ANTON B. DIDIKIN

Institute of State and Law, Russian Academy of Sciences
10, Znamenka str., Moscow 119019, Russian Federation
E-mail: abdidikin@bk.ru
SPIN code: 4897-4450
ORCID: 0000-0003-0808-8900

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SPEECH ACTS AND ACTIONS IN LEGAL LANGUAGE: CONCEPTUAL ANALYSIS

Abstract. Reconsideration of legal phenomena by legal language means is a typical feature of analytical tradition in the legal philosophy, since legal regulations are expressed not only in language, but are inextricably linked with the linguistic content of rules whilst applying them. Language as a form of communication and representation of the world is a holistic and specific phenomenon, that is localized in speech acts that form subject's intentions and his further actions. It is necessary to count the meaningful use of signs for the reality perception, that form the language. Legal reality and its language forms are inseparable, and thus, we can learn more deeply the essence of legal phenomena by interpreting legal texts and speech acts that illustrate legal intentions and actions.

So in the speech acts theory of J.L. Austin introduces the category of commissives, denoting the obligations declared by the intentions of the person (promise, agree, intend, plan, provide, allow, swear, etc.). In legal language speech acts are used with the purposes of execution, prohibition, coercion for maintenance of a social order, therefore legal discourse has performative character. Performative expressions in legal language are characterized by speech stereotypes due to repetitive procedures (for example, procedural actions in criminal proceedings or court hearings). If it is a question of acts of application of the right, from the point of view of their performative form they have declarative character, that is contain instructions and obligations of legal character. The illocutionary function of these proposals is to form a respectful attitude to the established norms, and the perlocutive force is to impose compliance with these norms.

The question of the relation of speech acts and actions in a different context was considered by Gilbert Ryle. Ryle's key thesis is that the workings of consciousness should not be described as a complex of some point operations, but rather should be

understood in the context of observed human behavior. Consciousness is determined by the actions of the subject, not by the construction of metaphysical entities. As a man thinks, so he acts. If the researcher inspects the scene of the accident, the notary certifies the authenticity of the documents drawn up, and the judge gives arguments for the adoption of a legitimate judicial decision, they do not need the whole set of causality relationships in nature, or an explanation that human behavior is completely determined, that he is not free, because he can not control the mental processes in consciousness.

H.L.A. Hart defines the essence of legal statements and their ascription of attributing legal value of a particular performative speech acts. The arguments on the specific features of legal statements in the context of the existing concepts of J.L. Austin, J. Searle, H. Hart and their critics.

Keywords: legal language, speech acts, legal statements, ascription, interpretation

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АНТОН БОРИСОВИЧ ДИДИКИН

Институт государства и права Российской академии наук
119019, Российская Федерация, Москва, ул. Знаменка, д. 10
E-mail: abdidikin@bk.ru
SPIN code: 4897-4450
ORCID: 0000-0003-0808-8900

РЕЧЕВЫЕ АКТЫ И ДЕЙСТВИЯ В ЮРИДИЧЕСКОМ ЯЗЫКЕ: КОНЦЕПТУАЛЬНЫЙ АНАЛИЗ

Аннотация. Переосмысление правовых явлений средствами юридического языка является характерной чертой аналитической традиции в философии права, поскольку правовые предписания не только выражаются в языковых формах, но и в целом неразрывно связаны в процессе их применения с лингвистическим содержанием правил. Язык как форма коммуникации и репрезентации мира — явление целостное и специфическое, которое в зависимости от типа языкового дискурса локализуется в речевых актах, формирующих намерения субъекта и его дальнейшие действия. Для восприятия действительности необходимо учитывать осмысленное употребление знаков, являющихся чувственно воспринимаемыми частями символов, составляющих язык. Правовая действительность и ее языковые формы неразделимы, а значит, интерпретируя правовые тексты и речевые акты, иллюстрирующие намерения и действия, имеющие юридическое значение, мы более глубоко можем познать сущность правовых явлений.

Так, в теории речевых актов Дж. Л. Остина вводится категория комиссивов, обозначающих обязательства, декларированные намерениями лица (обе-

щаю, соглашаюсь, намереваюсь, планирую, предусматриваю, разрешаю, клянусь и т.д.). В юридическом языке используются речевые акты в целях исполнения, запрещения, принуждения для поддержания социального порядка, поэтому юридический дискурс имеет перформативный характер. Для перформативных выражений в юридическом языке характерны речевые стереотипы из-за повторяющихся процедур (например, процессуальных действий в уголовном процессе или проведения судебных заседаний). Если же речь идет об актах применения права, то с точки зрения их перформативной формы они имеют декларативный характер, т.е. содержат указания и обязательства юридического характера. Иллокутивная функция данных предложений состоит в формировании уважительного отношения к установленным нормам, а перлокутивная сила — в навязывании соблюдения этих норм.

Вопрос о соотношении речевых актов и действий в ином контексте рассматривался Гилбертом Райлом. Ключевой тезис Райла состоит в том, что работу сознания не следует описывать как комплекс каких-то точечных операций, а скорее нужно понимать в контексте наблюдаемого человеческого поведения. Сознание определяется действиями субъекта, а не конструированием метафизических сущностей. Как человек мыслит, так он и действует. Если следователь осуществляет осмотр места происшествия, нотариус заверяет подлинность составленных документов, а судья приводит аргументы для принятия законного судебного решения, им не требуется вся совокупность причинно-следственных связей в природе, или объяснение того, что поведение человека полностью детерминировано, что он не свободен, ибо не может контролировать ментальные процессы в сознании.

Г.Л.А. Харт определяет сущность правовых высказываний их аскриптивностью, приписывающей юридическое значение конкретным перформативным речевым актам. Приводятся аргументы о специфических признаках правовых высказываний в контексте существующих концепций Дж. Л. Остина, Дж. Серля, Г. Харта и их критиков.

Ключевые слова: юридический язык, речевые акты, правовые высказывания, аскрипция, интерпретация

Introduction. In the modern legal philosophy the "linguistic turn" became not only the result of analytical philosophy's impact on clarifying the legal language terms, but also it was the reason for justification of conceptual analysis as the main method of resolving possible contradictions. The meaning of legal statements began to be understood in the linguistic context of legal rules. And in some cases, the social context has come to be considered not as a matter of interaction between law and social reality, but as a context of legal terms, for instance, in determining judicial reasoning or establishing the legal meaning of actions[1]. Such a new approach to solving old problems

[1] *Postema G.* Hart and Legal Philosophy at Mid-Century // Legal Philosophy in the Twentieth Century: The Common Law World by Gerald J. Postema. USA, 2011. P. 261–265.

of the legal philosophy, as was noted by V. Surovtsev and V. Ogleznev, allows to reveal the legal language's specifics more deeply and not to reduce it to any non-legal grounds, as legal realists periodically try to do[2].

The origins of the logical-semantic analysis method can be found in the works of early analytical philosophers — George Edward Moore with his concept of "philosophy of common sense"[3], and Bertrand Russell with the idea of "knowledge-familiarity" and descriptions theory[4]. The question of the correlation between language and reality in analytical philosophy is based on separation of intuitive comprehension of concepts and objects in the world, which existence is postulated in scientific knowledge. For analytical jurisprudence, the study of legal language avoids the issue with lack of legal theories of adequate empirical justification. If legal phenomena are not restricted exclusively by empirical facts and are subject to rational interpretation, linguistic analysis in such a situation is necessary. However, according to L. Wittgenstein's works of late period, the search for the meaning of everyday language terms involves the knowledge of "language game" as a connection between speech act and action[5].

Speech Acts Theory. In analytical philosophy, the theory of speech acts is associated with the ideas of John. L. Austin, that were heard at meetings of the Aristotelian Philosophical Society in the first time, and were found in his book "*How to do Things with Words*"[6]. Austin cites the symbolic procedure of naming a ship ("I name this ship "Queen Elizabeth"") as an example of special language expressions, not related to description of affairs. In this example, the solemn phrase pronouncement is not only an expression of intent, but also committing an action.

Such language expressions J.L. Austin calls *performative sentences*, *performative use* or *performatives*: "it indicates that the issuing of the utterance is the performing of an action — it is not normally thought of as just saying something"[7]. The use of certain words is an important and integral part of committing of a certain type of action, but it is impossible not to count the

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[2] *Оглезнев В.В.*, *Суровцев В.А.* Аналитическая философия, юридический язык и философия права. Томск, 2016. С. 126–142.

[3] *Moore G.E.* A Defence of Common Sense // Moore G.E. Philosophical Papers. London; New York, 2004. P. 32–59.

[4] *Russell B.* Knowledge by Acquaintance and Knowledge by Description // Russell B. The Basic Writings of Bertrand Russell. London; New York, 2009. P. 191–198.

[5] *Baker G.P.*, *Hacker P.M.S.* Wittgenstein: Rules, Grammar and Necessity. Oxford, 2009. P. 81–95.

[6] *Austin J.L.* How to do Things with Words. Oxford, 1962.

[7] Ibid. P. 6–7.

communicative situation: "it is always necessary that the circumstances in which the words are uttered should be in some way, or ways, *appropriate*, and it is very commonly necessary that either the speaker himself or other persons should *also* perform certain *other* actions, whether "physical" or "mental" actions or even acts of uttering further words"[8]. However, the criteria of truth and falsity are not applicable to performative expressions, "and that we *do* speak of a false promise need commit us no more than the fact that we speak of a false move. "False" is not necessarily used of statements only"[9]. Instead, he talks about the rules that define success or failure of performative expressions. Violation of these rules leads to failure of applying performative, but the extent of failure may be different. For example, if the ship naming ceremony is not produce by the captain but by someone else, this procedure will become questionable. But if you make an insincere promise, without intention to keep it, the promise still will be given and the action will be committed.

John. L. Austin emphasizes the difficulties of distinguishing between the statement constituting the subsequent action and the statement completing a single action (for example, "I grant' and transfer of a possession, "I sell" and completion of a transaction). The truth of certain statements, as well as the semantic structure of a sentence, can be singled out as a prerequisite for the performative's success. In this case, understanding the context of expressions use is decisive for the conceptual analysis of performative statements. At the same time, Austin discards the idea of a rigid distinction between *constative expressions* (which may be true or false) and *performative expressions* (successful and unsuccessful): "the truth of the constative utterance "he is running" depends on his being running"[10].

Therefore, among the types of speech acts Austin uses *commissives*, implying obligations that are declared by intentions. The essence of a commissive is to endow the person pronouncing it (pronounced also fixed in the contract) with the obligation to act in a certain way[11]. An element of a promise as a commissive in the legal sense is, for example, obligation and possibility of requiring fulfillment of this obligation[12]. Austin attributed the words "I promise", "I agree", "I intend", "I plan", "I provide", "I allow",

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[8] *Austin J.L.* How to do Things with Words. Oxford, 1962. P. 8.

[9] Ibid. P. 11.

[10] Ibid. P. 47.

[11] *Masaki Y.* Critique of J.L. Austin's Speech Act Theory: Decentralization of the Speaker-Centered Meaning in Communication // Kyushu Communication Studies. 2004. Vol. 2. P. 155–175.

[12] *Оглезнев В.В.* Харт и формирование аналитической философии права. Томск, 2012. С. 140.

"I swear" to commissives. Such speech acts may be particularly relevant in English contract law because they express intentions of the parties in fulfillment the contract terms. And, as was noted by the follower of the speech acts theory J. Searle, performative correlates with the situation that it creates itself[13], and therefore directly relates to the legal statements. Thus, it directly relates to the law. Performatives can be the basis of legal norms and acts issued by the legislator, declarations, and other law sources.

Among the grammatical and semantic conditions of applying performatives Austin emphasizes the impossibility of defining the absolute criterion or even a list of accurate possible criteria. In terms of linguistic pragmatic, he identifies only an approximate criterion — a verb in the form of the first person singular in the present tense, indicative, in the active voice (for example, the expression "I promise that I will be there", and as Austin notes, ""I promise to do X but I am under no obligation to do it" may certainly look more like self-contradiction — whatever that is — than "I promise to do X but I am not to intend to do it"[14]). At the same time, the meaning of the speech act is defined by the several types of actions:

- *locutionary action* generating the statement;
- *illocutionary action* expressing the speaker's intention;
- *perlocutionary action* as an impact on the addressee to achieve the expression's result.

It is worth to note that the legal language uses speech acts for the purposes of execution, prohibition, coercion in order to maintain social order, so the legal discourse is performative.

Performative expressions in the legal language are characterized by speech stereotypes due to repetitive procedures (for example, actions in criminal proceedings or court hearings). If we are talking about acts of applying the law, in terms of their performative form they are declarative, meaning that they contain legal instructions and obligations. Illocutionary function of these proposals is creation of respect for established norms, and perlocutionary force is in the imposition of those norms.

Ryle's Philosophy of Action. The question of the correlation between speech acts and actions in analytical philosophy was considered by Gilbert Ryle in a different context. Speaking about behavioral approach to understanding the consciousness, he noted that "the verbs, nouns and adjectives, with which in ordinary life we describe the wits, characters and

[13] *Searle J.R.* How Performatives Work // Linguistics and Philosophy. 1989. Vol. 12. P. 540–561.

[14] *Austin J.L.* How to do Things with Words. P. 54.

higher-grade performances of the people with whom we have do, are required to be construed as signifying special episodes in their secret histories, or else as signifying tendencies for such episodes to occur"[15]. The key Ryle's thesis is that the work of consciousness should not be described as a complex of some point operations, but rather should be understood in the context of observed human behavior. Consciousness is determined by subject's actions, not by the construction of metaphysical entities.

This raises the question — can one person understand the other consciousness through his consciousness? Ryle notes that "anybody who can play chess already understands a good deal of what other players do, and a brief study of geometry enables an ordinary boy to follow a good deal of Euclid's reasoning"[16]. As L. Wittgenstein argued in context of rule-following problem: "and hence also "obeying the rule" is a practice. Moreover, to think one obeying the rule is not to obey the rule. Hence it is not possible to obey the rule "privately": otherwise thinking one was obeying the rule would be the same thing as obeying it"[17]. Thus, learning the rules and observing other people's repetitive behavior indicates that "no metaphysical looking-glass exists compelling us to be forever completely disclosed and explained to ourselves, though from the everyday conduct of our sociable and unsociable lives we learn to be reasonably conversant with ourselves"[18]. Since each person can trace the relationship between his personal experience and external actions, it is possible for him to understand the other people's actions by analogy. According to Ryle, it is necessary to describe and interpret mental predicates by special *dispositional statements*, not as internal, unobservable, mysterious processes and events, but as a predisposition and ability to take actions that we can observe.

What advantages can be if in we focus on arguments of logical behaviorism philosophical and legal discourse? The main G. Ryle's thesis about possibility of analyzing subject's mental state through his behavior interpretation is extremely important for analytical jurisprudence[19]. A person acts as he thinks. If an investigator examines a place of accident, a notary certifies the authenticity of documents, and a judge gives arguments for a legal court decision, they do not need the whole aggregate of cause-and-

[15] *Ryle G.* The Concept of Mind. London; New York, 2009. P. 5.

[16] Ibid. P. 40.

[17] *Wittgenstein L.* Philosophical Investigations. Oxford, 2001. P. 88.

[18] *Ryle G.* Op. cit. P. 161–162.

[19] *Stout R.* Ryle's Behaviorism // Revue Internationale de Philosophie. 2003. Vol. 57. No. 223 (1). P. 37–49.

effect relationships, or an explanation that human behavior is completely determined that he is not free, because he can not control mental processes in consciousness.

The task of legal interpretation is to resolve the conflict, eliminate the harm caused by legal means, formulate rules of conduct which are regulating (but not determining in the physical sense) the actions of people. That is why linguistic phenomena that construct legal reality and the context of applying legal terms, which creates the basis for legally behavior, can be described in the categories of logical behaviorism.

Ascriptive Legal Statements as a Performative Speech Acts. In this sense, the well-known impact of John. L. Austin's and G. Ryle's ideas on the theory of H. Hart's legal language can be found in the analysis of H. Hart's works of the early period. For example, in the paper *Decision, intention and certainty*, written in collaboration with S. Hampshire, he discusses about the concept of reliability with respect to human actions — person's knowledge of his intentional actions in the present and future. Hart and Hampshire share the concepts of prediction ("certainty based on empirical obviousness") and decision ("conclusion based on thinking about the reasons for their actions"). Certainty does not follow from the facts, it arises at the moment of making a decision: "When he made a decision, i.e. when, after considering the reasons, he got rid of any unreliability of knowledge of what he was going to do, and until he either fell into a state of uncertainty again because of the obvious reasons, or finally did not change his mind, it is possible to say that he intends to do it, regardless of what he decided to do"[20]. Therefore, knowledge characterizes some certainty of actions. However, V. Ogleznev corrects this statement, stating that "the result of making a decision can be considered as elimination of uncertainty"[21], as in rapidly changing circumstances, decisions are made with some degree of uncertainty, besides there are various risks that introduce uncertainty in the decision-making process.

As an illocutive force of legal statements, Hart refers not to description but to attribution — *ascription*; a statement such as "He did it" is defined by exceptions rather than by a description of necessary and sufficient conditions. Thus, ascriptions as speech acts in the legal language characterize legal discourse's features. If the legal activity only refers to the legal qualification of behavior, then it is unclear how the facts support or oppose the legal conclusions. H. Hart describes the judicial decision as a mixture of empirical

[20] *Hampshire S.*, *Hart H.L.A.* Decision, Intention and Certainty // Mind. 1958. Vol. 67. No. 265. P. 3.

[21] *Оглезнев В.* Харт и формирование аналитической философии права. С. 95.

facts and legal norms. However, he criticizes the model of descriptive legal statements, as the judge's purposes are more complex than simply agreeing on facts, for example, of the necessary and sufficient conditions of the contract conclusion as provided by law. When the judge reviews a contract to establish its legal validity, his function is not to interpret the facts correctly but to recognize the existence of agreement through the accurate qualification of the actions of the parties fulfilling the obligations. The judge does not make deductive conclusions because the legal decisions are not based solely on the empirical facts.

"Open Texture" of Legal Language. If we consider the origins of the Hart's concept of "open texture" of the legal language we find it in the works of F. Waismann. Publications by F. Waismann often repeat the ideas of the late L. Wittgenstein, but in a more accessible form. However, some concepts in F. Waismann were a way of revealing his own ideas. The concept of "open texture" just refers to the consideration of his special approach to the philosophy of language. F. Waismann, following L. Wittgenstein, does not agree with the realist approach to language, but also distances himself from many positions alternative to realism[22]. In particular, the concept of "open texture" of language is presented as an argument against the phenomenalist position that material objective statements are equivalent to some statements filled with semantic facts. "Open texture" as a concept is introduced to conceptualize specific problems in theory testing. Since the "open texture" consists of empirical data, F. Waismann argues that material objective statements cannot be translated into statements filled with meaningful facts, because empirical statements cannot be definitively verified[23]. A term like "gold", although its actual use may not be vague, is not exhaustive or constituting an "open texture" as we can never fill in all the possible gaps in its use that may give rise to doubt.

F. Waismann points out the uncertainty arising from a situation that we could not foresee: "... there will always remain a possibility, however faint, that we have not taken into account something or other that may be relevant to their usage; and that means that we cannot foresee completely all the possible circumstances in which the statement is true or in which it is false"[24]. On the other hand, F. Waismann notes that a full definition of the term cannot be given because we can never rule out the possibility of some

[22] *Bix B.* H.L.A. Hart and the "Open Texture" of Language // Law and Philosophy. 1991. Vol. 10. P. 56.

[23] *Waismann F.* How I see Philosophy / Ed. by R. Harre. London, 1968. P. 39–40.

[24] Ibid. P. 43.

unforeseen factors, or the process of defining and refining an idea to meet each new factor will pass without achieving a result[25].

According to B. Bix, F. Waismann tries to give an additional argument in favor of the concept of "open texture" of language, considering the issues of confirmability and verification of statements[26]. In his work *Principles of Linguistic Philosophy* of F. Waismann, at first glance, little mentions the issues of confirmability. For example, he wrote: "We were asking the question whether the assertion that a ball is lying on the table can be finally verified. The answer to this question is that this can be decided on our part by an arbitrary determination"[27]. It all depends on what we mean by "checking", and whether there are previous reasons when it is necessary to choose one or another approach. With different approaches, argues F. Waismann, the judgment will never reach the final reality. At the same time, our ordinary language and grammatical rules do not help us very well if we begin to imagine extremely unusual circumstances. Here F. Waismann's judgments more correspond to the concept of "open texture" of language.

With regard to the philosophy of law, it is difficult to argue that legal language can be a way of formulating an unambiguous definition of legal concepts. The enumeration of facts and events in the legislation does not create an unconditional interpretation of the legal terms used. Another thing is that the clarification of the meanings of these terms can serve as a tool for a more conscious and definite attitude to the use of the relevant terms. As a matter of fact in the Hart's legal philosophy can be seen in this approach — the search for ways and means of overcoming contradictions in the use of legal terms using the methods of linguistic philosophy.

Further it is possible to note a number of examples which F. Waismann gives for consideration of grammatical situations. He addresses this topic from the point of view of finding a definition of content-limiting concepts. Essentially examples such as "a table that everyone can see but no one can understand" and "an element that reacts chemically like gold but contains a new kind of radiation" are echoes of his comments about the "open texture" of language[28].

We introduce the concept and limit its use in some areas, for example, we say this is gold as opposed to silver, platinum, etc. This is sufficient for most practical purposes, and we do not explore the content and scope of the

[25] *Waismann F.* How I see Philosophy / Ed. by R. Harre. London, 1968. P. 43

[26] Ibid. P. 57.

[27] *Waismann F.* Principles of Linguistic Philosophy. London, 1965. P. 74.

[28] Ibid. P. 74–75.

concept further. From the point of view of F. Waismann, we forget that there are other areas in which we have not limited the applicability of the concept. And if we did otherwise, we could imagine hundreds of situations that would require new restrictions in the application of relevant concepts. Whether our concepts are, therefore, incomplete and inaccurate? But what then would be the exact concept?

In the paper *Language Strata* F. Waismann argued that different types of statements, for example, statements filled with semantic facts, material objective statements, aphorisms and natural laws, should be analyzed in different ways: "...statements may be true in different senses; that they may be verifiable in different senses; that they may be complete or incomplete in different senses; indeed that logic itself may vary with the sort of statement"[29]. Statements can be true in different senses, verified in different senses, meaningful in different senses. Therefore, attempts to define "truth", or to establish a clear line between meaningful and meaningless, etc., are doomed to failure. Differences of language formations F. Waismann reminiscent of the arguments of L. Wittgenstein on "language games" in their diversity[30].

Meanwhile F. Weissman argues in favor of the concept of "open texture". The first argument is that material objective statements cannot be reduced to statements filled with meaningful facts: "It is only if we are quite clear as to the logical texture of the language we use that we shall know what we are talking about"[31]. The second argument he reveals is that the description of material objects (as opposed to, for example, geometric shapes) is never complete: "Open texture, absent in logical and mathetical concepts, is a very important feature of most of our empirical concepts. That the structure of empirical knowledge is so different from that of a priori knowledge may have something to do with the difference between open and closed texture"[32]. Both of these arguments appear in other publications of F. Waismann.

Is it possible to see similarities in the arguments of F. Waismann and H. Hart about "open texture"? To what extent are they similar? In the famous book *Concept of law*, namely in the chapter *Formalism and rule-skepticism* H. Hart argues that legal norms, regardless of whether they are promulgated by the authorities, or formed on the basis of previous practices,

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[29] *Waismann F.* How I see Philosophy. P. 99.

[30] *Roermund B. van*. Rules as Icons: Wittgenstein's Paradox and the Law // Ratio Juris. 2013. Vol. 26. No. 4. P. 540–541; *Schulte J.* Waismann as Spokesman for Wittgenstein // Waismann F. Causality and Logical Positivism. Netherlands, 2011. P. 225–242.

[31] Ibid. P. 99.

[32] Ibid. P. 97.

are characterized by the presence of the so-called "*core*" or direct meaning[33]. The decision as to whether a rule applies to a particular situation often depends on the delineation of the meanings of a generic term. For example, a rule that "no vehicles shall be used in a park" will usually refer to whether a specific object is a "vehicle" for the scope of the rule (or whether a specific area is meant, that is a "park"). In simple cases the general terms do not require interpretation, it will be the recognition of the case problem free or automatic from the point of view of the rule. There are general conventions in court decisions on the applicability of the classification of terms. However in a situation of "*penumbra*" of the meaning of the term (from the point of view of the purpose of the rule in question), its applicability loses its obviousness. The tendency of rules to have additional ambiguities, establishing uncertainties for their use in related situations, H. Hart calls the "open texture" of rules (or legal language in general). Hart adds that the "open texture" of legal rules should be seen as an advantage rather than a disadvantage, allowing rules to be reasonably interpreted when used in situations and types of problems that their authors did not foresee, or could not foresee[34].

For H. Hart the problem of "open texture" will be repeated constantly, because facts and situations constantly arise from nature or human actions, and have only some functions suitable for simple cases, but other functions are absent. A step-by-step agreement on whether a general term is applicable in particular to general or related cases is not enough to address the problem of "open texture" in legal language, as uncertain situations will arise again and again. Hart argued that starting with an "irresistible open texture" the nature of legal language is important for judges in some cases to make a fresh choice between open alternatives. Even if the conclusion (partially undefined) follows from premises (the "open texture" of legal language), the basis for these premises is weakly substantiated in the text. "Open texture" is more evident in the use of language than is logically proven. It can be noted here that Hart was hardly sure that the philosophy of language would give him universal methods of overcoming the uncertainty of rules. He rather focused on practice and the contradictions arising in it, which can and should be overcome. He had no clear evidence of the linguistic nature of the controversy, or the belief that judges should have complete discretion in their interpretations. However Hart explains in detail why the legal text should be interpreted so that judicial discretion still exists. If Waismann wrote about

[33] *Hart H.L.A.* Concept of Law. Second Edition. Oxford, 1994. P. 127–128.

[34] *Baker G.P.*, *Hacker P.M.S.* Wittgenstein: Understanding and Meaning. Oxford, 2005. P. 383.

languages in a general sense, then Hart writes about languages in the context of law, particularly in the context of the adoption and interpretation of rules, and the problems that can arise in such a context.

Hart's concept of "*open texture*" of law and the development of the concept of ascriptive legal statements were considered as methodological means of modeling and forecasting the practice of legal norms application. However, the complex process of interaction of legal norms at the time of qualification of the legally significant behavior of participants of legal relations, as well as the need to follow the formal procedures in the judicial decision-making, have actualized the issues of the new descriptive concept of legal proceedings development. In the new positivist interpretation of legal reality, the mechanism of "ascription" is a universal cognitive method that is used to prescribe the ascriptive form to empirical facts that become normative facts afterward and serves to differentiate the legal sphere from other spheres of nature and society.

Conclusion. It should be noted that language as a form of communication and representation of the world is a holistic and specific phenomenon, which, depending on the type of linguistic discourse, is localized in speech acts that form subject's intentions and his further actions. For the reality perception, it is necessary to count meaningful use of signs, which are sensually perceived symbols' parts that create the language. Legal reality and its language forms are inseparable, and therefore, we can learn more deeply legal phenomena essence when interpreting legal texts and speech acts, illustrating intentions and actions of legal meaning.

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СВЕДЕНИЯ ОБ АВТОРЕ:

Дидикин Антон Борисович — доктор философских наук, кандидат юридических наук, заведующий сектором философии права, истории и теории государства и права Института государства и права Российской академии наук, Москва.

AUTHOR'S INFO:

Anton B. Didikin — Doctor of Philosophy, Candidate of Legal Sciences, Head of the Department of Legal Philosophy, Legal History and Legal Theory, Institute of State and Law, Russian Academy of Sciences, Moscow, Russian Federation.

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