THE COMPLEXITY OF LEGAL INTERPRETATION FROM THE LAW ONTOLOGICAL PERSPECTIVE

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Abstract

The concept of law is a matter of extreme resonance in legal thinking the rebirth of natural law is both a revival of the concept of law, major part of human nature (conscience).

The analysis made for of the concept of law brings its contribution to the completion of positive emptiness law through a continuous process of adapting the law to the reality of social phenomenon. Along with the domestic law, the international law is conditioned and is a subject of interpretation of law by various members of international society. Contemporary system of international law produce sensitiveness on the view of civilized nations regarding the universal eternal values: equality of states, people freedom, unity and responsibility of the states for the future of humanity, righteousness (justice) etc. between peoples. International legal consciousness is deeply marked by the general principles of law, pre-existing to the fundamental principles of public international law. Around the law idea the internal and international juridical life is developing.

Closely related to the issue of globalisation is the legal transplants problem and on a more general plan, the "portability" of concepts and legal institutions, which should be addressed in considering the practical relevance of our law system. Legal transplants are multiplying exponentially in this globalise world. Countries of the former socialist bloc and the development countries of the Far East or Latin America imported legal solutions from the Western legislative orders with the pragmatic purpose of promoting the economic and social development. We believe that the legal issues of transplants is a very current aspect for the Romanian law, it can provide a comprehensive study material in this area, given the fact that an overwhelming proportion of our current legal framework consists of legal rules "imported from .," or "imposed" by the order of the community or the Anglo-American system.

Theoretical guidelines of explanation are noticed in time and concentrated on the major current an schools of legal thought (natural law, the German historical school of law, positivism, Marxism), in addition to any such legal thinking and thinking have had over the old ages and all over the world, an effervescent dialectics. In an attempt to establish a clear picture of how the right was set up and imposed we should referee to modern trends, which have exerted strong influence on the evolution of legal thought and philosophy of focusing on the idea of law oscillation between two current with all their variants: idealism and positivism.

Positive law is always based on higher principles when issuing his headquarters, which can not be understood only by the light and principles of legal interpretation. Between principle and rule of law is not only an unequal importance, but also a difference in kind. “Therefore, the principles unify the rules and give them rational basis, without them the rules do not receive the respect and principle free of rules remain without enforcement”. Gheorghe Mihai categorically states that the

principles are not rules because they do not have a source of laws and penalties attached to them; *"... if a principle is required, then it loses its characteristic theme. Instead, a binding rule even if it is called a principle, performs the role of what is right. "*

Principles, whether of law or fundamental or legal interpretation, are components of the ontic plane of legal reality of society and are the ideate precursors of legal rules. Legal rules are the components of the deontic plan of legal reality, which lose their sense outside its premises.

On the basis of legal conceptualism, an intellectual controversial process that raises many interpretations is the relationship between fiction and principle. Fiction is actually defined as a distortion of reality, but a "necessary evil" for the preservation of order and legal certainty. R. Ihering has brought the most complete explanations, after A. Vălimărescu on the role of fiction, convincingly illustrating the trinity of law principle - rule of law - legal fiction.

Thus, I consider that fiction raises a triple function: dogmatic, historical and logical-sociological. Historical function of fiction is to introduce some new rules of law, but without building a new principle, but only considering that some cases fall within an old principle, although the work is inaccurate, and only to change the principle. The historical role of fiction specific to conservative countries, responded with the safety requirements of social and state order. The prestige of law could not be broken through the continual change of its fundamental principles.

The doctrine of the present legal interpretation has elaborated new techniques, has completed and modernised the existing ones until their radical transformation, has combined techniques from different domains, adapting them to the requirements of the legal theory and practice. Among these methods we can list: the method of theoretical generalisation and abstractisation of data, facts, processes and phenomena from the sphere of the legal field, the method of the systemic analysis, the prospective method or method of prognosis of phenomena or processes from the sphere of law, the logic methods, containing elements of formal logic, frequently used in the matter of legal norms interpretation, the analytical method (proposed by John Locke and developed by neopositivism and logic empirism) which contains the ensemble of the logic processes of analysis, construction or reconstruction of the theory based on the results of the empirical research, in view of elaborating typologies, descriptions, explanations or predictions, the comparative method and the exegetic method (D. Davidson, 2001). Besides, we made appeal to other methods also, in a tight interdependency with the above, but mutually completing themselves, irrespective of the weight used such as: the realistic-empirical method (Aristotle), the dialectical method (Plato, Hegel), the deductive method and the "*useful rules for mind guiding in the research of the truth*" (Rene Descartes), the demonstration of the unity between induction and deduction (I. Kant, G.W. Fr. Hegel), the phenomenological method (Edmund Husserl), the hermeneutic method as philosophic-methodological ground of the autonomy of humanities, the semiotic method, the axiomatic method, the reductive method, pointing out the advantages and the limits of the validity of methods in specific theoretic frameworks.

The connection between the legislated law and language is a factual one, which means that the legal law is elaborated and expressed in a language, its natural language, and that the spirit of the language confers specificity to the spirit of the law. Not only the translation of a law from one language into another raises serious obstacles, but also the reception of the translation by the receivers, which means that each law branch has its language, determined by the factuality towards which it is oriented.

In elaborating juridical laws the legislator is required to use a clear language, as accessible as possible, on the one hand, and on the other hand, a language adequate to the general character of the rule it elaborates.

In the law interpretation one keeps in mind that the letter may entirely contain the spirit of the law or contain it more or less. According to this situation, the interpretation is declarative, extensive or restrictive. The grammatical technique of interpretation shows that through the

research of the grammatical structures of the language we may reach the authentic meaning of the legal rule. It is not the rule that is obscure, but the communication manner may be flawed.

Judged semantically, the interpretation of the norm enters a system of exchange, becoming an exchange object between the sender and its receiver, acquiring its significance in the process of conveying the meanings intended by the author the moment the legal norm is passed. A word bears in itself a basic meaning which regards the notion evoked by it, but also the contextual meanings, variable from one context to another.

The meaning of a word used by a subject in expressing his / her attitudes has two practically inseparable sides: cognitive, having an informational and affective load, which comes from the sending subject. For instance, the word "sanction" has cognitive legal meaning, the same for all, but different affective meanings for the judge, lawyer, accused, claimant, in a specific cause.

The cognitive meaning of a legal norm is the judgement it expresses. The legal normative sentences are inscribed in normative acts promulgated and applied using grammatical sentences, thus they are dependent on the natural language whose grammatical essence is used in a very variable manner. Consequently, the legal logic is the logic of the natural language saying something with legal meaning and significance. The legal meaning of a grammatical sentence may be searched beyond the normative sentence it expresses. The legal norm is a legal normative judgement in a normative sentence-type logic form, which is expressed in a certain grammatical sentence, so that one may affirm that it is not the legal norm which is polysemantic, but the text of the normative text. The grammatical sentences and the sentence forms are not juridical, but the normative judgement is, which confers a particular significant content to the general form, as well as cognitive value to the information in the grammatical sentence-type construction. (B.Frydman, 2007)

The interpretation principles along with the law ones are the ideation and deontic source of legislature in the norm process of social relations and are requirements that exceed the legal boundaries of the rules in the commission of justice. Or, as M. Djuvara says, *"... the interpretation of positive law must be above all dominated by the imperatives of justice. The judge, who in the name of positive borders is narrowed by a strict sense only extracted from the text and makes abstraction from their supreme reason for being, namely justice, commits a mistake which is a crime against the law itself".*

Explanatory value of the principles of interpretation lies in the disclosure of rationale founder of social values, they contain the grounds of evolution and transformation. Unlike the principles, teleological explanatory value of legal norms is quite secondary, their purpose being to preserve and safeguard the social values beyond the reason of explaining their existence.

Legal rules are the "coat" of the principles of interpretation, even if they do not have the power and scope of the absolute content for those. Therefore, we can appreciate the law principles and the legal interpretation ones with precedence and superiority over the new texts of law, legal regulations themselves. Obviously there are principles that are brought in the last analysis for the texts of laws themselves and therefore are based only on them. But there should be other principles, such as those that rely on legal interpretation and other that go beyond the law texts because otherwise the right would not move forward, being still in place, and could no longer receive any application. (Del Giorgio Vechio).

It is true that in a sea of positive rules, the supreme principles that rationale impose does not appear at first sight, they remain of obnubilate be the interest of interpretation of technical rules itself. But it is sure that the interpretation principles are losing any meaning without the ideas that underlie them. [H., Rabault, *L'Interprétation des normes : l'objectivité de la méthode herméneutique*, Paris, L'Harmattan, 1997, p.87-95.]

The dogmatic function of fiction is to keep the logical unity of the legal system. A legal system must be logical and coherent, and innovations must be made, of course within the limits in the framework of existing principles.

The logical function of fiction also implies the preservation of unity and coherence of a legal system. The sociological function of fiction is to maintain security and stability and to promote the idea of legal principles.

Any legal system must be considered as closed or complete to the extent that any dispute can be resolved by recourse to the legal system. It is open, or permeable, in that, according to its own rules of transformation (change) may incorporate rules from other systems or maintain other revealed reports (eg., subordinations ratios). The only exception is a set of constitutional rules that make contact with international law: the rules that define the powers of the state in matters of international treaties virtually and indirectly. Typically, constitutional intern rules that relate to international law create a screen between them and the subjects of domestic law. [S., Bellier De l'Art de decouvrir des principes> le Conseil d'Etat entre securite juridique et confiance legitime, în Les Principes et le droit, Presses Universitaires D'Aix-Marseille, 2007, p.79-83.]

Law is regarded as a system along with the applications structuralist method - the systematic regularity of knowing the organization and operation of the right as a system of social organization. Hereby it should be noted that the elucidation of this concept is particularly important in surprising the law substance. It can not exist but only as a system because legal standards as the basic cells, are set up in structures more and more complex in order to give the right configuration, which generates such order.

Starting from simple to complex it was observed that the legal standards as a common regulation, meet in the branches of law. In turn, branches of law are constituted as elements of the integrative system of law, component of the society. Giving a particular importance to the relationship between law and value, we must underlined the bivalent and reciprocal determinate links that are established during the historic old ages between these two essential concepts that are completing each other in a logical manner with the position analysis, role and functions of law in the finality of relations that are governed by them, relations which, necessarily, fall under the regulatory scope of other social rules (moral, religious, common, etc.). [Gh., Mihai, *Fundamentele dreptului I-II*, Editura All Beck, Bucureşti, 2003, p.421-425].

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The concept of law is a matter of extreme resonance in legal thinking the rebirth of natural law is both a revival of the concept of law, major part of human nature (conscience). [M., Rosenfeld *Les interpretations justes,* Bruylant, LGDJ, Paris, 2000, p.75].

Regarding the configuration we uncounted the natural environment in a broad sense, the socio-political frame, including the economic component, ideology or all prevailing beliefs and fundamental values in a society (in this category is included also religion), other social structures, the human factor and not at least the phenomenon of globalisation, which, because its scale and complexity effects may be considered as an important factor of the current configuration of the existing law.

The problem of legal theories terms is one relating to the meanings production and fixation derived from interpreting the legal, regulatory, and their exterior. These meanings can be thought as not only regarding the functions of terms within the deductive and inductive organization of such theories but also that of their participation in legislation and case law.

A characteristic feature of contemporary scientific knowledge is focused on construction, testing and application of scientific theories. The problems are formulated within the framework of theories in which are developed or summarized assumptions, that can only be validated through the test of theory and then as a following within their framework it is incorporated the significance of rules and their analysis. The main meta theoretical categories are such defined as being in relation to the overall ordered assumptions that constitute a theory. Action itself as far as it is based on rational it is built up upon a scientific theory.

What we should point out is that right, not concept nor operational, it is not the amount or the rules system caught by the hierarchy of normative acts, but much more - it is the justice that the legislative authority seeks volitional and interested to catch, to capture and to determine it in some way.

Being the first structural element of positive legal order, the legal rules defined through the entire as a public rule of conduct, general and impersonal, aimed to inter subjective exteriorisation of private conscience erected in its universality, creating ultimately a typical behaviour on individuals in agreement with the followed social model, required under the legitimacy of its collective consciousness level and that on need may be brought out by coercion.

It should not be omitted to mention of the phenomenon of "crisis" of the right, a phenomenon increasingly mediated lately, in the context of the crisis of other values (family crisis, culture, political crisis, the crisis of ideologies and institutions, etc.). analysing through this the new paradigm of law, noting in each historical era, founding that it produces, through its social practices, by its language, through its provided experience an imaginary structure called paradigm by historian and philosopher Thomas Kuhn. What causes the change of this frame of reference, its movement, is changing people's vision as a result of accumulating new feelings and experience. In the legal field, the crisis is determined by the relative discrepancy between the apparent irreducible complexity of social change and the acceleration of its rhythm, on one hand and a rigid, formal legal system, on the other hand.

Law “crisis” matches" the state “crisis”, both of law, and of the providential. The state no longer dominates a reality becoming more and more varied, making use of uniform regulatory scheme or too general, which affects the unity of the legal rule and affects the legitimacy of law. [I., Pârvu, *Semantica logicii propoziţiilor. Reguli de interpretare* , Editura Ştiinţifică şi Enciclopedică, Bucureşti 1981, p.109-110].

It is imperative to decode the concept of law also by the attempt to correctly define this notion, but not before presenting the justice as a foundation, a basis of law, starting from the fact stated by great philosopher Aristotle, who said in his *“Policy”* that *"the right is the decision of what is just"*. Obviously, the attempts of theorists to define the law are numerous, but this approach should take account of the notion that any definition can not express the phenomenon fully and perfectly under the definition, as a following of the the problems of abstraction and essence of which the law is subject to.

Determining the permanent of law is a constant concern of the doctrinal, the axis around which revolves the legislature and the major objective of the law applicant.

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