THE RATIONALE OF LAW. THE ROLE AND IMPORTANCE OF THE LOGICAL METHOD OF INTERPRETATION OF LEGAL NORMS

Mihai BĂDESCU*

Abstract

The interpretation of law was and remains an indispensable postulation, inherent and the most significant in the application of the law. Through interpretation the aim is to clarify the obscure text, to rectify the imperfection of the text of the legal norm, to remedy its shortcomings, and in consequence, to specify the exact meaning of the legal norm. Interpretation concerns itself with emphasizing the authentic meaning of the normative texts, finding the spirit of the lawmaker-author, the authentic legal sense of the actions that occurred, of the conduct of the perpetrator, and the significant legal connection of these meanings. The necessity of interpreting legal norms is justified by several considerations, out of which the most important remains the one regarding the act that the lawmaker cannot and need not provide everything in the normative text. The unity between the spirit and the letter of the law, the continuity of interpretation, the useful effect of the legal norm are just a few of the principles that need to be taken into account in interpretation. Be it official (obligatory), or unofficial (doctrinary), interpretation remains an extremely important stage in the application of the law: the literature of specialty consecrates five important methods of interpretation (grammatical, historical, systematical, teleological, and logical). The latter method allows for the formulation by the interpreter of certain rational assessments, done through operations of generalization, of logical analysis of the text, of analogy, through applying formal logic.
The present study will mainly deal with this method, analyzing the main logical arguments used in interpretation.

Keywords: *legal norm, interpretation, method, logical argument*

1. Interpreting legal norms designates the intellectual process of establishing the exact sense of the legal norm[1].

Usually, through interpretation we understand the analysis and explanation of an obscure text, of a text that "*leaves room for interpretation".*

From the very beginning, interpretation was an indispensable postulate, inherent and the most significant in the application of law. Not the other way around, in the sense that the application of the law determines its interpretation, because in that case, substituting itself to the lawmaker, the interpreter would also become the judge of the opportunity of laws. But a law that would be impossible to interpret would also be impossible to apply, because nobody can apply something they do not know, something they do not understand[2].

Interpretation means, beside clarifying the obscure text and circumstantiation of a general text, the rectification of imperfections in the text of the legal norm, solving the contradictions in the specific text.

Through interpretation what is intended is eliminating the ambiguities in the legal text, the remediation of its shortcomings and, in consequence, specifying the exact meaning of the legal norm.

Interpretation concerns emphasizing the authentic text of the legal texts, finding the spirit of the lawmaking author, the authentic legal meaning of the actions that occurred, of the behavior of the offender and the legal-significant connection of these meanings[3].

In the specialty literature it has been said that interpretation doesn't have general utility in law, but only when the law is unclear. In this sense we are facing an obvious contradiction because in order to establish whether a law is clear, it needs to be necessarily interpreted. Claiming the formulation is unclear in a legal norm does not lead to the only basis of interpretation; the more general the formulation, the more jurisprudence there is; the more heterogeneous the practice, the more uncertainties and freedom of interpretation increase. On the contrary, rigor and detailing regulations, the abundance of jurisprudence, the uniformity of practice diminish the number of ready variants in interpretation, without ever eliminating them[4].

The theory of law contains several syntagms regarding law and interpretation. Thus, expressions such as the following can be heard: "the interpretation of law", "the interpretation of laws", "the interpretation of legal norms", "legal interpretation".

Through "*the interpretation of law*" we can focus on "*a philosophical discourse, that takes into consideration the explanation of the main bases of the position and functioning of law in society (the theoretical and philosophical interpretation of law)*[5].

* Professor, PhD, Romanian Academy of Economic Studies (e-mail: **badescu.vmihai@gmail.com**).

[1] The term "interpretation" comes from *inter* and *pretium,* which designates *the intermediary, the interpreter.*

[2] D-C. Dănişor, I. Dogaru, Gh. Dănişor, *Teoria generală a dreptului,* C.H. Beck Publishing House, Bucharest, 2008, p.77.

[3] Gh. Mihai, *Inevitabilul drept,* Lumina Lex Publishing House, Bucharest, 2002, p. 433.

[4] Gh. Mihai, *op. cit.* p. 436.

[5] N. Popa, *Teoria generală dreptului,* All Beck Publishing House, Bucharest, 2002, p. 238.

The interpretation of law makes reference to "a certain hierarchy of the sources of law", the primordiality of the law as a main source of law being obvious[6].

Through *interpreting legal norms* we do not have in our scope the entirety of normative acts, but the interpretation as a moment of the application of the law.

2. The necessity of interpretation of legal norms is justified by the following considerations:

- in the process of applying the law, the implementing body (the judge, the administrative body) **is forced** to clarify with all precision the text of the legal norm, to bring law closer to the social reality, to go from general to particular and vice versa, to establish the compatibility of the legal norm in in a certain factual situation;
- the legal norm that has a general and impersonal nature cannot, not matter how perfect it is expressed, contain all possible situations that arise in the social reality. Through it's nature, the legal norm is general. It does not concern itself with concrete situations. This is why, many times it is incapable of predicting the rapid changes of concrete reality. The general sense of the legal norms can make the law obscure; thus it is necessary that its provisions should be adapted to each and every aspect of social reality that it regulates, in a general sense. **The lawmaker cannot and need not predict everything.** Is it impossible to them to encompass in a law all the needs of a society because it is so wide-spread?[7]. They don't have to, because in laws certain "*blank spaces"* are needed, some *"valve concepts"* to "*allow for the dilation and for the communication with the world outside* […][8], that can thus prevent the excess of compression in the legal system. The empty space created by the lawmakers, due to their impossibility of predicting all hypotheses of application – otherwise law would not be a general and abstract norm but an array of individual norms – is filled by the interpreter. Thus interpretation can have the traits of a "*complementary legislation"*[9].

Legal norms are established in a system; their application implies diverse relationships. In order for it to be correctly applied, it is necessary that it should be elaborated in conjunction with other legal norms that have the same domain, or a similar domain of regulation. And rightfully so it has been underlined that the current state suffers from a kind of *"legislative bulimia"*[10]. It tends to regulate everything. This excessive tendency of regulating through lawn leads to a legislative inflation and, in consequence, to a loss in value of legal norms. The rule does not have sufficient time any longer to crystallize and subsequently, it will be poorly drafted and coordinated with the rest of the legal system. This way contradictions appear between the provisions of the same normative act, between the provisions of multiple normative acts, between normative provisions and the general principles of law[11]. The role of interpretation is precisely that of eliminating these contradictions, the interpreter applying the principle of hierarchy of normative acts and thus solving any conflict between two acts (rules) of this kind[12];

- the reasoning of interpretation of the legal norms is given by the method in which the normative text is drawn up, by the language and style used in the normative construction. From this point of view the possibility of a confusing legal norm draft is not out of the question, a "product" of disregarding the requirements of lawmaking. The language used in a legal text is presumed to be utilized in the general sense. The general sense must be determined by the interpreter, and not specified by the lawmaker like in the case of technical terms;
- certain normative acts that are still in force were adopted a long time ago. As a consequence, disregarding the language of the times that was used (certainly outdated today), the normative text – that upon its adoption reflected the social reality of the moment – no longer corresponds to the reality "in the field".

3. In the legal doctrine and in jurisprudence a series of **principles** are relevant, principles that are at the foundation of the process of interpretation of legal norms. From a multitude of such principles, in order to form a general theory of interpretation of the legal norm, we have decide upon the following:

3.1. In the process of interpretation of the legal norms what must be respected is **the unity between the letter and the spirit of the law,** without any exaggeration on one side or the other. The imbalance between the letter and the spirit of the law leads to an abuse of rights, to the fraud of law.

Unity between the letter and the spirit of the law – as appreciated by prof. Gheorghe Mihai – irrevocably leads us into a system of law *"Indeed, for this «spirit of the law» can mean «the spirit of the lawmaker», determined, who is in a position to appropriate the de jure knowledge of certain principles, but in a personal formulation, and to disregard other principles or declaring certain personal assertions as principles; but it can very well also mean an array of natural principles, that*

[6] Gh. Boboş, *Teoria generală a dreptului,* Dacia Publishing House, Cluj-Napoca, 1994, p. 234.

[7] Portalis, even since the preparatory phase of the French Civil Code, signaled the fact that it is extremely dangerous to want to regulate and provide everything: „*To predict everything is impossible to achieve. The needs of society are so extensive that it is impossible for the lawmaker to provide everything"* (apud N. Popa, *Teoria generală a dreptului,* C.H. Beck Publishing House, Bucharest, 2014, p. 206.

[8] N. Popa, *Teoria generală a dreptului,* All Beck Publishing House, Bucharest, 2002, p. 237.

[9] I. Dogaru, D-C. Dănişor, *Teoria generală a dreptului,* Ştiinţifică Publishing House, Bucharest, 1999, p. 393.

[10] D.-C. Dănişor, *Drept constituţional şi instituţii politice,* vol.I, *Teoria generală,* Europa Publishing House, Craiova, 1995.

[11] I. Dogaru, *Elemente de teorie generală a dreptului,* Oltenia Publishing House, Craiova, 1994, p. 227.

[12] D.-C. Dănişor, I. Dogaru, Gh. Dănişor, *op. cit.* p. 93.

overtake the preferences and interests of a lawmaker or another, the reality of which subsequently being accepted by the lawmaker and affixed as the foundation of all its normative acts[13].

The spirit of the law situates itself above the spirit of the lawmaker, if we understand the term "law" with it's universal meaning, that is *"the spirit of any laws, regardless of places and times".*

In ancient roman times law was defined as *ars boni et aequi* (the art of good and fair), concept in which we find the coordinates of law and moral. "Equity is not against that which is just in itself, but against that which is just according to the law" said Thomas Aquinas. From this point, Perelman concluded that equity is the appeal of the judge against the law. Still, sometimes the law itself makes reference to equity, so not always do we encounter the opposition stated by Aquinas and Perelman[14].

3.2. In the process of interpretation we must always have in mind the will of the lawmaker, what he intended in the moment of the lawmaking[15].

The will of the lawmaker concerns his mediated and immediate objectives, achievable step by step through the given laws

3.3. The principle of continuity of interpretation presupposes that once the interpretation is established in a certain sense, it cannot be too easily modified. The reason for this is given by the necessity for stability of legal rapports and so that one of the most important desiderata of the state of law – the predictability of constraint – can be achieved[16].

3.4. An interpretation must **become** *„subiectum materiam",* that is, it must be in direct relation with the entirety of the normative act (with the entire economy of law), with the legal institution and with the branch of law it pertains to.

3.5. Exception is to be strictly interpreted - *exceptio est strictisimae interpretationis.* Between law and exception there is the following relationship: *specialia generalibus derogant* – the general rule does not derogate from the special law, the special law derogates from the general law. In law, an exception exists only if it is provided expressly by the legal norm. The exception cannot be created through interpretation, and the existing ones must be restrictively interpreted. Restrictive interpretation is imposed in the legal presumptions that do only exercise their role in the precise cases for which they were written. In criminal law, *poenalia sunt restringenda,* in complete respect of individual freedom that cannot be touched but in the strict limits provided by law expressly.

3.6. Where law doesn't distinguish, neither should the interpreter – *ubi lex non distinguit, nec nos distingere.* According to this rule, to the general formulation of the text corresponds an equally general application. The interpreter cannot introduce distinctions if the law doesn't incorporate them.

The silence of law can be interpreted in favor of the freedom of action: all which is not forbidden, is permitted. The lack of express constraint must hence be always interpreted in the favor of the individual.

Tightly connected to the aforementioned is what Roman jurists called *in dubio pro reo,* in other words, when a text seems ambiguous or obscure, the court must always conclude in the sense that is most favorable for the accused.

This principle derived from doubt, favorable for the guilty part, is to have consequences upon the matter of proof; indeed, every man is under the presumption of innocence until proven otherwise and if the evidence do not meet the attributes provided in the law, objective and subjective, then it is natural that the accused should profit from them[17)].

3.7. The principle of effectiveness is expressed through the adage actus interpretandus est potius ut valeat quam ut pereat = the law must be interpreted in the sense in which it is valid.

The interpreter must at all times begin from the premise that the lawmaker adopted the legal norm in order for it to produce effects; we cannot ever state that the decreed legal norm is a nonsense and in consequence does not find its applicability. Legal norms must always be interpreted as such, so that their effect is ensured. An interpretation which would cancel the practical effect of the rule is not permitted.

4. The interpretation of legal norms knows **two main forms,** after which the interpretation must be done by a public authority or a particular person: **official interpretation and unofficial interpretation.**

4.1. Official interpretation (obligatory) is done by the state bodies that have attributions either in regards to elaborating legal norms, or in regards to their application. Thus we distinguish the following: *authentic interpretation (legal or general), judicial interpretation (causal), administrative interpretation.*

Authentic interpretation (legal or general) is done by the legislator himself when, through a normative act (interpretative act), he interprets his own adopted normative act. Nothing can be opposed to an issuing body of a normative act (the lawmaker) interpreting it on the basis of the principle "*a majori ad minus"* (who can do more, can also do less).

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[13] Gh. Mihai, *op. cit,* p. 489.

[14] Ibidem, p. 490.

[15] *„Optima lex quae minimum judici, optimus judex qui minimum sibi"* = the best law is the one that leaves as little as possible to the interpretation of the judge and the best judge is the one that bases his decision in such a way through the law, that the arbitrary is as minimal as possible.

[16] *„Minime sunt mutanda quae interpretationem certam semper habuerunt"* = those that have a clear interpretation have always suffered the minimal amount of change (Paulus, *Digestele lui Iustinian, 1.3.23.).*

[17] Ibidem, p. 491.

We are not in the presence of an authentic interpretation but to the extent to which there is a strict equivalence between the original act and the act that interprets it, that is, if the interpretation is done by the same body and in the same form as the original act[18].

The interpretative normative act will be a common body with the interpreted act, it will be obligatory (in the sense that it is imposed to courts) and it will present the advantage that it radically eliminates all doubts the interpretation of law raises.

We are facing an authentic interpretation when, for example, the Parliament interprets through an interpretative law, a different law previously adopted or when the Government interprets a decision through another (interpretative) decision.

Through the normative act of interpretation, the only aim is to explain the adopted normative text, a correct understanding of the purpose and its finality and in no way adding new rules to the existing normative act.

The interpretative act should be applied from the date of its coming into force of the interpreted act, and consequently, the effects of the authentic interpretation being retroactive.

This aspect of retroactivity of the interpretative acts has constituted and constitutes the subject of certain major disputes in the specialty literature.

Judicial interpretation (causal) is done during the process of application of the law by the judge; it is always an interpretation by case. It only has obligatory force for the respective case and for the participants of the respective case.

Sovereignty of the judicial interpretation is a consequence of the independence of the judicial power. The courts remain not compelled, free in the sense of their own interpretations, otherwise also necessary to justly solving the causes brought forth unto them (to be tried).

In the specialty literature[19] what is underlined is the fact that between authentic and judiciary interpretation there is a main difference. In the case of the first form of (authentic) interpretation, the interpretation is granted a freestanding value and is made with the purpose of clarifying the meaning of a rule, not being conditioned by the necessity of concurrently solving a concrete cause. In the case of the judiciary interpretation, on the contrary, interpretation is just a means to solve a concrete cause. In these last situation, it is not about an act of interpretation, but about a (individual) legal act of application.

- *Administrative interpretation* is done by the administrative bodies in the process of application (of exercising) of the law.

The administration can emit general administrative acts of execution of the law (Government decisions, decisions and orders of the local councils) through which laws are interpreted, but these acts are not obligatory for courts, because of the fact that they are administrative acts, they are jurisdictionally controlled.

4.2. The unofficial interpretation (or doctrinary) does not have legal force, being optional (it does not have an obligatory nature) and it does not materialize in legal acts which have their being complied to and their application guaranteed by the state. It is represented by the opinions of the unofficial persons in touch with the elaboration and the application (and respect) of the law.

The unofficial interpretation made by specialists (scientists – jurists in the various scientific papers, treatises, courses, textbooks, monographs) is bestowed with a distinguished importance as a consequence of the analysis *(„de lege lata" or „de lege ferenda")* made during the theoretical research of law, which ca be invoked in the process of the application of the law, but which is not mandatory.

The plea of the lawyer in a certain cause also has an optional interpretation; the court can take into consideration the arguments of the lawyer, *if it so desires*, brought forth in the case before the trial or it can reject the without any specific reason.

5. În deciphering the exact meaning of the legal norm the interpreter relies on a series of methods[20] named **methods of interpretation.**

The legal literature the existence of five inportant methods is consecrated[21]: the grammatical method, the historical method, the systematical method, the teleological method, and the logical method upon which we will mainly focus.

- **The grammatical method** is an elementary method of interpretation of legal norms and it is constituted out of using the morphological and sintactical analysis procedures of the text of the legal norm, starting from the meaning of the terms and expressions used, from the link between them, from the construction of the sentence.

Grammatical interpretation is oriented in three directions: etymological, syntactic and stylistic[22].

Etymological interpretation regards the original meaning given by the lawmaker to a term.

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[18] P. Pescatore, *Introduction á la science du droit*, Luxemburg, 1978, p. 329.

[19] I. Craiovan, *Tratat elementar de teoria generală a dreptului,* All Beck Publishing House, Bucharest, 2011, p. 277.

[20] The word "method" derives from the Greek *"meta"* = after + *„odos"*=way. Methods are an ensemble of rational procedures (elaborate set of rules) and rational operations, organized according to some principles in order to achieve a certain thing (see Gh. Mihai, *op. cit*, p. 495).

[21] Some authors like S. Popescu, M-L. Hrestic,A.Șerban,R.Stancu,M.Viziteu (See *Teoria generală a dreptului,* Pro Universitaria Publishing House, Bucharest, 2016) classify the methods of interpretation as *intrinsic methods* (that have at their basis the very texts that were interpreted, such as the grammatical method and the logical method) and *extrinsic methods* (that emphasize the external elements of the interpreted texts – the teleological method, the historical method and the systematical method). Other authors group methods of interpretation in *analytical methods* (the grammatical method and the logical method) and *synthetical methods* (the historical method and the systematical method).

[22] See Gh. Mihai, *op. cit.*, pp. 501.

This meaning could be a common one, or a technical one, or of specialty.

Te common meaning has priority if it is found in a provision of material law, presupposing that the lawmaker spoke to everyone's understanding.

The technical meaning has priority if the term is found in a provision of formal law, because in this kind of situations the technical language is used. But there are situations in which with the occasion of the interpretation it will be given the meaning requested by the context of the regulation, even if it corresponds to the technical scientific one.

The syntactical interpretation also imposes certain rules. Thus:

- a term used in the singular implies the plural as well and vice versa. In normative acts the singular is used, because it is a stronger way of expressing the impersonal nature of the legal norm. The singular exceeds the plural or vice versa, only when the law treats them separately or uses a quantitative formula of exclusion. If it were always considered that using the singular excludes the plural, absurd solutions would be reached, contrary to the vision of the lawmaker;
- when a term can be both a noun and an adjective, it's true role must be discernible;
- words are examined in a certain order: nouns together with their adjectives, verbs together with their adverbs;
- interpretation needs to keep sight of the specific meaning of the terms in the legal domain to which it refers in the moment when a solution to the cause is being searched for.

From the point of view of *stylistic interpretation* it is established that there is without doubt a style of the lawmaker, a different manner of expression for the judge and for the lawyer[23].

The stylistic technique uses, as a crutch, the linguistic context to which a word or sentence, which the interpreter wishes to determine, pertains; the more concise the text, the more common, elliptical, the more possible interpretations, it would seem.

In conclusion, the grammatical method represents an array of common reasonings through which we search for the authentic meaning of the legal norms. *"The grammatical interpretation of the normative text is more likely a semantic activity – pragmatics specific to an intellectual act of adjusting the suitability of the normative judgment with the reality it refers to"*[24].

1. **The historical method** permits the intimation of the historical conditions in which the normative act was adopted, the totality of the social and legal circumstances that stood at the basis of elaborating the law *(„occasio legis"),* thus determining the aims desired by the lawmaker*(„ratio legis").*

Interpreting the legal norms through the historical method, the interpreter will have to:

- ascertain the mood in which the author of the normative act were, what were the reasons that determined them to legislate and how they represented the applicative future of the elaborated normative act;
- determine what was the will of the lawmaker that enacted the norm, studying for this purpose, the array of reasons made with the opportunity of the adoption of the law, the official statement of the debates, the reactions in the press of the time, the economic, political, and social situations of the time;
- to proceed to compare the actual regulations with the previous ones in the domain.

2. **The systematic method** allows for the interpretation of the legal norm and determination of its content through establishing the place it occupied in the system of law, through its classification in the economy of the normative act it pertains to and with other normative acts in the same of in a different branch of law.

The legal norm cannot be understood (interpreted) if it is isolated, broken off from the other legal norms. The necessity of interpretation through this method stems from this very unbreakable systematic bond between the components of an internal system of law.

The systematic interpretation is also defined by the fact that the interpreter "*applies his own reasoning and does not base his conclusion on just a provision of law [...] instead he bases it on an ensemble of provisions simultaneously taken into consideration, that have an accumulated efficacy which will impose the choice of a certain meaning rather than another […] (thus) to have in mind a group of complementary provisions that are examined in conjunction with each other*"[25]. Considering that a normative act constitutes a structured whole, there being links of logical coherency and legal consistency between its elements, based on logical legal principles, Savigny suggests the systematic method of interpretation through which we obtain the rational and just sense of the rule through the very investigation of these links in which the principles are employed.

Through the systematic method of interpretation:

- first and foremost what is checked is whether the law respects its position in the hierarchy of legal norms; applying the rule, the judge checks to see if there is a conflict between it and the superior law; if it is ascertained that such a conflict exists, it will give priority to the superior law;
- the interpreter has to establish the place of the law subject to interpretation in the system of positive law and even in relation to the fundamental principles of law, the affiliation of the law to a certain branch of

[23] Ibidem, p. 504.
[24] Ibidem, p. 505.
[25] Ibidem, p. 506.

law, if the law subject to interpretation is common or exceptional, in relation to the normative act in which it is enclosed, if the normative act is common or special, as well as the place of the legal norm subject to interpretation in the framework of the articles, sections, chapters, titles, books, parts of the law26. Thus, for example, legal norms in the special part of the Penal Code cannot be applied (interpreted) without making reference to the general part; equally, commercial legal norms must be in connection to the civil laws (contained in the Civil Code) etc.

The utility of this method – as is correctly affirmed by prof. I. Craiovan – is even more obvious in the case of incomplete rules (cross-referred rules and blank rules) which gain full content only through what is added through interpretation[27].

3. The teleological method (or by purpose)

In the situations when the interpretation through the aforementioned methods does not conclude or fails to accomplish the clarity and precision of a provision in a text of law, in the elucidation of it we can resort to **the purpose aimed for by the lawmaker** through adopting the respective normative text. Sometimes this purpose is explicitly formulated in the preamble of the respective normative act, other times one must begin from other clear texts of laws and from the results they led to or were in the process of leading to after their application.

Once the purpose of the lawmaker is established, the unclear legal provisions are to be given out of two or more possible interpretations, the one which is most consistently in tune with the purpose of the lawmaker. The presumption from which we begin for this kind of interpretation is, evidently, the identity or convergence of purposes aimed for by the lawmaker through the contained provisions in the same law or in different laws that regulate the same domain of social relationships.

Here the question that arises is if the interpretation must take account for the goals and will of the lawmaker, the actual author of the respective rule and who, sometimes, is at a great distance in time from the moment when the issue of interpretation arises, or from the aims and will of the current lawmaker.

Thus the teleological method is characterized by the investigation of the social purpose aimed at by the lawmaker, which is estimated to be of greater value today than the letter of the law. The usage of this method permits the intimation of what is called *„ratio legis",* meaning the finality, the reason for being[28]. For example, in the legal regulation of adoption, *„ratio legis"* is the restitution of a home to children who do not have a family[29].

6. The logical method of interpretation permits the formulation – by the interpreter – of certain rational assessments, achieved through generalizing operations, of logical analysis of the text of the legal norm, or analogy, through applying formal logic.

The logical method consists of using certain processes of general formal logic, such as inductive reasoning, deductive reasoning (syllogisms), the demonstration processes for unraveling the meaning of the legal norms.

As opposed to the historical interpretation which emphasizes occasio legis, logical interpretation emphasizes ratio legis and mens legis; logical interpretation appears to be a perfected variant of the other methods[30].

In what follows we will examine several **arguments** employed by this method.

- **The *per a contrario* argument** (or *„a contrario")* has at its basis the law of the excluded third party*(„tertium non datur"),* which means that in the case of contradicting notions, which cancel each other out, only one can be true, the other being false and the third possibility being nonexistent *(qui dicit de uno negat de altero- statements about the one deny those of the contrary)*. The specialty literature specifies the idea according to which this argument has a limited value, having to be carefully employed, preferably only in the case of limitative legal enumerations and rules of exceptional nature[31]. Thus, if art. 73 of the Constitution shows which are the domains regulated by the organic law, it means that, *a contrario,* all other domains are regulated by ordinary law or, by case, constitutional laws (of revision of the Constitution).

The *a contrario argument* isn't, after all, a logical argument, but a simple assumption based on the silence of the lawmaker. It only has value only if it relies on extrinsic arguments: on the exceptional or limited nature of a provision, on *ratio legis,* on the genesis of the texts of on the practical result of the interpretation[32].

- **The *a fortiori* argument** (- *all the more so)* consists of extending a law from a hypothesis not provided in it, because that hypothesis is motivated by the law. Thus we have moved from a known subject to an unknown one on the basis of superiority of reasons.

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[26] D.-C. Dănișor, I. Dogaru, Gh. Dănișor, *Teoria generală a dreptului,* C.H. Beck Publishing House, Bucharest, 2008, p. 106.
[27] I. Craiovan, *op. cit.,* p. 280.
[28] S. Popescu, op. cit., p. 287.
[29] Ibidem.
[30] N. Popa, *op. cit.,* p. 245.
[31] Gh. Beleiu, Drept civil român. Introducere în dreptul civil. Subiectele dreptului civil„„Șansa" SRL Publishing House and Press, 1992, p. 57.
[32] f, for example, a rule provides that "dogs are forbidden from entering", applying the a contrario argument, when I am walking a bear, I can enter with it. What is opposed to such an interpretation is the purpose of the law: interpreting ratio legis we arrive to the conclusion that "if entering with dogs if forbidden, even more so entering with bears is forbidden". Thus, the a contrario argument has value only if it supports the reason of law.(P. Pescatore, op. cit., p. 349.

Interpretation through the *a fortiori* argument is an extensive interpretation, applied to a larger sphere of deeds than the one originally covered by the law, because the reasoning used in drafting it are even more obvious in the given case.

Thus, if the lawmaker has forbidden an incapable person of selling their goods, it *a fortiori* forbidden them to donate the goods, for the donation is a more prejudicial action than selling. In the same way, if the right to property (which is the most important real right) can be gained through adverse possession, even more so can a property law clause of this right be acquired *(usus, fructus* etc.).

In the same sense, once bilateral civil acts, irrevocable in principle, can be annulled as a consequence of vitiated consent, there is an even more powerful reason for the annulment, on the same basis, of unilateral civil acts, because they, in principle, are revocable[33].

The *a fortiori ratione* rule – admits professor Gheorghe Mihai -, counts on the comparison of two situations, objects or events that are the same in nature, but have different degrees of importance (established through reporting to the same standard of value: good, useful, just, etc.); this expresses, in the activity of interpreting the rule, comparison through assessment[34].

The variants of the a fortiori argument are a majori ad minus and a minori ad minus.

- **The *a majori ad minus* argument** (- *who can do more, can also do less*) is at the foundation of the extension of the legal norm to a case not expressly provided in the law, but which, from a legal point of view, is evaluated as analogous but less important that the provided cases[35].

Also encountered under the form of *qui potest plus, potest minus*, this argument is specific to extensive interpretation. „*In the history of law* – affirms prof. Nicolae Popa – *we only find an exception from this principle, when more could have been done, but not less. It is about the right the married women had over the dotal property, before Justinian. Thus, the woman could sell the property, but couldn't mortgage it, the mortgage being a civil legal act with a narrower scope of effects than the sale*"[36].

Regarded as a form of *a fortiori ratione,* the argument represents a logical instrument through which the provisions of the rule develop towards those elements not contained within the typology of the hypothesis, but which express, with a more powerful motivation, the reasoning of the rule. The argument concerned is understood as a concentrated expression, in natural language, an appreciative reasoning scheme[37].

- **The *a minori ad minus* argument**, signifies the fact that *if the law prohibits less, it implicitly prohibits more.* In other words, if the lawmaker prohibits a certain class of actions because they damage certain values and purposes, then it *a fortiori* prohibits actions that can bring even further damage to them, even if they are not expressly mentioned in the formulation of the law. Thus, the principle is the following: if the lawmaker instituted for a certain legal situation an important interdiction, what follows is that for the same situation a similar interdiction should be applied but less severe. This way, if a person is prohibited from exercising his private rights, it will be ascertained that he is even more so excluded from exercising his political rights[38].
- **The *ad absurdum* argument** (- *reduction to absurdity)* presupposes establishing the truth of the thesis to be demonstrated through the refutation of the thesis which it contradicts. The interpreter demonstrates – resorting to this argument – that any other interpretation given to the text of the legal norm, besides the one given by him, leads to indubitable consequences, contrary to the law, absurd.

For example, if the law permits the party whose legitimate rights were injured by an administrative act, they should address the competent court to have it annulled *ad absurdum* it is deduced that the contested act can only be an individual act, one that produces, modifies or discharges a concrete legal report, because it is absurd to accept that subjective rights can be directly injured through legal normative acts that are general, abstract, and impersonal[39].

- **The *a simili ad simile* argument**(similar to the *a fortiori* argument*),* relies on the idea that the lawmaker, regulating a situation, also established all similar cases. In other words, the regulation is applicable to all identical situations if the law does not derogate.

In criminal law the principle that prohibits the application of an analogy of law in the detriment of the accused produces is acknowledged. Although some authors are of opinion that even in this case sometimes the reasoning is done in the same fashion, but, in order to save face, they do not say that it is analogy, but an "extensive interpretation" of certain rules[40].

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[33] I. Santai, Introducere în studiul dreptului, University of Sibiu, 1991, p. 121 (apud Ioan Humă, Cunoaştere şi interpretare în drept. Accente axiologice, Academiei Române Publishing House, Bucharest, 2005, p. 111).

[34] Gh. Mihai, Fundamentele dreptului. Argumentare şi interpretare în drept, Lumina Lex Publishing House, Bucharest, 1999, p. 238

[35] For example, French Civil law contains an article according to which who owns a just title and a property in good faith, can be granted the property by a limitation period of 10, 20 years respectively (in accordance with the home of the owner). On the basis of this article it is ascertained, reasoning with a majori ad minus, that in the same conditions, we can also be granted other real rights, for example usufruct or easement, which are lesser than the right to property.

[36] N. Popa, op. cit., p. 246.

[37] I. Humă, op. cit., p. 113.

[38] G. Kalinowski, Introduction á la logique juridique, Paris, 1965, p. 163.

[39] I. Humă, op. cit., p. 115.

[40] Egon Schneider, who makes this statement, cites the following example: Prussian criminal law regarding poaching, provides punishments far harsher for actions of poaching in which a covered cart, a boat, or a beast of burden are used. The Federal court of Justice decided upon the

- **The *a pari ratione* argument**(also named *analogia legis)* is founded on the reasoning that for identical situations, identical solutions should be ruled. In the absence of a rule that should regulate a concrete situation, we can resort to a rule that regulates a similar situation. Also under the form of *ubi eadem ratio, ibi idem ius* (- *where there is the same reason, the same provision is applied),* this argument having as its basis the idea according to which the same case produces the same effects.
- **The *a pari* argument** is founded on the idea of legal equality which necessitates that in *similar* situations, the same normative provisions should be applied. Thus, it is not about *identical* situations, for which we needn't resort to analogy. Here the rule exists; it mustn't be analogically deduced, but applied rigorously to all cases *of the same kind.* The transition from identical (the same rule) to analogical (similar cases to those regulated by the rule) is in fact the transition from analogical to identical; in other words it is a creative operation or lifting, through interpretation, similar deeds to the convergent light of the existing rule. The rule becomes applicable to other cases than those it originally refers to, because they are found in the reasoning it encompasses[41].
- **The *a rationale legis stricta*** and ***a generali sensu* arguments**, are rather rules of linguistic interpretation that logic per se; they are about showing that, due to the fact that the respective text of the law is clear and precise, it requests to be applied to the letter, without restrictions or extensions. These rules rely on the principles, consecrated in the legal practice,, *clara non sunt interpretanda,* and *ubi lex non distinguit, nec nos destinguere debemus* respectively(- *where the law doesn't distinguish, the interpreter must also not distinguish*[42].
- **The *in dubio pro reo* argument**(*doubt for the accused*) is applicable in criminal law where, if there is doubt about the guilt of the accused of having committed a felony, this doubt is in favor of the accused[43].
- **The *ab eadum* argument**(- *on the same route; equivalence*) is used to avoid the sanction that intervenes for not obeying the legal form, if an equivalent form was used. The argument of equivalence it met in the matter of succession. For example, it is considered that the testament is valid if it does not contain a calendaristic date, but contains the mention that it was dawn up on Christmas, because, universally, the indicated day corresponds to the date of the 25th of December[44].

Sometimes even ***other arguments of logical interpretation*** are used, but their value is debatable[45]:

- the *ad populam* argument– founded on the existence of the agreement of a majority;
- the *ad ignorantiam* argument– the impossibility of proving the contrary in certain cases;
- the *ex silentio* argument – evokes the idea that a thing is stated if it was not negated by anyone.

After presenting the main arguments of the logic utilized in interpreting the legal norms, an aspect must be emphasized: none of these arguments is justifiable of purely logical grounds, bur presupposes evaluations and decisions from the judge or administrative body interpreter, evaluations regarding the degree of similarity, from a legal aspect, of the cases, the relative importance of different obligations, prohibitions, or rights, the purpose of the lawmaker[46]. Thus in identical situations it can happen that a court will consider the *a simili* reasoning applicable, and another will adopt a different solution using the *a contrario* argument. As U. Klug says *„analogy and the a contrario argument,* precisely like all other logical operations in legal logic, intervene only after the premises were clarified in advance, through interpretation. Which certainly does not exclude the fact that interpretation is accomplished, in itself, following logical laws […]"[47].

Usually, as another author remarks in the same sense in the analysis he does of legal arguments, decisions are made before conducting such an interference, the aforementioned being rather only the technical legal form utilized in the final motivation of the decision that is taken[48].

The methods of interpretation of legal norms are interdependent, they must be applied in a complementary and interfering fashion, the process of interpretation requiring at the same time the creativity of the interpreter. But, as Mircea Djuvara said, it is about a temperate, prudent creativity which must refer to the harmonious and rational understanding of the law, resorting to historical tradition, preparatory works, the principles of law, the sense of equity presumed by any law[49].

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application of this provision to cases in which vehicles are used as well (E. Schneider, Logic fir Juristen, Verlag Franz Vahlen Gmih, Berlin und Frankfurt am Main, p. 92).

[41] I. Humă, op. cit., p. 117.

[42] An example for this would be the following: a French law from 1887 gave the state property over art and archeological objects found in Algeria in the concessioned lands, without making distinction between old and new concessions; in consequence, the law was applied to objects found on the concessioned lands before the year in which the law was promulgated, as well as on the lands concessioned after that date.

[43] "The doubtful interpretation exists when using all processes leads to nothing but a doubtful result. In case of doubt, the solution that created the fewest restrictions or deprivations of freedom, rights, or interests will be adopted" (V. Dongoroz, Curs de drept penal, 1942, p. 121).

[44] L. Barac, Elementele de teoria dreptului, All Beck Publishing House, Bucharest, 2001, p. 128 (apud V. Cristea, Interpretarea și aplicarea normelor juridice,C.H. Beck Publishing House, Bucharest, 2014, p. 223).

[45] G. Boroi, C.A. Anghelescu, Curs de drept civil. Partea generală, Hamangiu Publishing House, Bucharest, 2011, p. 49.

[46] See also M. Bădescu, Teoria generală a dreptului, Sitech Publishing House, Craiova, 2013, p. 182.

[47] U. Klug, Juristische Logik, Zweit Aufl., Springer Verlag, Berlin und Gottingen, 1958.

[48] E. Schneider, op. cit., p. 172-173.

[49] I. Ceterchi, I. Craiovan, op. cit., p. 103.

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