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Camelia IGN TESCU

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Letter and Spirit of the Law- an Interpretation based on Principles of Law

Camelia IGNĂTESCU ¹

Abstract

The union between the letter and the spirit of the law, before being given by a certain degree of freedom in applicative juridical interpretation, must be initially present in the creative will of the legislator, will that is made present in the text of the law, and which underlies, as a condition, the interpretation.

Keywords:

the letter of the law, the spirit of the law, interpretation, principles of law

¹ Camelia IGNĂTESCU - Lecturer PhD, Stefan Cel Mare University of Suceava, Faculty of Economics and Public Administration, Email: cameliaignatescu@yahoo.com

Introduction

From a philosophical and juridical perspective, the spirit of the law refers to the extra-judicial foundation, of axiological and teleological nature of the positive law. In the history of thinking, we come across the constant preoccupation of imposing to the law of the community one criterion – which is considered to have absolute value – of equality and justice, so that positive law is protected from the subjectivity of the law-maker, the law remaining fair. This criterion was meant to be a natural principle, being considered more than once opposing positive law, which was susceptible to unfairness. Natural law was represented either as an eternal natural law, a reflex of the universal logos (in Antiquity), or as divine reasoning, being impossible to understand (in the Middle Ages), or as universal and eternal human reasoning (in modern times), or as a genuine spirit of the people or as reasoning, this time intrinsically, of social solidarity (starting with the 19th C, when, successively, other criteria have been called forth: solidarity, functionality, etc.).

Spirit of the law and the legislator' will

As natural principle, the spirit of the law (Bok, 1989) was considered, in any of its metaphysical hypostases, as an unhistorical and unchangeable entity, as a pure essence, to which the law maker was supposed to obey unconditionally *hic et nunc*. But, beyond the generous intentions which were opposing the positive norm – much “too human”, it is true, even unjust so frequently – the untroubled spirit of “natural law”, this law could never, in its abstract representation, mean more than the desirable part of the effective spirit of the law.

The positive norm opportunely and practically exists only as spirit of the determining law-maker, spirit which gives formal seriousness to some requirements which s/he considers rightful, according to asset of values which contains the requirements and the interests historically determined (Sandu,2012).

The ontology of the spirit of the law is built inductively; it belongs to the juridical principles of a concrete legal system, they being found in its founding normative acts. Juridical interpretation, being placed unavoidably in a legal setting, does not start from legal principles taken into consideration speculatively, but from those which the given legislator accepts. In this way, only the spirit of the law determines the juridical and administrative solution of a trial. For juridical interpretation,

and even more for the applicative one, the spirit of the law is relevant as being that objective content within the form of the law, content that must be also obeyed by the concrete legislator (Mihai, 1999). This elaborates laws, but has to obey legal forms. And if one uses, as it inherently in the case, general phrases which, through the nature of the language used, induce several meanings, then the legislator is bound to admit that the interpretation of the law may bring out another meaning than the one that was initially given. To mechanically and exclusively deduce the authenticity of the meaning of a normative text from the pre-shaped intention of the legislator means, just as it has been noticed (Mihai, 1999), to assimilate this – even if it is only implicitly – with a master who offers to his subjects, for unconditioned obedience, law limited to the bare imperiousness of a pure order.

If we look at things from a different angle from the immediate one of the application of a norm for a given case, we cannot but admit that what represents the spirit of the law in one legal system or in another is associated – organic, not mechanic – to a general-human spirit of the law, this in itself being understood as a natural outcome of the increasingly value related convergences between various cultures and, implicitly, national legal systems; it is not a universal pattern, artificial and global reductive. The union between the letter and the spirit of the law will does not appear as a *dues ex machine*, as an entity spontaneously created and autarchic; it is created gradually, as a resulting vector, from the mix of forces and interests of political parties having a parliamentary representation.

We believe that there are sufficient reasons not to declare as principle of interpretation method the compulsory feature regarding the supremacy of the legislator's will, although other authors consider this necessary (Mihai, 1999, Craiovan, 2007).

The legislator's will, viewed objectively, from the perspective of a critical concept, contains in its own condition the virtual unity – rebuilt through applicative interpretation – of the letter and of the spirit of the law. Thus, the supremacy of the legislator's will remain an ontological requirement of the norm and not a methodological one. The last one is meant to materialize it through applicative interpretation, not to make it a self-sufficient normative reality.

The legislator's will – intentional reality – creates the norm; it does not apply it as well. The range of its effects is ontological and not methodological. Once again: the unity between the letter and the spirit of the law, as a principle of applicative interpretation, bears in itself the ontological requirement of the law supremacy, to which it is dedicated and which it serves methodologically as to ensure the application of the law. Referring to the principle of prevalence of the common sense over the technical one (Dăni or, Dogaru, Dăni or, 2008), this leads the interpreter towards deciphering within the structure of the normative document the common sense of the legal terminology, which facilitates natural, direct, approach, and not the artificially conceptualized one, of the normative content of the text, and, subsequently, the application of the solution without false problematization. The prevalence of the common sense ensures the preservation of what is alive, natural in a normative text, keeping fresh the perception of the norm even when (especially when) it is loaded with archaic scent and even of metaphors. Certainly, in the economic structure of the text, technical terms are also necessary, but only if their usage is required by certain unavoidable normative paraphrases.

Moreover, the interpretation has to value them by contrast with – but only when opposing – common semantic meaning. The latter, as long as it gives vital power to the norm, this alone being a social phenomenon, ensures its application through adequate positioning in a world in which usual meanings are accepted. It is because the legislator's will itself is covered in unavoidable colours of an emotional halo in the semantic field. Still, this does not weaken the strength of the solution, which is understood unavoidable selectively under semantic meaning; it is, on the contrary, loaded with persuasive force, because its interpretation, acting as understanding of the norm, will have overcome even the distant parts, of technical nature, of the notional contents, subordinating them integrative to synthetic perception. Not once, the interpretation preserves entirely, in its structure, the initial normative will, its spirit, more through intuition than through concept. The exactness of the concept acquired true cognitive value, as long as it is placed in the light stream of synthetic intuition. The application of the norm brings to life its prescriptive message. This is however the doing of the interpretation, which is ready to set free the authentic meaning of the

text, from the mortifying captivity of a saturated lexis, sometimes by the petty precision of the technical terms. They assign rigors – this is true – to the used language, but in the same time, they benefit from the input of the convincing meaning of the common words, as life experienced sense.

Related to the unifying principle between the letter and the spirit of the law, interpretation theories have offered, each at its turn, an answer deduced from an angular relation between the letter and the spirit of the law. On its account, one may notice a development of juridical thinking, which has determined, not easily, a more adjusted understanding – ready to overcome the reducing antitheses – of the relation between the letter and the spirit of the law, a relation, so greatly debated in the theoretical field, as well as in the jurisprudential field. Applicative interpretation has to disregard both the dogmatic solutions, which greatly favour the letter of the law, as well as those, just as unilateral, which totally ignore it, determining interpretation arbitrary. In this context, the significance given in interpretation to the notion of spirit of the law is not meaningless.

Juridical interpretation, under whichever form it appears, is not a reflex act; it unavoidably follows a number of guiding principles. Being called, in specialized literature, either rules or directives, axioms, canons or maxims and associated with other terms such as theories, methods, techniques, procedures, criteria, elements, etc., the principles of juridical interpretation do not get confused with interpretation techniques or with the rules of the interpretational act, which they justify and guide.

Fundamental interpretation represents a constitutive moment of understanding the social fact and elaborating, on this ground, the law. It is ultimately present in the general principles of the law, such as that of freedom, equality, responsibility and fairness and justice (Mazilu, 2007).

Applicative interpretation is the moment of applying the legal norms, more precisely, the moment of assigning juridical facts, situations and social relations. As far as the principles of applicative interpretation are concerned, we must indicate that these are first and foremost of functional nature. Although they have an immanent axiological basis, insured by the general principles of law, to which they are subordinated, they still operate in another register; they are configured functionally, orienting technically and methodologically contextual interpretation, with

an applicative character. Secondly, case interpretation principles, regardless of how strongly implied into the application of the norms, do not take a normative form (Mihai, 1999). If they receive a formal-normative power, they lose their principle-like nature, becoming norms (for example, the provision form art. 260, paragraph (2) new Civil Procedure Code – according to which “The administration of proves is made before the debates if the law is not consider otherwise” – is not a principle, but, a norm); but, the principles guides, enlightens it does not impose.

Within applicative juridical interpretation, we talk, referring to the method, about principles in the sense of the methodological requirements for solving a problem; the principles in discussion do not have their own history, independent form that of legal norms. To a great extent, principles derive from norms; they are a challenge for these and reflect social reality by mediation, through the norms. Even the fact that their theoretical study is assigned to Legal Science, which has the purpose of studying juridical norms, and not of the social relations or of the world of values, projects the real trajectory of the genesis and of the presence of the general principles in the field of law. It is certain that this idea opens an analytic trend, which can be beneficial by completing those elements which are already accepted by this knowledge field. These are methodological requirements which lead towards a solution; they do not evaluate the foundation, its basis of veridicality or of another nature (Mihai, 1999).

Related to nature of the applicative interpretation principles, we state that they are sometimes viewed as “traditional maxims”, or as “rules of logical interpretation” (Amititeloaie, 2000). The first phrase has an evocative force, but it approximated extrinsically the nature of these principles; this retains at most the cultural history of realizing and expressing in a concentrated “sapientia” manner. The second starts from the premise – greatly agreed upon a specialized literature, but contestable – that there would be a logical method of interpretation, together with others (which are not true methods, but interpretation techniques).

Starting from this premise is built a restrictive perspective, not to say inadequate, but the nature of the considered principles, which are mistaken with the rules of correct thinking. In reality, the principles of juridical interpretation, although they count on logical principles, they

take into consideration the rationality of the interpretation. This implies logic, but it does not boil down to it, because it involves, complementary, juridical and systematical features. Juridical interpretation is not to be only logical, strictly following the system of the principles of logic, it must also follow juridical thinking, through which, it only acquires the specific difference in contrast with ethical, political interpretation etc. of the law and it is being expressed as a moment of its application. In the same time, it fulfils the purpose of its existence only if it operates systemically, if the norm undergoing interpretation is placed in the integrative field of law and, in the same time, it is associated with its perspective meaning to the coordinates of the factual situation. For this, method principles must be placed under the integrative sing of their interactive conditioning, beyond which they remain basic requirements, accepted as practical wisdom, inherently spontaneous, and not as rigorous requirements, of technical nature.

The legislation rarely contains distinct interpretation norms, but if its forms, its techniques or its principles are not expressly provided, this does not mean that the interpretation problems may be solved in a speculative way; they need to be structured in the field of positive law (Bobo , 1999). The fact that the legislator does not set a restrictive frame prevents from the limitation of the scientific investigation of the interpretation problem, including its guiding methodological principles.

Beyond the specifics of each legal branch and, implicitly, of some particular aspects of interpretation according to the legal branch, the law has, through its integrative structure, a unite nature, which also ensures or should ensure the unitary application of interpretation principles, techniques and rules at the level of the entire legislative system.

Conclusions

The principles of interpretation, as ways of expressing the yet-to-be legal science, but also the perfectible juridical technique, are not a dogmatically given fact; they appear as a structured whole, but in a permanently changing methodological structure, in agreement with the dynamic requirements of systematic accumulation and of practical application of the law. Because, it would be an illusion to draw a table, limited like any thinking pattern, containing restrictively and definitively a list, allegedly predetermined, of these principles. It is more realistic to

speak of principles, and not of the principles of juridical interpretation alongside the process of accumulation legal knowledge and the challenges of jurisprudence, one may see other requirements which would become principles, just as some of the existing ones could change considerably their meaning and importance.

If we consider the unifying between the letter and the spirit of the law as a requirement of fundamental interpretation, then we will accept that it demands the transfer in the field of juridical of those social values assimilated in the form of law, express its rational origin. The spirit of the law is – when it exists – social reasoning embodied in the spirit of the law. In this becoming unity, in itself through itself, social reasoning (conscious objective necessity) is present in the field as a unit – constantly creating and re-creating itself – between the spirit and the letter of the law (here, formal condition of the law). In this hypostasis, what is the spirit of the law guides and structures *hic et nunc* the legislator's will. In the considered frame, the spirit of the law is fully revealed as a founding ontological principle.

The letter and the spirit of the law can be captured only in the context of a good and thorough education.

The importance of the assimilation of knowledge in this matter poses the problem of completing the education plans for master studies, which can not ignore the benefits of professional interpretation.

Bibliography

- Amititeloai, Al., (2000). *Teoria generală a dreptului*, Iași, Ed. Candy
- Bobo, Gh., (1999). *Teoria generală a dreptului*, Cluj Napoca, Ed. Argonaut
- Craiovan, I., (2009). *Tratat de teoria generală a dreptului*, București, Ed. Universul Juridic
- Dănilor, D.C., Dogaru, I., Dănișor, Gh., (2008). *Teoria generală a dreptului*, București, Ed. C.H. Beck
- Mazilu, D., (2007). *Tratat de teoria generală a dreptului*, București, Ed. Lumina Lex.
- Mihai, Gh., (1999). *Fundamentele dreptului. Argumentare și interpretare în drept*, București, Ed. Lumina Lex
- Sandu, A., (2012). *Appreciative ethics*, Editura Lumen, Iași
- Bok, H., (1989). *Montesquieu: Spirit of the Laws*. Anne M. Cohler, Basia Carolyn Miller & Harold Samuel Stone (editors) Cambridge Texts in the History of Political Thought. Cambridge, (Paperback ed.; 808 pp.)