



ORIGINAL PAPER

An Essential Overview of the Connection between Application and Interpretation in Law

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Abstract:

Can or must the connection between the application and the interpretation of law be permanent? Starting from the idea that some texts, by their simple content, “cannot be interpreted”, one can draw the conclusion, before any relevant analysis, that the application-interpretation connection in law is not generally valid. At the same time, if interpretation is not permanent, it can lead to the thought that it is occasional. If it turns out to be occasional, it is hard to explain its necessary character, necessity being an essential feature of this phenomenon impossible to avoid in law.

In addition to application, interpretation explains the power of the text of a legal norm in different situations, in situations judged to be similar, in situations in which we see ourselves obliged to endow the text of the norm, to expand or restrict it with wisdom. In law, there are no chosen texts to be interpreted in one way or another, but the “necessity” determined by the content of some texts to be conditioned in application by their interpretation. The appropriate connection between application and interpretation is given by the source of law: the legal norm thus perceived as the perfect means of resolving issues brought before the court and achieving justice.

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Introduction

If the strict application of legal norms were singularly achieved in proving the truth, we would eliminate any doubt about a fact and would no longer discuss the “difficulty” of interpreting that fact and, moreover, we could appreciate with too much ease a repeatable, but in no way identical situation. As a consequence, the interpretation of a separate framework must also be established, independently of the general framework, interpretation that can be used to demonstrate, according to certain criteria, an adequate application of the norm.

From a legal perspective, we function in two enshrined dimensions, and this is also from a real standpoint: space and time in which we, everywhere, create rules for ourselves. What is significant is that these rules are influenced, modified, differ and, consequently, produce effects based on the exclusive identification of the needs of a particular social entity and are interpreted in different ways in relation to the present. The present is not interrupted, it is permanent, but not the same. We thus imply new, correct rules from our point of view, which can be adapted, interpreted and assigned by presenting them as the most appropriate to the continuous moment, therefore created and interpreted by the demand of the conjuncture.

Moreover, it is argued that “When we tackle the origin of law” (Dănișor, Dogaru, Dănișor, 2008:36), “it is not about determining the historical beginning of law, but its essence, the set of objective and *permanent* conditions which determine its existence and constitute its essence.” (Dănișor, Dogaru, Dănișor, 2008:36)

We apply the rules depending on what we experience, and this means the creation of norms by the interpretation of the moment. But we understand the moment in relation to “our days”. In a few years we will understand it differently because we will face other needs, insist on other ideas and conform to other ideals that we tend to pursue until we seek others.

It is natural to get involved in similar activities, but over time we tend to understand them from a different perspective, as a result of both the approaches to common needs and our own approaches. We can ask ourselves, in this context, how powerful and interesting interpretation is.

It is obvious that there is no precision of relations that would determine and allow an application of the norms, of all norms, without any kind of interpretation. The law follows its purpose and, clearly, its content can often be, at the same time, interpretable.

Content

I believe that we must pay attention to interpretation in compliance with the law, restrict or expand its text by considering whether or not the law would be more accurate in its application with or without interpretation, and to assign to the interpretation in certain contexts the meaning due to it. It is obvious that we must read the law and understand its depth and, at the same time, observe it strictly, as the authority pronounced it, thus effectively preserving its objective substance. However, we appreciate in the subsidiary and concomitantly the power of the spirit of the law and the prevailing “authority” of the need for its interpretation. The power of the law thus becomes an indication for us and not an inconvenient imperative.

An analysis of the acceptance of the interpretation of the law is all the more convincing as we feel vulnerable at the moment of applying the law and think of alternatives. The judge is then the author who speaks his/her word and expresses justice, worthy of trust and the law worthy of being highlighted by its spirit. The identity of the case determines its interpretation which should be sufficient and convincing in the application of the legal rule.

Let us consider, however, that, for example, the clear claim of mandatory norms regarding their application eliminates interpretation and although, in these cases too, there many circumstances that often attract points of view, they all converge towards an obvious solution through the observation and concrete examination of the evidence.

Therefore, there is a need for the application-interpretation balance in law determined by the solidity of the law, a balance which leads to a fulfilment of the meaning of the norm. It is said that "Law is full of inconsistent areas, it is often lost in an ocean of 'vague'." (Dănișor, Dogaru, Dănișor, 2008:40) "However, this 'vague'" state reputable law professors (Dănișor, Dogaru, Dănișor, 2008:40) "can also play a role as a vector of progress in law and of the adaptability of texts to situations impossible to take into account by the legislator at the time of regulation, through a constructive interpretation."

It is therefore very pertinent to note that the phenomenon of application-interpretation in law eliminates discrepancies or gaps and essentially creates a profound and complete legal work.

We rightly tend to avoid the interpretation of the law, arguing that the law must be applied in the strict sense of its provisions. Yet, we underline that the very deficiencies of the law require its interpretation, and we thus embrace the point of view according to which it is impossible to avoid it precisely because interpretation comes in support of the law and, at the same time, helps us to preserve the possibility of demonstrating our own arguments.

We thus understand the rationale for the existence of interpretation methods: historical, logical, systematic, grammatical, appropriate to the analysis of the legal norm, either separately or together, for the purpose of removing doubts, for the purpose of verifying, explaining and finding a final answer claimed to be truthful in the two dimensions, time and space, with regard to a specific case.

In other words, we resort to these methods in order to find out, through pertinent verification, to what extent they are useful in clarifying the text of the norm, for each case that essentially claims to find the truth. The methods of interpretation of a legal norm must be approached especially when the application of the norm must be in harmony with the necessity that requires its application.

The historical method represents, for example, the "primary", fundamental, necessary means of information, regarding the evolution of our legal system by which we mark essential points in the history of law as a result of the reality of our entity over time, but also in the continuous present.

On the other hand, the opinions concerning the entire class of norms expressed by lawyers represent the doctrinal interpretation. This affirmation of points of view worthy of consideration constantly increases because it can lead to genuine conclusions regarding many details offered through the accuracy of the law or to the

creation of ideas provoked by its absence and can lead, generically, to legal convictions that determine the process of approaching any law under the close scrutiny and special care of those who thus create a true tradition of interpretation registered as an unofficial interpretation of the law.

Numerous valuable points of view have been collected over time, often understood *in concreto* in the action of applying the essential content of legal norms.

As for any other discrepancies between terms, one can also make examinations, assessments, whereas opinions and conclusions to one's own opinions found in the specialised literature, even without binding force, can be explained and can create a basis of inspiration under the sign of authenticity.

It is appropriate to list and explain other possible interpretations of a legal norm. We thus appreciate the extraordinary scope that extensive interpretation offers to the original textual material of the law, which can somehow recreate its authority. We do not refer to the norms of strict law. The norms of strict law, as it results from the legal literature (Dănişor, Dogaru, Dănişor, 2008:242), "are norms of strict interpretation." The renowned authors of the General Theory of Law add that "the law is normally explicit, clear, precise, rigid. It does not leave the one who enforces it the faculty to recreate it through interpretation." (Dănişor, Dogaru, Dănişor, 2008:242) with reference, obviously, to the norms of strict law.

The precisely established norm imposes from the very beginning the "ability" of application in its rigid content by taking into account the claims of the text expressed without contradictions or inaccuracies, using its strictly "original" letter pronounced in the field.

It is noted, at the same time, that "the inconsistency of law results both from its linguistic nature and from the complexity of the reality to which the law must respond." (Dănişor, Dogaru, Dănişor, 2008:40) But the extremely effective means in applying the norm can be its particularly careful interpretation, without the tendency to move away from its text, in order not to move away from its actual power, but rather to penetrate deeper into its core. It follows that interpretation is not a means of correcting the law, but an additional way to discover its value. This is the strong point of interpretation.

We thus record an authentic official interpretation, judicial and administrative, and an unofficial interpretation as we have already reiterated. The fact that there are comments regarding the law does not question the reality that a norm expresses and the inspired views on the entire system of norms justify and determine its complexity.

The field of law includes a multitude of norms and auxiliary doctrines of experts in the field that can lead to written conclusions of a certain importance regarding the creation and application of legal rules, thus constituting permanent points of attraction necessary in the knowledge of the legal phenomenon.

The doctrine often brings strong arguments that can change our initial beliefs through amazing discoveries of the substratum of the law. However, the concordance with the text of the law is not absent in any circumstance despite the expression of points of view that may become known, but often indecisive in modifying the certain and poignant concerns of the phenomenon of "law". The doctrinal contribution in the field of legal inspiration is notable.

At the same time, “Legal science resorts, more and more frequently in the contemporary period, to the methods of systemic, structural and functional analysis.” (Craiovan, 1999:17)

Another established method is therefore the systematic method concerned with proving the authenticity of the norms in accordance with the higher norms and the concordance of all the norms in the system, laying the foundations of the entire hierarchical pedestal on the constitution, accredited as the most important norm. “Fundamentally,” says Professor Gheorghe Mihai, “systematic interpretation is based on the idea that positive law is a system construction; this construction lies under a concept that gives it unity, that links the laws together.” (Mihai, 2003:507) Through such knowledge, it is demonstrated that the norms are based on each other, giving a strong validity to the entire legal system. “A genuine legal science is one that is constituted in the system and has as its primary object precisely the system.”, say professors Dan Claudiu Dănișor, Ion Dogaru and Gheorghe Dănișor. (Dănișor, Dogaru, Dănișor, 2008:22)

By practically implying the difficult overall knowledge of the system, we agree with the conclusion expressed in the legal literature, namely that the legal system appears to be complete. “A legal system is complete because it does not contain gaps.” (Dănișor, Dogaru, Dănișor, 2008:40) “In other words, if the law can have gaps, law cannot.” (Dănișor, Dogaru, Dănișor, 2008:40)

The unifying elements of the legal system are the legal norms which, even if they are not complete at times, ensure the completeness of the legal system through their unity, by sharing the same views directed, in fact, in one respect: justice. They all have this unitary message, perhaps difficult to explain, but through which the norms become proof of the possibility of proving reality by logical conclusions, despite their own deficiencies.

Moreover, “The most important activity of contemporary jurists is the description, analysis, interpretation, and commentary of laws, other legislative acts, and legal norms in general.” (Craiovan, 1999:18)

Returning to the significance of the dimension - time - it descriptively provides us with inevitable changes and determines the basis of legal regulations with their own characteristics, contributing to the transformation of the structure of law by a permanent, careful and accepted revision in the sense of a more efficient adaptation to the requirements of the re-emerging society. And our beliefs cross time and we continue to learn new analyses to establish truth and justice.

The arguments expressed through interpretation must be appreciated because they support the law and are all the more convincing as the law supports us. Without such an explanation, interpretation would indeed be meaningless. The effect produced is sometimes of major importance and strengthens our confidence that the law is enforced for us, not against us. We then wonder what contribution the existence of the law can have in adapting each one within society and in keeping society within the perimeter of good.

The constancy and, at the same time, the adaptability of the law according to permanent requirements makes the law constantly establish the bases through which we manage to legally overcome, in life, continuous obstacles.

“The identical as a principle is a primordial question, it is the *problematic* as such, the state of ambiguity of all that is, the possibility of any concrete thing to pass from itself to something more comprehensive”, says Professor Gheorghe Dănișor. (Dănișor, 2014:25)

To understand the law-citizen-man relationship, we must understand man’s conception of the law and the force of the law towards man. In this way, we can free ourselves from the “fear” of the law and understand the meaning of its creation, that of good. The identity of the law is valid for certain categories of people, but its prominence differs for each person. In this way, we create room for interpretation.

Law... “Monumental hypostases and countless facets seem to configure it...”, says professor Ion Craiovan. (Craiovan, 2009:42)

The contradictions continue and force us to observe the attitude of the norm that promises a strong response for a just cause. From this standpoint, examining the norm grammatically is a unique, very eloquent means that creates the opportunity for an advanced understanding of its text in order to dispose correctly in accordance with it. Judicial interpretation also has its say, with priority, the essence of which lies in the devotion to the provisions of the law, including by literally taking into account its terms by comparison or association.

We can compare, in fact, the types and methods of interpretation or we can pollinate them, in both cases, under the certainty that they lead to a clarification of the norms and to their acceptance, in the most correct sense.

In the context, “The term ‘logic’ has a vast diversity of meanings, outlined throughout history and suggesting just as many ‘methodological clues’.” (Craiovan, 2009:173)

In particular, we observe and study logic in order to end up accessing this method with a convincing description of the meaning of the norm as a result of the conclusions of reality. Moreover, on the basis of a continuous reality, law was created and spread everywhere, in particular forms, to be exercised completely and conclusively on what is necessary.

The logical method, as it emerges from legal literature, “has the widest use, being in essence the basis of any interpretation, being the foundation of the other methods.” (Dănișor, Dogaru, Dănișor, 2008:468)

According to the renowned professor of law and philosophy, Ion Craiovan, the logical method “also calls in legal research for the connection with other complementary and integrative types of rationality, which do not ignore the value of the logical approach, but do not reduce knowledge, especially in the sphere of social sciences, to this approach, a mutually profitable view, for various ‘centres’ and ‘types’ of knowledge.” (Craiovan, 2009:181)

Moreover, “the object of legal logic are the norms, but not only in themselves, but also in the intellectual process of their creation, interpretation and application.” (Dănișor, Dogaru, Dănișor, 2008:17) Examining a logical argument from a legal perspective can lead to the creation of circumstantial situations in the sense of accrediting the veracity of a case.

It is appropriate to mention that “Depending on the purpose pursued by interpretation, a purpose of primary importance in the process of enforcing the law, several important currents of thought have emerged: the exegetical method, based on

the will of the legislature, the evolutionary theory, the theory of the autonomy of texts.” (Dănişor, Dogaru, Dănişor, 2008:459-465)

Advanced theories explain the trust in the power of interpretation on different bases. It is natural to assimilate the image of the law, but without changing its substance, as this would lead to a dramatic transformation of the norm. We conclude that the appreciation of the value of interpretation in determining the most explicit content of the legal norm represents a weighing of its texts to correspond to the various situations that may occur, deeply implementing, from the position of those knowledgeable in the field, the idea of justice.

The interpretation of legal norms, states Professor Ion Craiovan, “*designates the intellectual process of establishing the exact meaning of legal norms in order to apply them, to decide certain cases.*” (Craiovan, 2001:275) Therefore, through the legal, official value of judicial interpretation, one can formulate conclusions in relation to the provisions of the law and, through a rational and intelligent approach, one can eliminate doubts regarding the application of norms in order to establish a truthful decision. From the legal literature it results that “here we do not actually have an act of interpretation, but a legal act of application, given on the basis of a legal norm whose content could be revealed following a more or less complex effort of interpretation.” (Craiovan, 2001:277) We thus accredit the text of the law under all its pretension and we refer to the depth of the law that justifies the purpose of its creation with all its specific features, valid, generically speaking, for each legal norm.

In an original way, the law is created by the legislature and “The interpretation of the legislature, respectively of the body that drafted the legislative act – Parliament – is an authentic official interpretation.” (Mihai, 2002:152)

Ambiguities are eliminated, the validity of the text of the law is accredited in all its details, while one can notice an additional solid support in the letter of the law specific to the complexity of such a type of interpretation. The criterion that is above any possibility of planning the interpretation of the law is the legislative climate of the creation of the norm itself and the reaction of the authority that occurs on the very act that it itself thought of. “The legislature can interpret its normative acts adopted through normative acts of interpretation, including the result either in the text of the interpreted legislative act, or in a subsequent legislative act.” (Mihai, 2002:153)

From all considerations, the authentic official interpretation is particularly significant because through this means the authority can reconstruct for essential reasons the very norm established by it, towards a new identification of its content or, possibly, new ramifications of the meaning of the norm can be found.

Last but not least, “Executive interpretation is the responsibility of the bodies that implement the law.” (Mihai, 2002:153) From the legal literature, it results that “Both the authentic interpretation of the legislature and that given by the executive become binding for the courts when deciding cases.” (Mihai, 2002:153)

Conclusions

The substance of the norm can be found through different analyses of its provisions and in order to be able to observe the content of the rule properly, the principles which underlie the legal system and which implicitly constitute the foundation for the realization of legal norms are worthy of consideration.

The open reaction of the law to interpretation creates the balance between its letter and its spirit under which the law acts with all the force of consequences, removing doubts about its exact application. We can opt for an interpretation of the law so that the law can manifest its deep significance.

The content of the norm must coincide with the reason for its creation. This is how we find out, illustrate and mark in fact and in law the necessity of the rule. Through norms, we create for ourselves the chance to aspire to good, truth and justice, but the wisdom to understand them and, consequently, to respect them, is our own, ultimately depending on each of us.

This mechanism of application-interpretation in law confirms the firmness of the provisions of the law, but also requires adaptability to changing situations in order to cover as wide a spectrum as possible.

The mechanism does not work before the rigidity of imperative laws which, alarmed by the gravity of the facts, intensify their force and impose a special concentration in their application in relation to the nature of the situations.

Similar, but not identical cases pervade society. We assign to doctrinal interpretation the art of convincing, through explanations, the “particularities” of the norm, in the sense of depicting their proper application to a “maximum” extent.

At the same time, the official judicial interpretation of the law, always present, establishes in the name of the law, the reason for judgment, understood in the skilful proof of reality by entrusting the truth to society.

The sign of extensive or restrictive interpretation in the application of law is the result of the permission of the norm for such an intervention. By thinking about the text of the law, we appreciate its authenticity and learn to perceive its substance by following its interpretation.

Interpretation means the opportunity to consider the substance of the norm, its importance and often the harmonisation of the legal norm with the causes of its existence. The genuine evidence of the reasons underlying a certain content of the law is achieved through the method of historical interpretation, a method that brings to light the conditions under which the norm is justifiably created and thoroughly appropriated.

Interpretation is certainly a topical subject and the prudent attitude of those who implement it presupposes its acceptance directly or indirectly in the process of enforcing the law.

We consider the role of interpretation and pay serious attention to it in the appropriate application of the text of the legal norm in many situations. In essence, interpretation intervenes in completing and supporting the legal norm that it manages to articulate in relation to the complexity of the cases and in order to settle them, preserving overall the completeness of its own legal system, which imperatively and constantly meets the needs of the community.

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