

INTERPRETATION OF LAW

1. Methods of interpretation

The laws are expressed in words and questions frequently arise as to the meaning of the words used in legislative texts. The process of determining the meaning of the law is called interpretation. Depending on the means employed by the interpreter, the interpretation may be literal, systematic, historical or teleological.

Literal interpretation is the determination of the meaning of a legislative text by application of the rules of grammar and syntax; it results in the discovery of the literal meaning of the law.

Systematic interpretation is used as a reference both to the position of a norm in a legal text, and to the relation of a norm to other norms.

Historical interpretation is used for cases where facts concerning the history of the legal problems under discussion are advanced as reasons for or against some interpretive decision.

Teleological interpretation is the determination of the purpose of a legislative text. It presupposes a detailed analysis of the concepts of ends and means as well as of the related concepts of willing, intention, practical necessity and goal. Teleological interpretation can use some formal arguments that lawyers have developed since the Middle Ages. Among them, especially the arguments *a fortiori*, *a pari* and *a contrario* are important.

The argument **a fortiori** is the assertion that a rule prescribed for one case ought to be applied to another case with even greater force. Thus, if the law allows a testator to disinherit his unworthy descendants, the law ought to allow a testator to leave to unworthy forced heirs less than their legitimate. Conversely, if the law prohibits negligent conduct, it also forbids intentional wrongs.

The argument **a pari**, that is, by analogy, leads to the application of an existing rule to a similar but unprovided for case. It differs from the argument *a fortiori* because it rests on the logical necessity that similar situations must be subject to the same regulation rather than the assertion that the same rule ought to apply with even greater force.

The argument **a contrario** is the assertion that if the law applies to certain expressly enumerated situations, it should not apply to any other non-enumerated situations. This argument is expressed in the maxims "*indusia unius est exdusio alterius*" and "*exceptio firmat regulam in casibus non exceptis*".

All these formal arguments may often be relevant for the determination of an unprovided for case and the interpreter may be faced with the problem of choosing the most appropriate among them for application to the case on hand.

Ordinarily, clear and unambiguous legislative texts do not require interpretation. Such texts ought to be applied literally to the cases for which they provide. It is a rigorous principle of interpretation that no distinction should be drawn when the law draws none - "*ubi lex non distinguit, nec nos distinguere debemus*". The legislature, however, may have made a mistake in

the choice of words and the legislative text, though apparently clear, may still require interpretation. This happens when legislative statements are incomplete, too broad, or too narrow. In these circumstances, it is the task of a corrective interpretation to attribute the proper meaning to an apparently clear text.

2. Subject of interpretation

From the viewpoint of the persons that may engage in interpretation, distinction is made between doctrinal and authoritative interpretation.

Doctrinal interpretation is made by learned members of the legal profession in treatises, law reviews, or even the classroom. This interpretation is free in the sense that views expressed as to the meaning of the law represent a personal opinion reached freely by elaboration on texts.

The outer limits of the interpreter's freedom are prescribed by a sense of professional responsibility and compliance with the principles of juridical thinking. This interpretation is also theoretical in the sense that it is made for a hypothetical situation rather than determination of a case pending before a court. Its purpose, however, is to influence judicial decisions in future cases.

Authoritative interpretation is made by persons having authority to interpret the laws, and it may be judicial or legislative. The judicial interpretation is made by courts in cases pending before them. According to civilian theory, the judicial interpretation is free in principle. A court ought to adopt the solution that it considers to be proper, being bound neither by its own prior decisions in similar cases nor by those of superior courts. Lower courts may thus develop jurisprudence contrary to that of superior courts, but, of course, their decisions may be reversed on appeal.

The theory of free judicial interpretation admits only one exception: a lower court is bound to follow the decision of a superior court in a case remanded for determination according to instructions. In practice, however, lower courts seldom deviate from the settled jurisprudence of superior courts because of various considerations. The freedom of courts to decide cases as they see fit is connected with delicate problems of the judicial process and with the role of judicial precedents as sources of law.

The legislative interpretation is made by the legislature. In a legal system based on the principle of legislative supremacy, the authority of the legislature to interpret the law is a correlative of its power to legislate. Logically, the legislature ought to be the appropriate agency to clarify the meaning of state ments that purport to express its collective will.

According to an ancient maxim "eius est interpretari cuius est condere" the task of interpreting the laws belongs properly to one who has authority to make them. In Roman law, by application of this maxim, obscure imperial laws could be interpreted by the Emperor only. The maxim passed into pre-Revolutionary French law and it became settled that the King alone

could interpret his ordinances. When the meaning of an ordinance was obscure, judges refrained from determining its meaning. The action was suspended and the parties were sent to appear before the King, so that the meaning of the law could be established definitively.

The principle of separation of powers does not exclude the authority of the legislature to enact truly interpretative laws that clarify, without regard to any pending litigation, the meaning of previously enacted texts. It is a different matter when the legislature in reality amends previously enacted legislation by laws termed interpretative. This may be an improper exercise of power tending to attribute, contrary to constitutional guarantees, retroactive effect to new legislation.

3. Gaps in the law

When the law is silent, the work of interpretation acquires a new dimension. Decisions may be reached with greater independence, but the interpreter is still bound by the spirit of the legislation as a whole and by the general principles of law that may be extracted from legislative texts. Relying on general principles of law, for example, French courts have developed remedies for unjust enrichment.

A major problem in this area is to determine whether the law is, in fact, silent. In certain situations, apparent **gaps in the law** may be filled by an expansive interpretation of existing texts. In these situations, the law is not really silent because there is a legislative will that has not been adequately expressed. At times, the existence of a gap in the positive law is sought to be established by an argument a contrario and by reliance on the maxim that "inclusio unius est exclusio alterius". The argument, however, is often misleading because the enumeration of factual situations in a rule of law may be merely illustrative. In such a case, the law is not silent because the enumeration may be expanded by the addition of similar fact situations.

When there is gap in the law, legal doctrine resorts to **analogy**. This is the process by which a case is decided on the basis of texts contemplating situations similar to the one on hand. Analogy is based on the maxim that when the reason is the same, the law ought to be the same - "ubi eadem est ratio, eadem lex esse debet". Analogy differs from expansive interpretation because it applies to truly unprovided for cases. The legislator did not only express himself inadequately, he failed to foresee the case. The argument of analogy loses its force when the provision on which it is grounded, is merely an exception from a general rule. Exceptional provisions, according to another maxim, are not susceptible of expansive interpretation or analogous application - "exceptio est strictissimae interpretationis". For example, privileges, being exceptions from the general rule that all creditors share equally in the distribution of the assets of the common debtor, are applied strictly."

According to the theory of self-sufficiency of the positive law that prevails in certain continental countries, analogy may adequately resolve all "unprovided

for" cases. This assertion, however, has been questioned by modern French doctrine and the prevailing view in France is that when analogy fails to provide a role for the resolution of a case, the judge is bound to decide in the light of equitable considerations and as if he were himself a legislator.

Civil legal relationships that are explicitly regulated neither by the Czech Civil Code nor by another act shall be governed by the provisions of the Civil Code regulating relationships that are closest to them in point of their content and purpose.

The Latin aphorism *iura novit curia* or "the court knows the law" belongs to the language of jurists and is used to express a norm concerning "proof of law". However, at least in our legal framework, the aphorism is not included in legal texts, but is almost an un-uttered or implicit norm drawn up from doctrine. It is an implicit principle.

For certain legal rules the ***iura novit curia*** is valid and for others this is not the case. When *iura novit curia* is valid the parties do not have to argue or prove the existence or content of legal rules, given that the court knows them. However, on the contrary, when the principle is not binding the sides have to give evidence regarding the existence and content because it cannot be assumed that the court knows them. Therefore, the court is not bound to take into account these rules unless the parties in question give the evidence on them. From this perspective, it could be stated, that the aphorism *iura novit curia* is a presumption.

A presumption is a rule which treats the state of facts which it refers to as a tried truth. In the proceedings the content of the presumption is treated as fact, consequently exonerating the burden of proof of the arguments even when they are somewhat dubious. There can be two kinds of presumptions: ***iuris tantum***, which allows evidence to be given against the supposed state of affairs and ***iuris et de iure*** which does not allow the state of affairs referred to in the supposition to be refuted. It could be said that the suppositions act as statements to assure legal decision-making, thus absolving the need to prove.

The principle ***iura novit curia*** can be considered as a supposition of ***iuris et de iure***, given that if the sides do not present any legal arguments or they do not give evidence of them, or even if they do, there will be no evidence proceedings of the applicable law. because it is supposed in all case that the court knows it. Thus. the parties do not have to provide legal evidence in the process. At the same time the court, in order to reach a final decision, is able to use any piece of legal matter which it considers necessary, whether it has been put forward by the parties or not.

When the principle is not valid, the sides must give evidence on what they want the court to take into consideration, verifying its existence and clarifying the contents. The supposition the court knows the law will simplify or eliminate the probation proceedings regarding existence and content of law.

Within the Czech legal framework for example, the principle of ***iura novit curia*** is valid in written state law, and since joining the European Union, in

European law published in the Official Journal of the European Union. However, the principle is not valid in customary or foreign law.

Given that the general rule of proof of law is the exoneration of proof, that is to say, there is no proceeding proof of law or it is assumed that "the court knows the law", and the exception being the need to prove is tied to legal framework, a framework governed by the jurisdictional rule of law legal jurisdiction: the rule established by the principle **iura novit curia** is valid because the judge is obliged to solve the case in accordance with the law and the knowledge of the law is an essential condition for its application.

The foundation of the presumption is one which confers credibility to the presumed case that the court knows the law or to be more precise, statutory law of the state, which could be understood as laws made by the ruling authority of the state, a public, written legal source. The feasibility of the presumption is supported by the idea that a judge is a highly trained professional in legal rules. From this point of view, the principle **iura novit curia** is connected to the concept of law and jurisdictional activity characteristic to civil law countries.

If, within our legal tradition the court could choose the grounds for any rules, that is to say, statutory law of the state, foreign law, local customs, legal precedents, equity and so on, the credibility of the presumption "the court knows the case" would be dubious, and perhaps legal evidence would have to be proved as a general rule.

However in a legal system which employs the jurisdictional rule of law and the court is considered an expert on legal materials, whose role is to solve cases according to this law, this law being more cognizable than other legal sources given that it is written and public, it is logical that the principle **iura novit curia** is valid as a general rule, that is to say, the presumption that the court knows the law is highly feasible.

Questions to the text:

1. Characterize the concept of interpretation of law.
2. What methods of interpretation do you know?
3. Which formal arguments are used by the teleological interpretation?
4. Which are the subjects of interpretation?
5. How to deal with the situation of gaps in the law?