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The Concept of Judicial Interpretation

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The Concept of Judicial Interpretation

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Abstract

In the large sense of the notion of interpretation, the concept involves the activity of allotting the significations to some norms and, where there are no doubts and controversies related to this, it is in fact an activity of the enrichment of the law.

Keywords:

interpretation, meaning, normative dispositions, principles of law

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Introduction

The concept of interpretation can cover more activities: both in the common languages and in the juridical language.

The interpretation can be useful to the process of elaboration and enforcement of the law, or can lead to contradictory results depending on the one who interprets. The theory of interpretation must elucidate the causes of these differences, and applying them to the concrete, to explain the possible gradation, to develop systems so that it becomes a common language for all the people of law: law clerks, doctrinaires, or clerks.

The judicial interpretation is in general a textual interpretation. The expressions of juridical interpretation, the interpretation of the law, the interpretation of the governmental decree are similar, largely signifies, either the activity to certify or to decide the significance of a certain document or a juridical text; either the result or the product of this kind of activity to certify or decide is a controversial problem, to which the various theories of interpretations give different answers (Guastini, 2006).

The interpretation - legal form

These difference result from the wide variety of juridical text, subjected to the activity of interpretation, laws, regulations, contracts (Royce, 2010), wills, sentences, administrative acts, in a trial to enumerate in order to exemplify. A first distinction which would help to elucidate the types of interpretation would be the interpretation of the law which differs from the interpretation of the origins of the law. The interpretation of the law, of the norms depends on the meaning we give to the notion of norm. The norm can be a normative text but at the same time by the interpretations of the laws we can understand its content, its signification. In this case, the norm is not the object of the activity of interpretation but its result (Craiovan, 2009).

The restraint concept of interpretation refers to the activity of attributing a signification to a normative text, in the case in which doubts and controversies exist over its signification or over the field of application. In this kind of interpretation the arguments indissolubly appear, because "an interpretation which is not argued is not a genuine interpretation, but an intuitive understanding" (Guastini, 2006).

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It could be argued that allotting to a normative text an obvious signification over which there is no controversy or even to solve a minor controversy, it would not mean an interpretation. Yet, it must be underlined the fact that a clear signification is the result of more variables, if we can name variable the entity which applies the norm. It is enough that, although the meaning of the norm is clear, a certain fact is excluded from being applied, which in accordance with the way of thinking of the one who enforces the law is not competent to judge the norm and we already have interpretation, yet a different one.

The explanation or the argumentation of this opinion consists of the fact that any interpretation also involves enforcement or any enforcement of the law involves the activity of interpretation.

Ricardo Guastini defines the interpretation as being "the activity which has in view the determination of the significance of the sources of the law or the activity which confers on the statements that form the sources of the law, the staus of norms" (Guastini, 2006). Consequently, the interpretation is the activity which is exercised on the normative texts and from which the norms result.

It is also noticed the difference between the two notions: disposition and norm, in fact, between the normative documents and the related to significations (Sandu, 2012). The terms, disposition and norm, are used in order to define a normative statement which is part of the sources of the law or the signification of the normative dispositions or certainly both meanings (Chiassoni, 2003).

Having in mind the clear distinction between the dispositions and norms, theoretically, the activity of interpretation can be configured and its signification determined the concept of "interpretation in the very extended sense", "interpretation in the extended sense" and "interpretation in the limited sense".

The interpretation in the very extended sense of the word embodies a conglomerate of heterogenic activities, which comprises the interpretation both in the extended and limited sense, that corresponds to the notion of textual interpretation and other subsequent operations. These subsequent operations are grouped under the name of meta-textual interpretation (Chiassoni, 2003), because they transcend the existent normative dispositions. Among these operations could be mentioned the qualification of a subjects-document as a normative document which is part of the sources of the positive law; the

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identification of the dispositions which apply to the case, which would imply a "first hand", non-technical interpretation, the qualification of the norm which is applied as an imperative, suppletive, common, special, exceptional norm and general principle; the solving of the antinomies through what is called cohesiveness which implies an activity of textual interpretation which would have as a result the certification of the antinomy, if not, its creation by the ones who apply the law; the formulating of the arguments from which a certain would be accredited as being the exact or correct solution.

The interpretation in the extended sense defines the activity of allotting significations to the dispositions of the laws in general.

The interpretation in the limited sense is used for the activity of allotting significations to the normative dispositions which are not clear.

In order to make the distinction between the norms with a clear meaning and the ones with an unclear it is obvious that it also resorts to the interpretation, which can differ depending on the operator which does the interpretation, and in fact it should not be made a delimitation between the interpretation in the limited sense and the interpretation in the extended sense, but it would be defined through the concept of textual interpretation on the normative dispositions (Chiassoni, 2003).

In conclusion, the textual interpretation can be defines as the intellectual activity of the normative documents subordinated to the application of a hermeneutic code which consists in allotting the signification to a disposition, signification to a disposition, signification credited as being correct from the judicial point of view and having as a result an explicit norm.

Francois Terré takes the necessary steps to define the interpretation as through this process the passing from the general to the particular is achieved. The author makes the distinction between the interpretation of the law circumscribes two types of interpretations: according to the letter of the law in the spirit of the law. In order to define the domain of the interpretation, the author starts from the same maxim mentioned before, but notices that is difficult to make a distinction between a clear term and an obscure one, especially because in the judicial language any notion get different meanings, and the judicial norm becomes a flexible one. He also describes the interpretation of the facts, or even their absence. The judge is wanted to apply the contract, that is, to interpret it in order to have the effects.

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With that end in view, he/she should relate to the will of the parties, but if this is not enough, it is referred to the good-faith, the customary law and the equity (Terré, 1998).

Mihai Gheorghe notice that through "the judicial interpretation one could make out a number of rational operations of abstraction, explanation and argumentation of the senses and the normative significations bore by the judicial objects – judicial acts, means of proof – with the purpose of finding a solution for the judicial problem, theoretical or practical" (Mihai, 2000). In this definition of the concept of interpretation he notices as well that the object is represented by the legislative acts, but also by contracts, testamentary provisions, and different means of proof.

The theory of the corrective interpretation specifies that no interpret can not serve as a substitute for the legislator in order to change the meaning of a norm, but "he/she allowed to fill in the lacunas when any other possibility was exhausted" (Mihai, 2000). This way, the lacuna appears when an express, judicial norm does not exist, but the judge is obliged to judge bringing an appeal to the principles of law. Thus, the interpretation solves the lacuna of law. The author makes the distinction between the system which request a strict interpretation that does not admit lacunas and a permissive system which admits the lacuna. It is a judicial lacuna if "relations, state of fact, a case or an aspect of these do not have a judicial regulation" or "the regulation should result from the general principle" (Mihai, 2000).

There are point out three types of interpretation (Guastini, 2006):

- The cognitive interpretation, which is expressed through statements of the descriptive language, having as a result the declaration true or false, being a scientific activity.
- The decisional interpretation, which consists in deciding the signification of a normative statement or in the activity to choose between the different significations of the norm that determined meaning. Of course, the decisional interpretation implies cognitive interpretation. The author underlines that the decisional interpretation is based on political activities, in the extended sense of the word.
- The creative interpretation, which consists of the attribution to a normative statement a new signification which is not encountered within the significations retained by the cognitive

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interpretation. However, in a limited acceptance, the creative interpretation would not be an activity of interpretation, but one of creating law, applicable when the solving of a lacuna is imposed

The conclusion is that any judicial text can be interpreted so that the lacuna does not even exist.

However, the line between the prevention technique of the lacuna, strictly interpretative and the covering technique of the lacuna is not very clear. The distinction in fact between the interpretation of a normative text and the formulation of a new one is not that net with to the employed technique.

Exemplifying, we can detach some interpretative techniques which are used for the prevention and the covering of the judicial lacuna:

- The *a contrario* argument can be employed in order to obtain from the interpreted disposition an implicit norm which contains judicial consequence for all types of acts which are not included in the legislative acts.
- The extensive interpretation, as being the interpretation which extends the literary meaning of a normative text with a view to include in the field of applying the norm and other facts for which, at the first interpretation can use analogical arguments or a fortiori. Thus, facts within the judicial system are disciplined.
- The evolutionary interpretation is the interpretation which tends to adjust an old disposition to new concrete facts, which were not included in the original meaning. In this sense, revealing is the evolution of the articles 998-1004 old Civil Code which governed the tort cases.

From the perspective of the ethical implications of the trans-modern society, the interpretation of laws, of positive law, is necessary to be carried out by reference to European legislation, but also by reference to legal values enshrined globally.

Conclusions

Taking into consideration the consequences of the process of interpretation, a profounder study and the expression of the concepts related to interpretation are needed, because the possibilities of exploration are unlimited.

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