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CONSIDERATIONS REGARDING THE INTERPRETATION OF LEGAL NORM

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Abstract:
The legal norm represents an intellectual creation of the legislator. It is expressed in legal language, according to certain rules of preparation, respecting the grammar rules specific to the language in which it is drawn up, as well as the legislative technique. The final result, thought out and wanted by the author, must be understood in direct relation to his intention. Interpretation of the law concerns the particular significance of the general form and the cognitive value of the information, of grammatical construction that expresses the legal norm.

Key words: interpretation, legal norm, necessity, meaning

JEL classification: K10

The problem of interpreting the law has always benefited from increased attention, being considered since antiquity the barometer of legislator's mastery and judge's technicality[1]. Romanian doctrine grasped and explained the significance of the interpretation, arguing that 'legal norms have real substance that is why its formal substance (the abstract content) finds its replica in the very reality of things. Therefore, the law is not and cannot be isolated from the reality, because, starting from that, it is intended to be applied to it. The rule of law is not a dead word (vox mortua), but an active dynamic living commandment, under it pulsing the reality. Or, since the reality that causes the application of the legal norm is just the same reality that determined the creation of that norm, it is common sense that we cannot interpret correctly enough the norm with disregard for realities that shaped its formal substance (the abstract content)'[2].

Interpreting the legal norms has two different meanings.

In the narrow sense, interpreting the legal norms designates an instrument of judicial technique and includes all formulas admitted and recognized rules by which the judge settles cases to be decided.

In the broad sense, interpreting the legal norms has value through the fulfillment of its goal within an organized society, and participates more directly to all obscure forces that co-operate in the elaboration of law. From a wider point of view, interpreting the legal norms is more expressive than its utilitarian technique, becoming a social function[3].

Interpretation of legal norms is an intellectual operation that consists in the elucidation of the signification of an obscure text and the specification of a general text in order to apply it to a particular case. Thus defined, the interpretation is different from other operations consisting in filling juridical gaps and developing the imperfect and inadequate law.

The interpretation of legal rules requires the use of certain assessment methods of the letter of law and of its spirit[4].

In the practice of law, the interpretation gathers all intellectual processes that determine and define, in a given situation, the applicable principle. In this respect, as mentioned above, interpreting means, of course, to clarify an obscure text; but it also means to analyze in detail a general text, to rectify the imperfections of texts and find compliance with the present requirements; to resolve contradictions; to expand texts in order to fulfill lacunas. In other words, the interpretation includes all operations necessary to make rules of law susceptible of practical application.

Interpretation of legal norms should not have a contemplative nature. In terms of content, legal norms must be known and understood in a dynamic way, relating their meaning to the realities of social life. To the extent that, in the application of juridical norms is found that the initial

meaning does not meet the social need of ordering social relations in a certain area, the rule should be amended[5].

The need for understanding the spirit of the law follows not only its imperfections but also the intrinsic nature of laws and generality of rules they are made of.

THE NEED OF INTERPRETATION OF JURIDICAL NORM

The need for interpretation arises from the fact that, like any other message, the juridical norm includes concepts, abstract realities, and types of behaviors, attributes and modes of action. To understand the intention of the legislator must necessarily to determine the meaning and significance of the content of the terms used.

In the activity of execution and application of the positive law, the interpretation is inevitable, it is required when the general and hypothetical character of the legal norm does not cover situations that may arise in practice, but also when the legislator uses a concise terminology, focusing in a maximum way on ideas he wants to express, something that enforces harder deciphering of its real content. But even the legislator succeeds to regulate carefully a social relation, the interpretation is not pointless. Even the most clear and comprehensive rule of law must be interpreted. For example, the diligence required to the debtor in carrying out his obligations is similar to the diligence that a good owner has for his assets (according to art. 1480, Civil Code) and imposes the clarification of the way in which such owner would act. We cannot determine whether the debtor acted in good faith unless we determine the aspect mentioned above. Or this can be achieved only through the operation of interpretation.

No doubt that if the legislator stated more precise his hypotheses, it would be easier to determine whether the facts are covered by the law or not. However, it is impossible for the legislator to do so because he cannot predict all the facts and circumstances that may arise in the existence and development of social relations. 'It is enough to reflect for a moment to the essence of laws to convince us that the need for interpretation results less of their obscurity or insufficiency than of their nature'[6].

When a particular rule is interpreted differently by courts, the result may be unjust and detrimental to the individuals concerned. It would thus come to the situation in which two people, found in the same legal position towards third parties, receive different and contradictory solutions.

FORMS OF INTERPRETATION

The specialized literature distinguishes between official interpretation and unofficial interpretation.

The official interpretation, also called 'legal interpretation' is mandatory and can be authentic or casual.

The authentic interpretation is the interpretation given by the legislator (by the issuing body of the juridical norm) while formulating the legal rules or, later, in their application process (when the interpretation is done by so-called' implementing rules' of the law). This kind of interpretation is binding and general.

Interesting is the analysis of generally binding interpretation from the perspective of the administrative law. It appeared the problem of the right of a hierarchically superior body to interpret juridical rules elaborated by lower bodies. It is natural that when higher authorities can amend and annul acts of lower bodies, they have the ability to interpret them, too. If the hierarchical subordination report presented above determines the logical solution stated, which would be the answer to the question whether lower body can interpret the normative acts of the upper body? In our opinion, the answer is positive. Therefore, administrative bodies can interpret the law either by inferior normative acts, or by acts of an individual nature, so that the interpretation under consideration is possible. But there is a rule that must be observed, namely that the interpretation is

not allowed to contradict or modify the content of the law, but only clarify a certain issue in its letter and spirit.

The casual interpretation is the interpretation given by the courts or public administration authorities in the application of legal acts in specific cases ('case interpretation'). This kind of interpretation is usually not general, but is binding on the parties concerned.

The casual interpretation can also be made by an administrative body authorized by law to this effect. So are the documents elaborated by the public administration authorities in the application of legal rules to individual cases, such as, for example, the issuing of a certificate of urbanism for a building. Even the legislature can make a casual interpretation when applying the law to specific circumstances, such as the waiver of the immunity of a parliamentarian under the provision of the Chamber Regulation that he is a member of.

Exceptionally, in Romanian law the interpretation given by the High Court of Cassation and Justice in a decision handed down in an appeal on points of law becomes also binding on third parties since its publishing in Romania's Official Monitor, Part I.

Even if it does not create new law rules but only interpret or eventually supplement existing rules, the application of juridical norms as interpreted is appreciated to be a 'social source of law'[7]. This conclusion is driven by the truism that the practice is a component of the material reality that determines in its form and content the will of the legislator as expressed in law norms.

The unofficial interpretation (or doctrinal interpretation) is given in the specialized literature by experts in law. This form of interpretation means both elucidating obscure text and specifies a general text, rectify the imperfections of texts, adapt to current needs, resolve contradictions, and enlarging text to cover lacunas.

It should be noted that the unofficial interpretation may also be performed by specialized institutions that do not have the status of state bodies. Another form of the unofficial interpretation is the so-called 'officious interpretation' belonging to certain authorities that debate the drafts of some normative acts.

The unofficial interpretation is not mandatory but optional, but by clarifying certain issues of law, by notifying the legislative gaps and by the correctives proposed, it is a guide in the elaboration and application of the law.

THE INTERPRETATION RESULT

Setting the full and accurate meaning of a juridical norm is a process of thinking that involves logical structures, using methods and working techniques and some general principles.

Basically, the methods of interpretation are grammatical method, systematic method, historical method, logical method and teleological method. The result of applying these methods can be seen as the expression in one of the following forms of interpretation: literal, extensive and restrictive.

The literal interpretation appears when the real intention of the legislator is caught right in the form of expression. For example, when the legal rule provides that divorce can take place by agreement between the spouses at the spouses' request or at the request of one of them accepted by the other spouse, its literal interpretation leads us to the conclusion that this type of divorce passed in two circumstances. First one involves the consent of both spouses while filing for divorce, the second requires that 'defendant spouse' agrees with the claimer's intention for the law suit (art. 373, paragraph 1, letter a, Civil Code).

When the law says less than the legislator had meant, the interpretation is extensive. In this case, the range of situations covered by the law is much broader in social reality than implies the wording of its text. Therefore, the interpretation will give to the legal norm the direction of its content, applying other hypotheses of the regulated report. For example, the rule governing contractual liability in the Civil Code provides that an individual with discernment who breached the rules of conduct that the law or local custom requires and through his actions or inactions

prejudiced the others' legitimate rights or interests, will be responsible for all damaged caused, being obliged to fully compensate (art. 1349, paragraph 1 and 2, Civil Code). Although the legislator used the term injury without specifying its nature, respectively its material or moral nature, the extensive interpretation concluded that as long as the law does not limit the notion mentioned above, the legal norm can be applied in both hypotheses. Equally, the minimal reference to fully compensation of the prejudice will include through extensive interpretation both main and additional damages, regardless of their nature. But there are also texts of law having limitative character or laws that establish certain exceptions or exemptions from the general rule.

When the legislator meant less than the contents expressed by the regulation, the interpretation is restrictive. In this case, the interpreter restricts the application of the legal norm to the limits that have been set ignoring the meaning resulted from the imperfect wording of the text.

There are strictly interpreted the exception established by legal regulations, onerous legal norms, criminal laws and those legal rules that establish the competence of public authorities.

In conclusion, the interpretation can be appreciated as the most important element that constantly keeps the structure of the law, the reporting and synthesis of the obvious and necessary in the society, the relationship(with different intensities) between the judge and the legislator.

But the exaggeration of differences between interpreting in the restrictive sense and interpreting in the broad sense, namely between what is usually described as 'understanding' the rule and what we call 'development' of the rule is however beyond the purpose of the legal interpretation. Thus, the interpreter is the one who takes responsibility of maintaining the balance of these two categories to achieve harmony between the letter and the spirit of the law required by the legal stability.

ENDNOTES

[1] Longinescu, S.G., (1992) - *Elemente de drept roman*, vol. I, Editura Curierul Judiciar, Bucureşti, p. 176

[2] Dongoroz, V., (1939) - *Drept penal*, Editura Tirajul, Bucureşti, p. 105

[3] Jèze, G., (1913) - *Cours de droit public*, Giard et Brière, Paris, p. 241-244

[4] Popescu, S., (2000) - *Teoria generală a dreptului*, Ed. Lumina Lex, Bucureşti, 2000, p. 285

[5] Iftime, E., (2013) - *Teoria generală a dreptului*, Editura Didactică și Pedagogică, București, 2013, p. 149

[6] François, L., (1878) - *Principes de droit civil*, Bruxelles, Bruylant-Christophe, Paris, p. 269

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