears as a system with a strictly hierarchical organization: "the ways of interpreting the norms of law should be considered as an integral systematic legal education having a hierarchical character" [8, p. 21].

Thus, V.M. Syrykh admits that "the study of concrete historical conditions and the process of preparation and adoption of a normative legal act in all cases seems necessary when the act has been in effect for a long time, and society and law enforcement officers no longer have complete ideas about this period" [9, p. 304]. Excursions into history, as the author refers to this method, are sometimes "the only way to solve questions about the admissibility and expediency of applying previously

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adopted acts in historically new conditions" [9, p. 304-305].

V.A. Petrushev believes that "the history of the creation of a legal norm and its functioning interests the subject of interpretation only as much as it is necessary for its practical application," however, the same author further states that legal prescriptions are subject to historical interpretation both in the course of scientific research and in the course of the implementation of law [10, p. 151-152].

Perhaps from the point of view of a modern law enforcement officer, such an approach is justified. But narrowing the interpretation to the clarification of the meaning of a legal prescription at a specific time for a specific situation reduces the historical interpretation to a craft level, the only purpose of which is instrumental.

Neither the interpretation itself nor the history deserve this, especially since not all researchers agree with the existence of a hierarchical organization of interpretation methods. Thus, A.H.R. Vianna believes that there is no clear hierarchy of interpretation methods in the theory of law, and the interpreter has the right to use any methods, and, according to the author's observations, this can lead to different legal decisions for the same case" [11, p. 2501].

As researchers from the University of South Asia in New Delhi F. Ahmad and Anmolam rightly noted, with regard to the interpretation of the texts of regulatory agreements, "it is impossible to say with certainty that the text best reflects the intentions of the parties. Although the text is a starting point, it makes sense to study the preparatory work only because it will give a more complete idea of how one or another party agrees to something" [12, p. 180]. Orientation to any one way of interpretation to the detriment of others can lead to a one-sided assessment of the content, for example, in the form of an "excessively textual approach to interpretation" [12, p.172].

The historical method of interpretation allows us to build scientific hypotheses, predict the further development of law on the basis of historical knowledge about the interpreted norm, assess the possibilities of reviving canceled norms in recurring socio-economic and political-legal situations, or, in the apt expression of Brazilian researcher Paolo de Oliveira, "temporalize" law through interpretation [13, p. 1397].

Consequently, the scope of historical interpretation is much broader than the decision of one particular case in a particular period of time.

It seems that first of all it is necessary to identify some fundamental points on which this work is based.

The starting point of the proposed study is determined based on the name of the method – "historical". This means referring to the past, i.e. the law-making body and the interpreter are in different time frames. In principle, if the norm was drawn up yesterday, and the interpretation is given today, this is also an appeal to the past. In the context of historical interpretation, the past can be understood as what happened before the legal regulation was put into effect.

It seems that historical interpretation in law is an intellectual activity in which the clarification and clarification of the content of a legal prescription is achieved on the basis of the identification of legal and non–legal factors, both preceding the creation of the norm and accompanying its adoption.

Most often, examples of historical interpretation are sought if there are norms with outdated content in the legislation. In this case, indeed, this method of interpretation is quite obvious and can bring practical benefits. And if the interpreted prescription is not outdated? Is its historical interpretation possible? And one more question – is a historical interpretation possible in relation to the norms enshrined in the repealed acts?

Answering the questions posed, it is necessary to identify several basic positions.

Firstly, the historical interpretation can be both official and unofficial.

For some reason, in scientific research, the historical way of interpretation correlates mainly with subjects authorized to make legally significant decisions.

But it would be wrong to limit the field of research to the only official part of the historical interpretation. Since in the theoretical and legal science, in relation to interpretation, there are generally types of interpretation by subjects, this

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gradation is quite applicable to various methods of interpretation.

Consequently, the historical method of interpretation is available both to specially authorized subjects and to any persons, regardless of whether they have special knowledge and training (competent interpretation) or not (ordinary interpretation).

If we take into account this fact, the possibilities and goals of historical interpretation, as well as the scope of its application, are significantly expanded. It is worth remembering at least the school of glossators, thanks to which a practical interest in Roman law was revived.

Secondly, historical interpretation can be carried out both in relation to existing legal regulations, and in relation to outdated norms, as well as regulations that have lost their legal force.

If we do not narrow the scope of the target orientation of interpretation only to the interests of legal realization, such a conclusion looks reasonable.

Some authors refer to the possibilities of historical interpretation precisely from the point of view of understanding outdated norms, rightly emphasizing that these norms should be evaluated from a practical standpoint. The interpretation of outdated norms may entail the prompt creation of a new norm more appropriate to the new living conditions.

Thus, V.M. Syrykh admits that "the study of concrete historical conditions and the process of preparation and adoption of a normative legal act seems necessary in all cases when the act has been in effect for a long time, and society and law enforcement officers no longer have complete ideas about this period" [9, p. 305]. Excursions into history, as the author refers to this method, are sometimes "the only way to solve questions about the admissibility and expediency of applying previously adopted acts in historically new conditions" [9, p. 305].

But in this case, there is no question of the priority of the practical result of interpretation: the question of whether the prescription has legal force is taken as a basis.

Why does it seem unreasonable to prioritize the sign of "obsolescence" of prescriptions?

First of all, because the division into "outdated" and "not outdated" norms is evaluative. How much does the norm not correspond to the current moment? Does this discrepancy really create difficulties in implementation? Is it impossible to implement this rule in all situations?

If there is an unambiguous answer to all these questions, then, most likely, the norm from the point of view of practical implementation needs not a historical interpretation, but the efforts of a law-making body.

Thus, for historical interpretation, not only the prescriptions of the current law are important, but also those that have already lost their force, but the essence, the meaning of which the interpreter would like to understand.

Thirdly, the historical interpretation in the literal sense is an interpretation based on the circumstances of society that have developed by the time of the formation of the content of the norm and its legal formalization.

This thesis requires a detailed analysis, since the question of the content of the term "historical interpretation" is ambiguously resolved by researchers.

The first group of authors inclines to the fact that the historical interpretation establishes the content of the norms "based on the conditions of their occurrence" [14, p. 82], "based on knowledge of the facts related to the history of the interpreted norms" [15, p. 352]. In addition to A.F. Cherdantsev and T.V. Kashanina, this group of authors includes N.A. Vlasenko, N.A. Pyanov, L.V. Sotsuro, etc.

This approach can be described as "static", since the basis of interpretation is the conditions for the formation and formalization of the norm.

The second group of authors offers two criteria for attributing the interpretation to the historical one at once. Firstly, these are the historical conditions for the creation of the norm, i.e. a static criterion, and secondly– this is the dynamics, the movement of the norm, which is reflected in the practice of applying (or more broadly, implementing) the norm.

This position was shared and is shared by V.V. Lazarev, V.M. Syrykh, V.S. Nersesyants, V.A. Petrushev and others.

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Thus, from the point of view of V.V. Lazarev, the "historical and political" interpretation presupposes both "knowledge of the socio-economic and political situation at the time of the adoption of the act" and taking into account the practice of applying the normative act, i.e. its life" [16, p. 74]. V.A. Petrushev also believes that that in addition to studying the socio-political situation that developed during the adoption of the norm, for historical interpretation it is also necessary to "understand how it functioned" [10, p. 151].

It seems that the differences are very serious. The problem is that it is in such a situation that the content of the norm, which was originally laid down by the law–making body, or also how the norm was interpreted by the subjects implementing its prescriptions, is subject to historical interpretation?

If both approaches coincide, the issue can be solved easily and agree on a possible static and dynamic option. And if they don't match?

How different are the results of interpretation if one or the other position is adopted?

Let's turn to the examples.

In 1766 Catherine II signed "A nominal decree given to the Senate on the establishment of a commission in Moscow to draft a new code of conduct and on the election of deputies to it." It described in detail exactly which groups of the population and territorial units received the right to choose a deputy to the laid commission. In particular, Article 3 of the "Regulations from where deputies should be sent by virtue of the manifesto to compose the draft of the new Code" states that it is necessary to choose "One deputy from the residents of each city".

The content of the article is so unambiguous that its interpretation seems almost unnecessary. According to the textual formulation, Catherine's plan was to grant the right to send a deputy from a certain locality – a city.

But what is a city in the understanding of the law of the XVIII century?

Historical interpretation based on an assessment of the circumstances preceding the creation of this rule allows us to conclude that not every locality in the Russian Empire could claim the status of a city. If the city is "old", then the sign is the presence of a posad and a county, listing, etc. For "new" cities founded during the imperial period, it was common practice to adopt a special regulatory act on its establishment. Thus, the "static" historical interpretation narrows the circle of settlements to those that are officially recognized as cities.

However, the study of the practice of implementing this regulation showed that some territories, even without the status of a city, nevertheless participated in the elections.

Thus, the residents of the Gzhatskaya pier considered that their settlement, having been established by the nominal decree of Peter I "for the glory of Russian commerce" and having over one and a half hundred merchant yards, could well stand on a par with official cities [17, p. 259-260]. The fact that Gzhatsk does not have its own county, the residents decided not to pay attention.

Skopin residents also sent their deputy, although the Heraldmaster's office refused to recognize the choice on the grounds that "Skopin is not a city but a parish ..." [18, p. 214].

Thus, interpretation from the standpoint of the practice of implementing the legal regulation will give a different picture than previously indicated – settlements with a significant number of residents who have the right to vote (in this case, they are homeowners) and an active lifestyle, who wanted to contribute to the work of the laid commission, delegated their representative to the commission, even if the cities they were not.

Thus, a modern researcher, carrying out a historical interpretation of the prescription of Article 3, will encounter difficulties in its interpretation – which content (static or dynamic) should be taken as the basis for understanding the meaning of the norm?

Another difficult question illustrating the problem is – what will be the "correct" historical interpretation if the circumstances of the implementation of the norm have changed significantly during the implementation of the norm?

An example of such a situation is the Criminal Code of the RSFSR of 1922 (as amended in 1926).

Despite the introduction of multiple additions to the original text of the Criminal Code (in

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particular, the expansion of Articles 58 and 59 into a full-fledged chapter, including sections "Counterrevolutionary crimes" and "Crimes against the order of governance especially dangerous for the USSR"), the interpretation allows us to evaluate both the content embedded in the legal prescriptions of the legislator and how it was actually implemented.

Thus, according to A.I. Kalashnikova, "the preparation of the Criminal Code of the RSFSR in 1926 clearly showed that ... criminal law was a field of fierce struggle not so much on criminal law issues proper, but in connection with the need to finally consolidate communist ideology in criminal law and, no less importantly, the creation of repressive tools to ensure security the government and the implementation of its policy" [19, p. 8].

In this regard , the adoption of the Resolution of the CEC of the USSR of 02/25/1927 is quite understandable . "Regulations on state crimes (counterrevolutionary and especially dangerous crimes against the order of government for the USSR)". From these positions, the content of paragraph 10 of Article 58 of the Criminal Code fits into the scheme of political struggle – "Propaganda or agitation containing a call to overthrow, undermine or weaken the Soviet government or to commit certain counter-revolutionary crimes" is punishable. What counterrevolutionary crimes are is indicated in the very first article of this chapter.

However, the practice of implementing this article proves that these frameworks are optional for the law enforcement officer. The course towards collectivization, the active resistance of the "kulaks" led to the fact that calls for counter-revolutionary agitation were evaluated as calls to counteract measures to "eliminate the lack of competition", and agitation against collective farms and even calls not to go to work in the collective farm, logging and rafting.

Thus, even in this case, the conditions for the development of the norm and its implementation give rise to different interpretations.

As for choosing the preferred approach to the question of the content of historical interpretation, it is necessary to clarify – what is the subject of interpretation of any kind?

If the content of the norm, then the practice of implementing the legal regulation has nothing to do with it.

If we take the dynamic approach as a basis, it is necessary to include in the subject of interpretation the features of the established practice of the norm.

But in this case, the established practice is how the rule was interpreted and understood by the law enforcement officer, and not what it was in the original sense. This idea is prompted by the remark of A.V. Smirnov and A.G. Manukyan: they demand to take into account in the historical interpretation those historical conditions and circumstances that affect the understanding of their content by the subjects of legal realization [20, p. 68].

Of course, it can be assumed that it is the law enforcement officer who understands the meaning of the legal prescription laid down by the legislator the best and most correctly. But not always such an ideal picture develops. This is hindered both by a subjective view of the semantic meaning of the norm, and by objective circumstances, in particular, the inconsistency of the "old" content of the norm with the "new economic, social and political-legal conditions.

Thus, it is more correct to understand the historical interpretation as an interpretation based on the circumstances of society that have developed by the time the content of the norm and its legal formalization were formed. It is in this case that the "primary source" is interpreted, i.e. the content of the norm, and not its interpretation by the subjects of legal realization. The dynamic variant, however, seems to be fairly attributed by A.F. Cherdantsev and T.V. Kashanina to an independent type – a functional way of interpretation.

Fourth, the list of circumstances of society's life that have developed by the time of the formation of the content of the norm and its legal formalization and which are taken into account in the historical interpretation can include both legal factors proper and phenomena of a broader order.

What should be taken into account when drawing up a picture of the historical conditions accompanying the creation of a legal regulation?

The identification of the most important characteristics of the situation that prompted the

legislator to create a norm includes a wide range of diverse elements, which will rightfully include both political, economic and social factors and purely legal phenomena – previous norms, bills, repealed acts, customs of legal significance, as well as many other factors, for example, the level of legal awareness and legal technology, the presence of legal scientific schools, etc.

Socio-economic and political conditions of life are the primary basis for assessing the norm: with historical interpretation, as T.V. Kashanina notes, "the interpreter finds out the concrete historical conditions that existed at the time of the adoption of the interpreted norm, the economic, social situation, the reasons, the reasons that brought to life the normative acts that became the object of interpretation" [15, c. 352]. But, as the author rightly notes, it is impossible to get this information from the text of the act, therefore it is necessary to turn to sources "lying outside the legal system" [15, p. 352].

As such, N.A. Vlasenko calls draft normative legal acts and debates on them, minutes of meetings of law-making bodies, etc. [21, p. 192].

V.M. Syrykh emphasizes that the data on concrete historical conditions "can be supplemented and specified by an in-depth study of the process of preparation and adoption of the act. At the same time, the author clarifies that special attention in this area of research should be paid to "clarifying questions about which projects were being prepared, who participated in their development, what goals the designers set, why some projects were rejected and others were approved" [9, p. 250].

But excessive expansion of this group of sources can lead to incorrect results. As T.Y. Nasyrova rightly noted, "an interpreter can never depart from the objectified result of the will of the legislator – a normative act," Therefore, the involvement of additional sources "is appropriate only when they have affected its meaning" [22, p. 20].

Documents and projects related to the interpreted norm can be summarized into a single group of documentary legal materials.

Another source contributing to the understanding of the conditions for the adoption of a particular prescription may be a previous prescription containing a norm that has become invalid.

N.M. Korkunov believed that historical interpretation implies comparing the norm with its predecessor, i.e. the norm "operating on the same subject at the time of the establishment of a new one" [1, p. 418]. This perspective of historical interpretation implied several rules: norms should alternate in time, have the same subject and mutually exclusive nature.

Perhaps this is the meaning that A.V. Smirnov and A.G. Manukyan give to the historical interpretation, pointing out that the historical interpretation is based on comparing the interpreted norm with "the content of other norms having the same subject" and, as the authors pointed out, the norms for comparison usually contain in acts adopted earlier or later than the law from which the interpreted norm is taken [20, p. 65].

Without fully sharing the point of view of the authors, it should still be agreed that the norm preceding the interpreted prescription can give food for thought in historical interpretation: it "... makes it possible to understand the idea of the legislator, for example, whether he sought to strengthen legal responsibility ..." [21, p. 192].

A.T. Bonner, having in mind the historical interpretation, actually combined documentary sources and predecessor norms. He believed that historical interpretation implies a comparison of the interpreted norm with the previously valid ones, as well as the study of various materials "contributing to the clarification of the reasons for the publication or change of this norm" [23, p. 16].

Another element on which the historical interpretation is based is, as it seems, the level of development of legal science, the views of researchers on the sphere of relations regulated by this norm.

This aspect can be designated as a scientific, doctrinal source of historical interpretation.

Thus, the views on the problems of interpretation, including the ways (methods) of interpretation, N.M. Korkunov and E.N. Trubetskoy were largely formed under the influence of Savigny's works. The discussion that existed at that time was mainly about the number of ways of interpretation

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and the priority of certain ways.

The practitioners of that time looked at this problem more narrowly. E.V. Vaskovsky, who, in addition to teaching, had extensive practical experience as a judge and lawyer, as mentioned earlier, singled out only two ways of interpretation.

Representatives of the branch legal sciences of that time were very restrained in attracting historical material. A well-known expert in the field of criminal law N.S. Tagantsev complained that the articles of the law are verbose, they contain a lot of unnecessary words and expressions that only obscure the meaning, how often the legislator introduces the motives that caused this or that criminal law into the characterization of the act and even sometimes introduces historical materials into the text [24, p. 222-224].

The allocation of a larger number and the justification of new ways of interpretation is characteristic of Soviet legal science. Thus, A.S. Shaburov justified the position on the existence of seven ways of interpretation [25, p. 362].

Modern researchers build their research on the existing scientific base, introducing, of course, a certain element of novelty and, accordingly, forming a new level of the doctrinal base of interpretation. However, sooner or later their developments are subjected to critical interpretation as to a certain extent outdated, dogmatic, as the Brazilian scientist R.L. Simioni writes: "The analysis ... shows how outdated the methodological concepts of legal interpretation used by legal doctrine since the XIX century and the need for transdisciplinary legal practice of interpretation" [26, p. 135].

Finally, it seems that an important source of information about the political and legal conditions for the creation of a norm can be provided by those acts and the norms contained in them that accompanied the interpreted prescription.

The content of the norm can be disclosed by analyzing the source as a whole and the place of the norm in the system of the "general package" of legal regulations, "the place of the rule of law in the system of the branch or even in the system of law as a whole" [15, p. 350].

As E.V. Vaskovsky rightly noted, "all the norms that make up any law bear the seal of spiritual unity..." [3, p. 203]. At the same time, the author extended this sphere of unity not only to articles of one act, but also to their totality. I.Y. Dyuryagin noted that "the meaning and content of some legal norms is determined by which normative act or in which section of it these norms are included" [4, p. 92].

An example is the evaluation of the prescription of the Constitution of 1924, which prescribes the principle of free withdrawal of republics from the USSR.

A modern researcher can fully believe in the right of secession of the Union republics, based on the textual wording of Article 4 of Chapter 2 of the Constitution, where it is promised that "each of the Union republics retains the right of free withdrawal from the Union." But it is worth assessing the fact that neither during the development of this principle, nor at the time of the approval of the text of the Constitution, there were no norms providing for a mechanism for leaving the Union.

Against the background of this fact, the historical interpretation in the context of the "accompaniment" of the interpreted norm generates a stable belief about the declarative nature of this establishment.

Using the example of the last source of information about the content of the interpreted norm, one can make sure that this type of interpretation combines both elements of the historical (in the event that the interpreted norm and the entire "package" of accompanying acts are separated from the time of interpretation) and another way of interpretation.

It should be noted that this example is no exception. Many factors that underlie historical interpretation acquire familiar features of the methods of interpretation that are in use in modern research - systematic, linguistic, etc.

3. Types of historical interpretation in law

The justification of all the above provisions aims not only to reflect the author's basic approaches to the problem of historical interpretation, but also to promote the correct

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gradation of this method of interpretation into types, using several classification bases.

In particular, the last thesis can form the basis for the identification of several types of complex historical interpretation, which uses the techniques of other methods of interpretation. In addition, it is possible to classify historical interpretation depending on the effect of the norm over time, depending on which sources of law formalized the prescription and in accordance with what factors are taken as the basis of historical interpretation.

Classification taking into account the connection of historical interpretation with other methods of interpretation.

In accordance with the techniques of which methods of interpretation complement the historical interpretation, the types of interpretation can be divided into historical and complex proper. With this in mind, we can talk about the existence of complex (mixed) ways of interpretation.

The idea is not new, but in the appendix to the historical method of interpretation, this idea is made public only for the combination of the historical and functional method. Thus, V.M. Syrykh noted that the historical method of interpretation is applied not only independently, but also together with the functional method. According to the author, the functional method is the same historical method, only used to clarify the specific historical conditions for the application of a normative legal act [9, p. 305]. N.A. Vlasenko, however, rejects the idea of a connection between the functional and historical method of interpretation [21, p. 192].

V.S. Nersesyants strictly distinguished between historical and functional interpretation, but the definitions with which he designated both methods indicate that these methods partially overlap each other. Historical (historical-political) interpretation, as defined by the author, includes, among other things, an analysis of the will of the legislator not only at the time of the creation of the norm, but also at the time of its implementation in this particular situation, whereas for functional interpretation it is necessary to take into account the specific conditions, features of the time and place under which this rule of law is implemented [6, p. 495-496].

Is it possible to talk about other options? It seems that this is quite acceptable. N.A. Pyanov pointed out that in the process of clarifying the meaning of legal norms, not one, but a whole set of methods of interpretation is usually used [27, p. 441]. F.N. Fatkullin insisted on the independence of the "techniques" of interpretation, but, nevertheless, believed that they are used "always in a complex, closely intertwined with each other" [7, p. 247].

Complex historical interpretation can be divided into several subspecies: historical-systematic, historical-functional, historical-teleological, historical special-legal and historical-linguistic.

- Historical and systematic interpretation

This complex method requires that, when interpreting, the nature of the prescriptions accompanying the interpreted norm and its place in the system of the "general package" of legal prescriptions of the time when the interpreted norm was created should be taken into account.

An example is the institution of pledge in the Civil Code of 1922. Thus, according to Article 88 of the Civil Code, "Only a valid claim can be secured by a pledge." This article at first glance refers to the previous prescription – Article 1305 of the Code of Laws of the Russian Empire, which states that "Contracts and obligations by mutual consent can be strengthened and secured: 1) surety; 2) penalty condition; 3) pledge of immovable property; 4) mortgage of movable property."

Thus, from the standpoint of historical analysis of the previous norm of the Civil Code of 1922, it speaks of a pledge as a way of securing obligations. However, the historical and systematic way of interpretation gives a completely different picture: the article being interpreted is included in the section "Property law". So the Soviet pledge law, along with the right of ownership and the right of development, judging by the place in the Civil Code of 1922, refers to the real, and the pre-revolutionary – to the binding.

- Historical and functional interpretation

The historical-functional way should be understood as the interpretation of the "dynamic"

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order. In other words, the historical-functional method is based on the study of the practice of implementing the interpreted norm.

But, unlike functional interpretation, historical and functional interpretation allows analyzing the practice of implementing canceled regulations, outdated norms and those provisions that are separated from the interpreter by a significant time interval, within which the living conditions of society could have changed significantly.

- Historical and linguistic interpretation

This interpretation is based on the peculiarities of the vocabulary and grammar of the time when the norm was created.

It is interesting that E.N. Trubetskoy, denying independence to historical interpretation as a method, nevertheless, it was, in fact, what he meant when he pointed out the need for a thorough acquaintance with the language of the legislator, since "This language may differ significantly from our modern language" [2, p. 137].

For example, without a historical interpretation with a linguistic component, it is difficult to correctly understand the content of the prescription, which requires "to build fortresses" (Articles 247-253 of Chapter X) of the Cathedral Code of 1649. This prescription, as legal historians know, has nothing to do with military affairs, but is directly related to the civil-legal sphere of relations.

It is even more difficult for a modern researcher without a historical and linguistic interpretation to understand what the legislator meant by describing the situation with a peasant who came without bellies (v. 26, Chapter XI), and the killer also did not have a belly (V. 133, Chapter X). The fact is that since ancient times "belly" was called property belonging to the subject.

- Special-legal (technical-legal) historical interpretation

Special-legal (technical-legal) interpretation as an independent method is not recognized by everyone. Its existence and productivity are indicated in the works of F.N. Fatkullin, S.S. Alekseev, T.V. Kashanina.

It seems that the interpretation of the content of the legal regulation, indeed, among other things, should take into account the terms, concepts and constructions used in the text [7, p. 246].

This type of interpretation is carried out taking into account previous norms, as well as projects that have not become legislation), but on the basis of "technical and legal means and techniques of expression and presentation in the act of the will of the legislator ..." [28, p. 303].

An illustration of this type of interpretation can serve, in particular, the so-called Code of Laws of the Russian Empire, in which the legislator operates with such legal terms and constructions as "acquired property", "partnership on faith", "sale record", "bill of sale", "recruitment receipt", etc.

- Historical and teleological interpretation

Sometimes the historical method of interpretation is generally referred to as "historical-target", emphasizing that with the help of the study of historical documents, it is possible to establish the goals of the interpreted prescription.

The question of the need to single out the target (teleological) method as an independent method of interpretation in the scientific literature has been ambiguously resolved. Thus, in a number of studies, this method is not recognized at all, and some authors [29; 30], according to T.Y. Nasyrova, elevate it to the rank of "a method claiming to verify the truth of the results of other methods" [22, p. 67]. N.A. Pyanov focuses on its significance in in the conditions of a sharp change in the socio-political situation [27, p. 440]. In addition, some authors share the concepts of target and teleological interpretation. Thus, in particular, the Croatian scientist Milos Vukotic considers the target interpretation "a kind of teleological interpretation, a statement based on various assumptions about subjective and objective goals" [31, p. 10].

But, with all the variety of assessments of this method, it seems that the opinion is fully justified that the goals of the legislator often "go beyond the content of the regulatory prescription" [22, p. 19]. This is especially important to establish in cases where the intentions of the legislator are veiled by special techniques, for example, with the help of legislative techniques. I.Y. Dyuryagin explicitly pointed out that the historical and political interpretation, among other things, is to clarify the socio-political goals of the legislator [4, p. 91]. V.M.

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Raw also focuses on the need to establish the "content and direction of the will of the legislator" at the time of the creation of the act [9, p. 304].

Taking into account the opinion of authoritative researchers, it can be assumed that this aspect should also be taken into account when implementing historical interpretation.

In particular, without interpretation it is difficult to understand what the emperor meant in art. I and IV of the Manifesto on the formation of the State Council of January 1, 1810: "In the order of state regulations, the Council is an estate in which all parts of the administration in their main relations to legislation are considered and through it ascend to the supreme imperial power," and the order of formation of this Council is also textually confused: "The Council is composed of individuals, by our power of attorney to this estate of the called".

It should be noted that neither knowledge of the features of the language of the early XIX century, nor legal terminology in this case will not help. The words "thinking", "ascending", "called" – they are all understandable from everyday positions, but mask the true meaning of the prescriptions.

Only a historical and teleological interpretation can explain in this case that a new state body is created as an advisory body under the emperor, and is formed by appointing members of the council by the emperor.

a. Classification of historical interpretation by types of sources of law, which contain a legal norm

The object of historical interpretation is the content of the rule of law, formalized by the text of any source of law.

Unfortunately, in our theoretical and legal science there is a stable tradition to put an equal sign between the material carrier of the norm and the normative legal act.

As a rule, it is the normative act that is associated in research with the textual formulation of the norm: "interpretation is a cognitive activity carried out in order to establish the content of the rule of law set forth in the text of the normative legal act" [9, p. 276]; "the interpretation of law is understood ... the process aimed at establishing the content of the norms of law by identifying the meanings and meaning of terms and expressions (signs of natural language) contained in normative acts" [14, p. 5-6]; when interpreting, "the interpreter reveals layer by layer what is legally expressed and stated in the text of the normative act" [28, p. 301].

Some authors simply do not specify the form of the textual embodiment of the norm, but tacitly agree with normative legal acts as its bearers. However, it is possible to consider the issue more broadly and recognize the need and possibility of interpreting the norms that are laid down by other forms (sources) of law.

Based on the above, the historical interpretation can be classified into several types.

This is a historical interpretation of the content of the norms contained in

- regulatory legal acts
- legal customs
- normative contracts
- religious texts (this type is actively used in legal systems based on religion)
- legal doctrines
- judicial precedents
- other forms, including outdated, partially or completely unrecognized by Russian theoretical and legal science (legally significant customs, wills of princes, religious and secular texts, party regulations, etc.)

b. Classification of historical interpretation depending on the effect of the norm in time

As previously noted, the historical interpretation is applicable both to existing norms and to legal prescriptions that have become invalid. These types of historical interpretation may have different goals and different degrees of usefulness for practice, but it would be wrong to exclude one or the other from the means of clarifying the content of a legal prescription. In particular, when the authors point out the importance of the "predecessors" of the modern norm, they thereby open access to the historical interpretation of not only the norm itself, but also its "progenitors".

Based on the above, depending on the action of the norm in time, it is possible to distinguish:

- historical interpretation of the norms that

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have become invalid

- historical interpretation of the norms of the current law

The latter type, in turn, can be represented by two varieties.

These are, firstly, the current norms of current content, and secondly, these are outdated prescriptions in terms of content, however, have not lost their legal force. It is in relation to outdated norms that historical interpretation is of particular importance.

c. Classification of historical interpretation by subjects

This classification criterion is quite popular in modern jurisprudence. Based on the status of the interpreter, in relation to the historical interpretation, it is possible to distinguish

- historical official interpretation
- historical unofficial interpretation

For law enforcement, only the first variety has significance and force. The second can serve as an aid and perform tasks of a scientific, educational, educational, etc. nature.

It should be noted that the above scheme of classification of historical interpretation in law is not exhaustive. There may be other grounds for gradation of methods of interpretation, however, it seems that the above classifications best reflect the ambiguity of the methods and means of historical interpretation, the diversity of its goals and possibilities of influencing both the law enforcement officer and law-making bodies.

4. Conclusions

Based on the research, it can be concluded that the historical interpretation of the content of legal norms has an undoubted value and significant potential. It not only helps in law enforcement activities, but also allows you to build sound scientific hypotheses, predict the directions of development of law based on knowledge about the historical conditions of the development and adoption of the interpreted norm, assess the possibilities of reviving canceled norms in recurring socio-economic and political-legal conditions. Historical interpretation implies clarification and clarification of the content of legal regulations on the basis of knowledge about the legal and non-legal circumstances that accompanied the development and official adoption of the legal regulation. Speaking about the historical method of interpretation in law, one should not forget about the multidimensional content of this method. Historical interpretation in law can be complex, i.e. to combine the techniques of the historical and other methods of interpretation (functional, linguistic, etc.), to be carried out by both authorized subjects and persons of any status, the interpreted prescriptions may relate to the current law or lose legal force, and the prescription itself is formalized not only in a normative legal act, but also a normative contract, legal custom, etc.

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