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The Influence of Ancient Greek Judicial Speakers on Interpretation of Legal Norms

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The article is devoted to the interpretation of law in ancient Greece. There was shown the influence of judicial speakers on perception of law orders sense. There was underlined the significance of legal norm interpretation for proper judicial decisions and further development of legislation.

Keywords: law, legal norm interpretation, judicial speaker, interpretation activity, judges, gap in law, judicial speech.

Problems of interpretation of law and peculiarities of influence of different factors on interpretation of legal norms present the great interest for researches. Present problems repeatedly became the subject of researches of foreign [1] and domestic scientists. However, in general, they caused interest from modern or national positions.

It is considered that the present subject is interesting as well and in historical aspect, and we paid out attention to it in our article.

Yet from ancient times researchers noted that on formation of internal views of law enforcement analysts concerning to the sense of legal norm had the influence not only the text of law expressing the legislator's point of view, but its interpretation too, given to other persons. The judicial procedure of conflict resolution became the base "on which basis the procedural and

material-legal norms-judicial laws are formed and developed" [2, 15].

In present research we emphasize on judicial speakers whose skill of legal norm interpretation frequently defined not only the person's destiny, but the law in itself. In general, the interpretation is "immanently inherent feature of a person, important need to ponder ... and assert oneself, taking part in pleadings, disputes..." [3-4]. So, no wonder that the activity of judicial speakers became the object of fixed attention in different historical epochs.

So, among ancient Greek historical heritage we can find works of outstanding Athenian speakers: Lysia, Demosthenes and et al. Among other works we can meet speeches written for addresses in trials in which the personal opinion of a speaker on the essence of legal norm is expressed and on correspondence with committed action to law content.

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Researches suppose, that Antiphont the first began to write and publish judicial speeches for money, the beginning of this activity referred to 430-425 BC [6, 2]. The great interest presents the speech of Demosthenes against Androthion on breaches of law, dated to 355 BC, in which the foundations are stated and can block the bill in people's assembly [5, 142 -146].

There were cases when the opinion of outstanding speakers disagreed with the opinion of a judge, and they didn't hesitate to challenge it. So, in 352 BC Demosthenes wrote the speech for address against the project of the draft resolution of the advice introduced by Aristocrat, [5, 167 -191] according to which the ringleader of hirelings Haredi who was that time the Athenian citizen, who received the special protection, because in case of his homicide it was resolved to detain the guilty if he was in any state-ally of Athens. Citing the quotations of laws necessary for resolution of this case and interpreting them, Demosthenes proves the injustice of positions, containing in the project of resolutions. At that time it is clear that the interpretation given by the speaker based on presumption of innocence, justice and equality before law and court.

So, in ancient Greece not only legal norms but acts of their application subjected to interpretation as well. Demosthenes in his speech directed against Aristocrat, tried to show that some regulations of law were interpreted in his project of the resolution too freely. Distortions of existing legal norms resulted in it. Regulations must be made up in accordance with laws. Consequently, a person, preparing the critical resolution, broke the law.

Moreover, it is evident from the speech, that there was the difference between laws and acts of law application in interpretation of ancient Greek lawyers, because there was cited the quotation from the law, running that it is forbidden to issue

laws concerning only to one person if laws aren't spread equally among all citizens of Athens.

Theses given by Demosthenes testify about that in ancient Greece the interpretation has already implemented in accordance with judicial authorities of acts and their division on normative and individual ones.

Demosthenes quotes to Greek law running that no resolution passed by the Council or national assembly can't be stood above the law at the end of his speech. In the case of adoption of the project which is criticized by him as a resolution, it will breach laws. So, as Demosthenes states, a person who breaches a lot of laws stands his private interests on the first place. So, he really demands to place his resolution above laws [5, 191].

Proceeding from present speech of Demosthenes, legal norms must not be subject to excessively broad interpretation, because except of breaches of law, it will entail the violation of interests of society and state for benefit of private person interests.

Detailed characteristic and interpretation of regulations in present speeches and merits of Demosthenes as well as a source allowing us to get knowledge on Greek law and legal procedure, allow to make the conclusion that his speeches were the pre-source of modern professional interpretation of legal norms.

It should be noted that not all contemporaries respectfully concerned to the activity of judicial speakers. Tisias, Gorgias of Leontini called this activity as a means of persuasion. Platon demonstrated his double relationship to it calling this relationship as a shadow of a particle of state management science, or the fourth part of flattery. Epicurus considered the judicial oratory to bad sciences and called it the art to deceive [6, 471].

We must admit that such an attitude had some foundations. Sources indicate that parties, defending their position, could refer to the laws as

citations, as in free narration. The same concerned the contracts, wills and other documents. Allegations abounded with implausible abstracts, often contradictory to common sense, and previous to the words of speakers. The result of these oratorical interpretations of legal norms, events and actions was unpredictable: judges often irritated by the speech gave the death sentence to innocent people or acquitted the guilty, who could move them to pity.

In Heliaya this rule does not act. However, the ancient Greek wise man Socrates, being judged there, did not take the advantage of these means, because they believed that it contradicted the spirit of laws and morality.

Long ago researchers noticed and the Athenian practice confirmed one essential peculiarity of ancient Greek life of classical epoch: conclusive power of living word was much than the power of documents. Therefore to underestimate the value of interpretation, exploring the ancient Greek era would be a mistake. The value of written documents began to grow only in the 4th century, with the transition to a written claim and written testimonies. [7, 270, 271]. We can assess the activity of judicial speakers, but we cannot deny the fact that it had a positive impact on the interpretation of legal norms and their further development.

But, despite the positive aspect, it is very difficult for researchers to assess how effective were the tactics of actions and oratorical tricks, because the outcome of a process in which that speech it was said often remains unknown. In addition, the extracts from legal acts, referenced by one or another speaker, are omitted in speeches, inaccurate or distorted by copyists. Such a situation does not allow us to reconstruct the literal content of legal norms, we can guess on it from the point of view of the interpreter. It is not excluded Free interpretation of legal norms in the interests of entrenched positions is not excluded.

Researchers [7, 15, 10, 115] note that the emphasis in their speeches the speakers did not so on laws, but on beliefs, social values, fears and patriotism of population, and consequently, not all aspects contained in the speeches of the orators, even purely procedural, are credible.

Therefore, we can conclude that the characters of ancient Greek judicial process did not aspire to the maximum exact interpretation of the text of the legal norms. They did not clear the technical details of law, did not specify its requirements, tried to comply with relevance or admissibility of rules to the specific case. Presumably, judges are also not required of all the subtleties of the statutory regulations and legal formalities. Sources show that the greater value in their eyes had the norms of public morality, political and social preferences. That is, the judges guided not so much legal as illegal criteria.

Such an understanding led to the derogation from the principle of legality. So, the absence of a suitable application of the law Lycurgus reimbursed by sophistries of the following content: « To such extent the crime is terrible and it is so great that it is neither possible to find any relevant charges, nor to look for a punishment in laws for such crimes». In addition, it is known his appeal to the judges not only to administer justice, but also to act as nomophets, condemning the accused sine lege, i.e. creating a suitable law in his imagination [7, 397]. The greater propensity of judges to illegal criteria can be explained as established those times that laws can be abused and distorted.

Although the Greek judges swore to verdict in accordance with the laws and regulations and to vote in accordance with the highest justice, the obscurity and ambiguity of ancient Greek laws gave the possibility to deviate from this oath by implementing the most advantageous to the subject of interpretation.

However, it was already known that the law can't cover absolutely all life situations. For cases that have not received enshrined in laws, there was acted the principle expressed in the speeches of Demosthenes «Against Leptin»: to judge by laws, and if there are no laws that are suitable to the occasion, judge in accordance with the judgment of the higher justice.

Thus, the respect of the ancient Greeks to the domestic law did not oblige them to stick to each letter, on the contrary, the provisions of legal regulations had to be weighed against the requirements of justice and to do as it seems to be useful for the state. In Ancient Greece, speakers argued quite often in their speeches that this or that norm is disadvantageous to the state, which led to the acquittal of those who broke it.

However, we should consider the fact that justice is understood by everyone in his own way. And it provides space for different interpretations of the same provisions of the law. And it provides with space for different interpretations of the same provisions of law.

It happens that relationship by its nature should be dealt with in the sphere of legal regulation, but are either fully addressed or insufficiently regulated. In this case, the orators of Ancient Greece believed necessary to fill the gap, referring to the words of Aristotle that “the one will act correctly, he will correct the defect and will fill the gap, left by the legislator; the lack of which the legislator has corrected by himself, if he would present and if he would know about this case, when he gave the law” [9, 102].

When interpreting legal norms, Aristotle put on the first place not the letter of the law, but the interpretation of the actual will of the legislator, i.e. his «spirit» [10, 209]. However, it should be noted that, in discussing his work «Rhetoric» the ratio of legal argumentation and justice in the court speeches, Aristotle focused on illegal criteria. For example, on feelings which

should inspire the audience and the speaker. Texts of laws, including the old ones, in Ancient Greece were available for contemplation, so the invention of fake was punished by the death penalty. But nowhere the arbitrary interpretation of the text of the existing laws was forbidden, including in isolation from the context, and it should be noted, that it has been perceived by judges. The analysis of ancient Greek judicial speeches indicates that the distortion of the text of laws were frequent.

In addition to the separation of individual phrases and sentences from the context, the participants in the trial made a perverted interpretation of the law, referring to the intention of the legislator, and thus expanded the meaning of the law or its scope.

However, the speakers didn't risk to counteract to law and justice. For the most part they tried to prove the violation by opponent of the written law. In their speeches they tried to give this new interpretation, which allows to combine *nomos* (law) and *dike* (justice).

In addition to this, the substantiation of the decisions on the idea of justice, and not on law, contributed the suspicion of Greek judges in respect of those who knew the laws are «too good». This gave reason to declare that the party referring to the law in his speech, «spit it in all sides» but the situation is different. Given welcome, in particular, was used in the speech of Demosthenes «About wreath» [5, 152].

Proceeding from the aforesaid, it should lead the result, which shows that already in Ancient Greece, researchers, speakers, judges and philosophers of law, understood that, the text of the law by itself, whatever it was correct from the point of view of the content and legal technique, has no power without the right interpretations. Only the exact interpretation of the text of the law and its implementation in accordance with the intent and purpose of the legislator can breathe

life into it, to regulate social relations and to facilitate the evolution of society and the state. The correct interpretation is the power of the law. As rightly Demosthenes said in the speech «Against Midiy» [7, 224], the law itself is not able to assist

people. It is only just a written text which can't do anything in itself. The real power of law is in people following it. And the right interpretation is necessary for exact following and application of law is necessary.

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**Влияние деятельности
древнегреческих судебных ораторов
на толкование правовых норм**

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Статья посвящена толкованию права в Древней Греции. В ней показано влияние деятельности судебных ораторов на восприятие смысла правовых предписаний. Подчеркивается важность верного толкований норм права для принятия правильных судебных решений и для дальнейшего развития законодательства.

Ключевые слова: закон, толкование правовых норм, судебный оратор, интерпретационная деятельность, судьи, пробел в праве, судебная речь.
