INTERPRETATION OF LEGAL NORMS - A HUMAN RIGHTS PROTECTION METHOD

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Abstract

Human rights have continuously evolved, are evolving and will evolve given the change and improving of their protective mechanisms and instruments. The protection of human rights is made through well known instruments and mechanisms. The interpretation of legal rules can represent the base of the mechanisms and instruments used for human's rights protection, but, can represent, also, the means to implement the instruments and to operate the mechanisms. The interpretation of legal rules existing at a given time creates jurisprudence, wich shows the need to change the old rule or even to adopt a new law, wich will repeal the old law. This aspect that marks the evolution of law, generally speaking, affects the instruments of promoting and protection the human rights. The boundaries of legal rules are established by the interpretation of law.

Key Words: *legal norm, interpretation of legal norm, Human Rights Protection, juridical philosophy.*

The Universal Declaration of Human Rights represents the starting and institutionalization point of the human rights protection instruments in contemporary era, and, as regards the protection mechanisms, we believe that the moment of utmost importance is the founding of the European Court of Human Rights and the grant of competences for the judgment of the claims whose subject matter is the breach by the state through contentious and non-contentious means of the human rights. These are vested with the core elements in the evolution of instruments and mechanisms after the Second World War, triggering, since their emergence, a different approach in terms of the legal norms and of the enforcement of the legal norms, aiming to defend and foster them.

The human rights protection mechanisms, as any other legal norms, are general and impersonal, typical and mandatory, albeit they do not encompass every cases or situations in which a person may be at a given moment, comprising an abstract model to be interpreted and applied to each and every case.

In the process of assuring the legal security, from law-making to the interpretation of the legal norm, the latter is to be carried out so as to render the material content of a norm efficient and to establish whether it is compatible with the de facto and de jure situation circumscribing the legal norm. The professional who applies the general and impersonal norm shall render it efficient by transposing the general into the concrete, i.e. by turning the general and impersonal character into a concrete and personal one. The interpreter of the norm is bound to check the meaning of the terms or of the terminology

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used by the lawmaker or by the high contractual parties for the interpretation of a norm included in international instruments.

"Interpretation is a mediation between law and the reality of life (between law and aequitas, as the Romans used to say). For this reason, the interpreter shall have to explain the norm in the social context in which it produces its effects"[1], because, after all, the norm is the result of the knowledge of social relations, of the appreciation thereof according to personal criteria stemmed from the system of values embraced by society, the constructive activity of a legal norms system being an "anticipative modelling of the social processes."[2]

The interpretation of the legal norm must be in line with the needs, socials expectations; hence, we must always analyze whether the legal norms correspond thereto or not, so that, depending on this analysis, the legal norm is deemed compliant or not.

In literature, many authors argued that the interpretation of the legal norm is official and unofficial, the former determining the legal force and the latter deriving from the doctrine.

The official interpretation is made by the state through its bodies and institutions which either drafted the legal norm or interpreted it in the enforcement activity.

The first interpretation of the legal norm is conducted by the issuing bodies (lawmakers or administrative bodies) by the very process of enacting them. A norm cannot be issued without being first interpreted by the issuer in order to identify whether the purpose of the norm is fulfilled or not.

However, this process is not always sufficient or satisfying and this leads to the possible interpretation of the norm through the enactment of another. This is possible by virtue of the principle *ad majori ad minus*. The legal norm interpreting another legal norm shall form a common body, otherwise both being devoid of finality; but this means of interpretation is but a part of the interpretation activity, being supplemented by the interpretation of the legal norm in the process of its implementation. In the doctrine, the process of interpretation of the legal norm has been described and analyzed by the courts of law and not by the administrative bodies that performed the so-called causal interpretation or causal official interpretation. This interpretation is a particular one that takes each and every case individually by applying the general into the concrete, by firstly identifying the cause, its circumstances and subsequently by establishing the applicable legal norm. The enforcement body can rule only on the case that it has to settle and not on the legal norm in general.

The unofficial interpretation or the doctrine represents an optional interpretation of the legal norm, made in the specialized studies and treaties by the formulation of opinions on the interpretation of a legal norm within the legal research activity. The characteristic of this form of interpretation is its compulsoriness, the state bodies applying the norm, being free to take or not into account this interpretation.

The legal norm is construed through various methods, of which we mention the grammatical method, the systematic method, the historical method, the logical method and analogy. These interpretation methods of the legal norms are the traditional ones

[1] N. Popa, *General Theory of Law; academic course,* C.H.Beck Publishing House 2012.
[2] H. Klemer, *Juristische Theorie*, Berlin, 1967.

because, as we shall further see, the fact that international law norms included in treaties in which states adhered become internal law norms, gives rise to the need of diversifying the interpretation methods, the treaties interpretation methods becoming applicable as well.

The grammatical method of interpretation of the legal norm or the ad literam interpretation is the means of establishing its content following a morphological and syntactical analysis of the text. The interpreter shall outline the meaning of the words, deciding whether they have been used in the common meaning or in the legal meaning thereof. The issuer of the norm usually uses the legal meaning of the terms and, as a result, the interpreter doesn't face difficulties in his interpretation activity.

The systematical interpretation is the method by which the meaning of a legal norm is deduced from other legal norms or from the entire content of the respective norm, the components of the norm being in a state of "*interference and not indifference*"[3]".

The historical interpretation is the method by which we take into account the entire historical and social context that led to the enactment of the legal norm, its reasons or its purpose as well as a comparative analysis to the former or repealed norm, or, in other words *occasio legis.* This method entails that the interpreter takes into consideration the substantiation report that accompanies the legal norm, thus establishing the reason and the purpose that underlined its enactment.

The logical method of interpretation is the most wide-spread method and consists in the identification of the reasoning of the norm's existence and meaning, *ratio legis and mens legis.* This method implies the use of the rules set by the science of logics in view of identifying the content of the legal norm. The teleological method presupposes the use of a logical-formal argumentation, such as *ad absurdum, per a contrario, a majori ad minus, a fortiori.*

The *ad adsurdum* interpretation or argument means that a theory is evidenced by infirming the theory that contradicts it, so that any other interpretation of the legal norm, except for the exposed one, leads to a conclusion that goes against the legal norm.

The *per a contrario* interpretation or argument means the application of contradictory notions that deny each other, excluding a third notion or interpretation that cannot exist. This argument is an expression of the adagio *qui dicit de uno, negat de altero.*

The *majori ad minus* interpretation or argument means that he who can more can less and he who is allowed more is allowed less, being, de facto, a syllogism. There is a single exception to this interpretation, exemplified by all authors and it refers to the fact that in the Roman law, prior to Justinian's coding, the married woman could sell the building that constituted her dowry but she could not mortgage it.

The analogical method or the analogy is the reasoning by which we use a similar norm since the applicable legal norm does not contain a relevant provision, there being a legislative loophole. This method of interpretation is frequently used in praxis whenever we encounter a loophole in the law, by applying a similar norm, taking into account that a case cannot be remain unsettled, under the law.

[3] N. Popa, *Teoria generală dreptului: curs universitar,* C.H.Beck Publishing House, 2012.

Special interest is laid on the methods of interpreting the internal norms which, de facto, are international treaties which, according to the constitutional provisions, become internal legal norms; on the other hand, a European law is shaped and applicable in all states.

Pursuant to article 20, para 1 of the Romanian Constitution: *Constitutional provisions concerning the citizens' rights and liberties shall be interpreted and enforced in conformity with the Universal Declaration of Human Rights, with the covenants and other treaties Romania is a party to* and, according to article 20 para 2: *Where any inconsistencies exist between the covenants and treaties on the fundamental human rights Romania is a party to, and the national laws, the international regulations shall take precedence, unless the Constitution or national laws comprise more favorable provisions.* Therefore, in certain situations expressly provided in the above-quoted constitutional text, the legal norm that stems from international covenants and treaties on the fundamental human rights and liberties, if the latter contain more favorable provisions, is considered internal legal norm subject to the interpretation norms evoked above.

Article 148 para 2 of the Romanian Constitution provides: *as a result of the accession, the provisions of the constituent treaties of the European Union, as well as the other mandatory community regulations shall take precedence over the opposite provisions of the national laws, in compliance with the provisions of the accession act,* which means that the European legal norms are considered to be internal legal norms.

As such, at a first glance, we observe that these international legal norms which become internal legal norms are subject to the above-quoted interpretation methods and, on the other hand, to the interpretation methods of the international treaties described in the public international law. As such, one of the difficulties that we face at the level of the European Union is related to the used terminology which, depending on the used language, leads to a closeness of different legal systems, namely the Anglo-Saxon system and the Romano-Germanic legal system. As we all can see, the terms used in English are not perfect synonyms of the terms used in French.

As such, the jurisprudence of the European Court of Human Rights is revealing in this respect; based on the international treaty represented by the European Convention of Human Rights, it developed a rich, albeit sometimes contradictory, jurisprudence in terms of the human rights and their protection

The European Convention of Human Rights, as international treaty, is a source of international law and, at the same time, a source of national law. It is interesting, for instance, that, although in our system of law jurisprudence is not a source of law, the Court's jurisprudence is at least on the verge of becoming one, if it didn't already.

Therefore, the interpretation of the European Convention of Human Rights can be characterized as being teleological and evolutive.

The teleological interpretation prevails in the jurisprudence of the Court which appreciated that, due to its particular character, the European Convention of Human Rights, as international treaty as well as internal law norm, is subject to any relevant rule of international law in the light of the provisions of the Vienna Convention form 1969[4] so that its provisions are compatible to any norm of international law.

[4] Art. 31 of Vienna Convention 1969 on the law of treaties:

The evolutive interpretation is the method by which the object and the scope of the European Convention of Human Rights are fulfilled, the European Court of Human Rights itself considering, in the developed jurisprudence, that the provisions of the convention must be assessed in compliance with the actual life principles so as to ensure an authentic and efficient protection of the citizen. As life principles are continuously evolving, it goes without saying that the interpretation and jurisprudence of the ECHR have a continuous but at the same time limited evolution.

The limits of the evolutive interpretation are dictated by the European Convention of Human Rights, since the Court ruled that interpretation does not entitle it to establish the existence of a fundamental liberty or right which is not included in the text of the Convention.

The European Court of Human Rights is bound to construe the provisions of the convention in line with the objectives and goals pursued by the state through the enforcement thereof; such an interpretation cannot be restrictive.

This evolutive interpretation may lead to changes in terms of the Court's jurisprudence which decisively impacts on the jurisprudence of the national states. Since the European Convention of Human Rights is a protection instrument of the human rights, the Court has to monitor the positive and negative evolutions at the level of each state and react, by enforcing solutions and creating a jurisprudence and even reconsidering its own. The jurisprudence of the European Court of Human Rights shall influence the national jurisprudence which develops through the interpretation of the legal norm in compliance with the interpretation by ECHR of the same norm.

„1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) Any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;

(b) Any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(a) Any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) Any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) Any relevant rules of international law applicable in the relations between the parties

4. A special meaning shall be given to a term if it is established that the parties so intended."