STUDIES

Interpretation and Hermeneutics

Mihaela AGHENIȚEI[1]
Jafar SAMDAN[2]

Abstract: *Hermeneutics, in general terms, is the art of interpretation. As such, hermeneutics has a rich history and can now be identified with four major directions: conservative, critical, radical, and moderate. Of these components, Hans-Georg Gadamer's moderate hermeneutics proved to be the most relevant for educational thinking. While many hermeneutic topics talk about educational concerns, four - questioning, world history, language, and disciplinary knowledge - are particularly relevant. Hermeneutics remains an important but unexplored branch of educational philosophy. Hermeneutics refers to the theory and practice of interpretation, where interpretation involves an understanding that can be justified in time. It describes both a body of diverse historical methodologies for interpreting texts, objects, and concepts, and a theory of understanding. As such, it refers to making the unintelligible both intelligible and communicable. The history of hermeneutics spans epochs, methods and all disciplines in the humanities, social sciences and even the natural sciences. Finally, hermeneutics is conceived as a theory of information exchange developed from the ancient theories of truth to the theories of gnoseology of the twentieth century-lea.*

Keywords: *hermeneutics; interpretation; multidisciplinary vision; practice; legal specificity*

The interpretation in the legal doctrine has a central position, being considered not only the heart, but also the quasi-totality of its substance. The genius of Roman law in this regard, the work of medieval glossers, the role of interpretation - as a particular and specific type of human understanding - in the modern period have made it considered an exemplary hermeneutics[3]. The glory period of the interpretation of legal norms was inextricably linked to a certain conception of law - an expression of modern society, of a certain historical time. After the modern period, it became more and more evident, as a result of complex social changes, that law is not a homogeneous, insular, closed concept in relation to certain strict features, as Leon Fuller mentioned for the modern period, but it is more and more a concept. open, of a variable geometry, an organizing and ordering concept, of social

[1] "Dunărea de Jos " University of Galati, Romania, Legal Research Institute – Romanian Academy, ESIL and ELI member. Corresponding author: maghenitei@gmail.com. This article was presented at the International Conference "Exploration, Education and Progress in the Third Millennium", that took place in Galati, Romania, on the 12-13th May 2022.

[2] The Legal Center, Kuwait (L.L.P)

[3] Gadamer, H. (2001). *Hermeneutica,* Gespräch, ed. de Carsten Dutt, Heidelberg: Universitätsverlag C. Winter, engleză trans. Gadamer, pp. 34-36.

engineering[1]. The excessive cantonment of contemporary legal doctrine on the interpretive analysis of legal norms, so necessary in fact, on normativism - law means norms and only that, a position expressed brilliantly by H. Kelsen - but the dogmatic refusal of any openness and change made it a renowned contemporary author - Mark van Hoecke[2] - to appreciate that the current legal doctrine is sometimes in a schizophrenic situation, because it is confined only to the legal text, while other disciplines, considered peripheral and ignored - such as sociology, history, psychology or anthropology in correlation with law and in interdisciplinary approaches - they capture or at least try to capture the legal reality as it is. The fact that the traditional interpretation of legal norms is in crisis is also proved by its results, too often in relation to other types of arguments, unpredictable, vulnerable, fragile, changeable, sometimes under the sign of randomness, paradox and perplexity. In other words, it can be argued that the traditional approach to interpretation - the instrumental use of techniques, once sufficient, which of course must not be abandoned, but integrated into more complex visions - no longer satisfies the requirements of contemporary society, increasingly complex and with major and accelerated changes. It is proposed and increasingly required to move from the simple use of interpretive legal techniques to non-captive, rigorous, critical but open, receptive, creative legal thinking that interprets on the horizon of contemporary understanding. In this respect, studies of comparative law, legal linguistics - stimulated, for example, by the translation of European Union law into the languages of the Member States - have had a major impact, noting, inter alia, from the internal perspective of lawyers that to be understood outside the tradition and history, of the culture specific to a form of human community, of a social context, that these coordinates are imperative and come from within the legality. From this perspective, the connection and the more accentuated interaction of law with other interpretive worlds, with hermeneutics approached as a general theory of understanding, the critical and creative capitalization of their experience can be extremely beneficial sources. That is why we propose in the following, in this sense, some notations. Some etymological and conceptual coordinates of the term hermeneutics[3] indicate the general meaning of "art and philosophy of interpretation", as well as a possible origin. etymological: the Greek god Hermes (volatile and ambiguous god, the father of all arts, but also the god of thieves, who knows no spatial limits and can, in various forms, be in different places at the same time), who carries the messages of the gods to mortals, doing the work of translating from divine language into human language.

---

[1] Douglas-Scott, S. (2013). Law after modernity, Oxford and Portland: Hart Publishing, Oregon.

[2] Hoecke, M., Legal Doctrine: Which Method(s) for What Kind of Discipline?, p.4-5, https://www.bloomsburycollections.com/book/methodologies-of-legal-research-what-kind-of-method-for-what-kind-of-discipline/ch1-legal-doctrine-which-method-s-for-what-kind-of-discipline accessed 07.05.2022.

[3] Cosma, Luminița, Dumitru, Anca; Frunză, Florin; Gâdei, Radu; Ionescu, Cornel Mihai; Pop, Mihaela; Stănciulescu, Hanibal; Totu, Sabin (2004). *Enciclopedie de filosofie și științe umane/ Encyclopedia of Philosophy and Human Sciences,* Bucharest: All Educațional, pp. 439-442.

The conceptual evolutions of the term owe much to the theological meaning of hermeneutics, as the art of the true interpretation of the sacred text, worthy of note being the theorizing in the Middle Ages of the 4 meanings of Scripture - historical; allegorical; moral; anagogic - spiritual. A remarkable turning point occurs when language becomes the object of philosophical thinking[1] - language is no longer seen as a simple instrument of thought expression, but as an organ that makes a common body with it, so it already has a cognitive function. Language is a center where the self and the world come together[2]. For Witgenstein[3], language is essentially interpretive, because it already carries a vision of the world. Thus, hermeneutics moves from interpretive technique to the philosophy of interpretation - linguistic thinking that interprets, and with Schleiermacher, hermeneutics becomes the general theory of understanding. The hermeneutic research project has as methodological landmarks, among others: we are already moving in a horizon of understanding and we try to "understand" certain phenomena, which seem problematic to us, namely, to integrate them into what is already familiar to us; because we interpret something in the light of what is already known to us, we include these approaches in the sphere of hermeneutics, which aim at the art of interpretation. The approach of philosophical hermeneutics reveals questions such as: what did the author actually say, namely what was the original condition of the text?, what did the author actually intend to express with his words ?, what role does what was intended for the interpreter play

Any process of understanding presupposes a certain "prior understanding" that defines what is familiar. It is the horizon of understanding of the interpreter. The interpreter must also be aware that the interpreter also has his own horizon of understanding which, in general, cannot be completely reconstructed. Therefore, the act of understanding consists in the partial fusion of two horizons[4] in an integration of the meanings of the framework conditions in the constituted meaning structure of the interpreter. Because the interpreter must already know important things about the conditions he is trying to understand, we are dealing, in the strictest sense of the word, with a circular thinking structure - the hermeneutic circle: we grasp the world in terms of its components, but we can it catches the things of the world only in terms of our primary mastery over the network of significance of the world. However, for us, the insiders, who are initiated into the practices of a historical culture, the world is already intelligible.

In relation to the traditional methodological issue of the interpretation of legal norms, the current legal literature retains important changes, regarding which we point out, in the following, some aspects:

---

[1] Schleiermacher, F. (2021). *Hermeneutics*, in Encyclopedia of Philosophy of Religion, 2021, Online ISBN: 9781119009924| DOI: 10.1002/9781119009924, pp. 231-2340.

[2] Gadamer, H. (2001). *Hermeneutica,* Gespräch, ed. de Carsten Dutt, Heidelberg: Universitätsverlag C. Winter, engleză trans. Gadamer, pp. 34-36.

[3] Witgenstein, L. (2021). *Tractatus Logico-Philosophicus,* Bucharest: Humanitas, pp. 21-22.

[4] Gadamer, H. (2001). *Hermeneutica,* Gespräch, ed. de Carsten Dutt, Heidelberg: Universitätsverlag C. Winter, engleză trans. Gadamer, pp.105-107.

Leaving the traditional model, in which interpretation is only an operation of legal technique, subsequent to the application of legal norms and confined to it, revealing that legal interpretation is ubiquitous, systemic, being inherent in specific manifestations, at different levels, degrees and proportions in the activity of the legislator, judge, prosecutor, lawyer, doctrinaire, etc.

Different approach to the nature of the interpretation of legal norms. According to cognitivist theories, the interpretation of legal norms is an activity of knowing and describing norms. The basis of these theories is questionable insofar as the naive conception that texts have a natural meaning, independent of their use and which only needs to be revealed, is retained. According to skeptical theories - especially American realism, the interpretation of legal norms is an activity of creating norms, because before interpretation there can be no norm that could be known. Mixed theories seek a conciliation between the above points of view, pointing out that the interpretation of legal norms is an activity of knowing the existing norms and - to the same extent an activity of creating norms. It can be considered that the interpretation of legal norms is not just an enlightenment of norms. It is constitutive of legal norms, because - in the absence of interpretation - the legal norm is opaque, it does not participate in the legal circuit, so it simply does not exist. Interpretive discourse is therefore constitutive of significance, not descriptive of significance[1].

Regarding the models of legal interpretation, the classical model retains: the text that contains the will of the legislator in its entirety, the interpreter that reveals the text - exegetical school or considers the text obstructive in relation to the idea of justice[2], the result of interpretation the letter and the spirit of the law. From the current perspective of interpretation as a constitutive discourse, all the components of the legal system are variables of the interpretive activity. A complex model considers, in this regard: the theory of the sources of law; directives of legal reasoning - the context of legal argumentation, jurisprudence - decision-making experience of law, values of contemporaneity, doctrine - acceptance within the legal scientific community, etc.

The validity of the interpretation will have not only a formal dimension, but also a sociological and pragmatic one, being a system validity, the expression of the involvement of all components of the legal system and its coherence, in which the supreme text conferring "a certificate of absolute validity" remains illusory.

The interpretation of legal norms strongly reveals the philosophical and cultic dimension of legal knowledge. It cannot escape the philosophical meanings of interpretation, the hermeneutic research project, the systemic approach, analogies, interferences and confrontations with other types of interpretive approaches. In this

[1] Aarnio, A.; Alexy, A.; Peczenik, A. (1999). *The Foundation of Legal Reasoning,* in Eveline T. Feteris, Alexy's Procedural Theory of Legal Argumentation, pp. 92-118.
[2] Geny, Fr. (1904). *La technique législative dans la codification civile moderne dans le code civil. Book of the centenaire/Legislative technique in modern civil codification in the civil code. Book of the centenaries*, pp. 989-1038.

context, we note the contribution of Umberto Eco[1] which reveals: a text is an open universe in which the interpreter can discover infinite interconnections; language is not able to capture a unique and pre-existing meaning, but on the contrary, the duty of language is to show that what we can talk about is only the coincidence of opposites; language reflects the inadequacy of thinking, our being in the world coincides with the inability to find a transcendental meaning; the true reader is the one who understands that the secret of a text is its very emptiness; to overinterpret texts means to exploit the indisputable fact that from a certain point of view everything has relations of analogy, continuity and resemblance to any other; when a text is produced not for a specific recipient but for a community of readers, the author knows that it will be interpreted not according to his own intentions, but according to a complex strategy of interactions that also involves readers and the competence they have in terms of language as a given social heritage; any act of interpretation is a difficult transaction between the reader's competence - knowledge of the world in the reader's possession and the type of competence that a certain text postulates in order to be read economically; Between the intention of the author and the intention of the interpreter (who sometimes "strikes the text in a certain form that will serve its purpose"[2] there is an intention of the text - *intentio operis.*

Are there any regulatory criteria, subject to subjective control, that allow us to delimit something that is interpretation and something that is not? For Eco, these criteria exist and serve to assert the rights of the text against those of the reader and the author. These criteria, which allow a text to be read according to its internal nerves and not according to data imported from outside, are reducible to the criterion of coheren- identification of the topic to establish the relevant isotopes and the criterion of economy and wonderfully following non-system details. However, it is not a question of strong criteria, but of the possibility of selecting the wrong interpretations in order to remove them. This framework asserts a form of reasonableness that seeks to defend the citadel of the text by preserving it from the incursions of the most unforeseen contexts and the most varied purposes.

In his reply, Culler[3] does not acknowledge or legitimize those criteria, nor does he agree with Eco's savage interpretation of deconstruction; it is not true, he replies, that everything is allowed and that the texts are just pretexts. Culler emphasizes the importance of the context or universe of discourse in which a text stands out. An interpretation cannot be out of context, but at the same time it cannot be decided a priori which and how many are the true contexts, in other words, a text can be updated and depending on it can mean something else.

According to Rorty, there is no difference between use and interpretation. The latter can be thought of exclusively as a practice, which would be fully explained in terms of a selected use over time. Interpretation seems to be not so much in the realm of

---

[1] Eco, U. (2004). *Interpretare şi suprainterpretare/ Interpretation and overinterpretation,* Constanţa: Ed. Pontica, trad. Ştefania Mincu, pp. 25-82.
[2] Rorty, R. (1982). *Consequences of Pragmatism*, Minnesota: Ed. University of Minnesota Press, pp. 141-145.
[3] Culler, J. (2006). *The Literary in Theory*, Stanford: Stanford University Press, pp. 65-66.

traditionally understood communication, but rather in the realm of interaction, which makes the subject taking charge of it not a cognitively oriented subject, but "a human being who is an interweaving of desires and beliefs".

The adoption of the term 'interpretation' must first be attributed to the dismissal of an informational type of communicative model which did not consider either the complexity of the semantics of a language or the possibility of a mismatch between the codes of transmission and reception.

Thus, trying to conclude and add new meanings, in a multidisciplinary (philosophical, linguistic, communicative) and integrative vision, legal interpretation is a species of hermeneutics as a general theory of understanding[1], and this understanding is inherent in man. as hommo symbolicum because everything that is external to man, things or the like, cannot be known directly, but only mediated, through symbols that involve meanings. In this sense, language, as a constitutive expression of rationality and a set of symbols and meanings that formulate and transmit messages, has an extremely important role, and religion, art, science, law are large symbolic configurations[2].

But, never, a sign unilaterally and unequivocally designates only one meaning, the language being in the original and constitutive way relatively ambiguous, but also having the ability to express intelligibly what is meaningful and can be expressed – after Wittgenstein. In addition, the meaning, whatever it may be, is initially configured and collected, in humans as a transmitter, partially, it inherently supports enrichment and remodeling depending on the channel through which the information is transmitted, the socio-cultural environment, the specificity of the codes, the ability and competence of the recipient to decode, so that in the end the understanding, the message, the result of interpretation is a pluralistic and complex theoretical construct.

Therefore, in this view, legal interpretation is not a sick state, but an inherent conferment of meanings, it not only illuminates a preconstituted and intangible meaning - traditionally the will of the legislator, but builds meanings, of course, not at random or with the freedom of the creator and the interpreter of art, respecting the "rules of the game" and the legal specificity - in this sense U. Eco proposes the concept of overinterpretation, being constitutive of meaning outside it the text does not participate in the legal circuit[3]. The result of interpretation is thus achieved through participations, between which there are interdependencies, conditions and hierarchies - but no one is the sole and absolute court given by: the will of the legislator, the interpreted text, relatively autonomous, exemplary jurisprudence and doctrine, linguistic, professional and cultural skills of the community legal and

[1] Gadamer, H.; Schleiermacher, F. (1996). *Hermeneutik,* in Jean Grondin, Hermeneutik, Tübingen, Mohr Siebeck, p. 21.

[2] Cassirer, E. (1923–29). *Philosophy of Symbolic Forms* [*Philosophie der symbolischen Formen*] English translation 1953–1957 in Georg D. Blind, The missing piece in E. Cassirer's theory of symbolic forms: the economy, p. 35.

[3] Aarnio, A.; Alexy, A.; Peczenik, A. (1999). *The Foundation of Legal Reasoning,* in Eveline T. Feteris, Alexy's Procedural Theory of Legal Argumentation, pp. 121-124.

interpretive (the reception of the message being "negotiated"), philosophy - understood in the Hegelian sense as a spiritual quintessence of the time but also by some "ingredients", more or less desired, as public opinion or media.

Bibliography

Gadamer, H. (2001). *Hermeneutica/Hermeneutics*, Gespräch, ed. de Carsten Dutt, Heidelberg: Universitätsverlag C. Winter, engleză trans. Gadamer.

Cosma, Luminița; Dumitru, Anca; Frunză, Florin; Gâdei, Radu; Mihai, Cornel Ionescu; Pop, Mihaela Stănciulescu; Totu, Hanibal Sabin (2004). *Enciclopedie de filosofie şi ştiinţe umane/ Encyclopedia of Philosophy and Human Sciences,* Bucharest: All Educaţional.

Schleiermacher, F. (2021). *Hermeneutics*, Encyclopedia of Philosophy of Religion, 2021, Online ISBN: 9781119009924 | DOI: 10.1002/9781119009924, pp. 231-234.

Witgenstein, L. (2021). *Tractatus Logico-Philosophicus.* Bucharest: Humanitas, pp. 21-22

Douglas-Scott, S. (2013). *Law after modernity*, Oxford and Portland: Hart Publishing, Oregon, pp. 57-59.

Hoecke, M. Legal Doctrine: Which Method(s) for What Kind of Discipline?, p.4-5, https://www.bloomsburycollections.com/book/methodologies-of-legal-research-what-kind-of-method-for-what-kind-of-discipline/ch1-legal-doctrine-which-method-s-for-what-kind-of-discipline accessed 07.05.2022.

Cosma, Luminița; Dumitru, Anca; Frunză, Florin; Gâdei, Radu; Ionescu, Mihai Cornel; Pop, Mihaela; Stănciulescu, Hanibal; Totu, Sabin (2004). *Enciclopedie de filosofie şi ştiinţe umane/ Encyclopedia of Philosophy and Human Sciences,* Bucharest: All Educaţional, pp. 439-442.

Witgenstein, L. (2021). *Tractatus Logico-Philosophicus,* Bucharest: Humanitas, pp. 21-22.

Aarnio, A.; Alexy, A.; Peczenik, A. (1999). *The Foundation of Legal Reasoning,* in Eveline T. Feteris, Alexy's Procedural Theory of Legal Argumentation.

Geny, Fr. (1904). *La technique législative dans la codification civile moderne dans le code civil. Book of the centenary/Legislative technique in modern civil codification in the civil code. Book of the centenary*

Eco, U. (2004). *Interpretare şi suprainterpretare,* Constanţa: Ed. Pontica, trad. Ştefania Mincu.

Rorty, R. (1982). *Consequences of Pragmatism*, Minnesota: University of Minnesota Press.

Culler, J. (2006). *The Literary in Theory*, Stanford: Stanford University Press.

E. Cassirer, *Philosophy of Symbolic Forms* [*Philosophie der symbolischen Formen*] (1923–29), English translation 1953–1957 in Georg D. Blind, The missing piece in E. Cassirer's theory of symbolic forms: the economy, p. 35.