TELEOLOGICAL INTERPRETATION IN CZECH CASE LAW[1]

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Abstract: *The article deals with the concept of teleological interpretation as one of the fundamental interpretative methods recognized by the Czech legal theory as well as practically used by Czech courts, especially by the Supreme Court, Administrative Supreme Court and Constitutional Court. The article is divided into two major parts. The first of them analyzes the historical genesis and characteristic features of the teleological interpretation from the perspective of both Czech and international literature. In the second part of the article, the authors focus on the analysis of selected judgments which use teleological interpretation within its argumentation. The article describes the role of the teleological interpretation and its consequences to the final judgment of each case. Particularly, the text investigates the relation between textual interpretation and teleological interpretation and illustrates the situations when the teleological interpretation prevailed.*

Keywords: *statutory interpretation, teleological interpretation, case law, purposivism, e ratione legis*

1. CONCEPT AND BACKGROUND OF TELEOLOGICAL INTERPRETATION

The term "teleology" was first used by Christian Wolff, an enlightenment philosopher also important for the development of legal science,[2] in his *Philosophia rationalis, sive logica* of 1728. There he gives a name to a part of philosophy: *"Philosophiae naturalis pars, quae fines rerum explicat, nomine adhuc destituta, etsi amplissima sit & utilissima. Dici posset Teleologia"*.[3] The word "teleology" is derived from the Greek work *telos* (τέλος), which means "end" or "purpose". The first to speak of a teleological interpretation in law was Josef Kohler in 1886 when he says, *"Man spricht hier von logischer Interpretation; man sollte eher von teleologischer Interpretation sprechen"*.[4]

This "logical interpretation which should be rather termed teleological", that is, an interpretation going beyond the framework of the text of the law, appears around the end of the 17th century in the works of Christian Thomasius (1655–1728), a natural philosopher, and of Justus Henning Boehmer (1674–1749), a representative of *usus modernus pandectarum*.[5] Thomasius distinguishes between *interpretatio grammatica* and *interpretatio logica*,

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[2] Cf. especially WOLFF, Ch. *Grundsätze des Natur- und Völckerrechts.* Halle 1754.

[3] WOLFF, Ch. *Philosophia rationalis, sive logica.* Frankfurt, Leipzig, 1732, p. 38. Translation: "The part of natural philosophy which explains the purposes of things, has until now lacked a name, even though it is very important and very useful. We might call it Teleology." As a secondary source see BUSCHE, H. Teleologie; teleologisch. In: *Historisches Wörterbuch der Philosophie.* Basel 1998, Vol. 10, p. 970.

[4] See KOHLER, J. Über die Interpretation von Gesetzen. In. GRÜNHUT, C. S. *Zeitschrift für das Privat und öffentliche Recht der Gegenwart.* 1886, Vol. 13, p. 35. Quoted in VOGENAUER, S. *Die Auslegung von Gesetzen in England und auf dem Kontinent.* Tübingen: Mohr Siebeck, 2001, p. 453 and SCHRÖDER, J. *Recht als Wissenschaft. Geschichte der juristischen Methodenlehre in der Neuzeit (1500–1933).* 2nd ed. Munich: C. H. Beck, 2012, p. 332.

[5] SCHRÖDER, J. *Recht als Wissenschaft. Geschichte der juristischen Methodenlehre in der Neuzeit (1500–1933).* 2nd ed. Munich: C. H. Beck, 2012, pp. 136–137.

whereby the former is interpretation according to words while the latter comes into play when the text is obscure or ambiguous, and its legal meaning must be sought in other signs and suppositions.[6] Boehmer further enlarges on the two kinds of interpretation both in his *Introductio in ius Digestorum* of 1704 and in his more comprehensive *Exercitationes ad Pandectas* of 1745.[7]

Here in the chapter devoted to the interpretation of Roman law, introduced with the famous quotation from Celsus, *"Scire leges non hoc est, verba earum tenere, sed vim ac potestatem"*,[8] he explains at length the difference between a grammatical and a logical interpretation. Whereas a grammatical interpretation concerns words and their syntax, a logical interpretation is much broader: *"Logicam vero circa id, quod legislatorem mouit ad ita disponendum, et in quem finem eam dispositionem fecerit, verbaque paulo latius vel arctius conceperit"*.[9] Here Boehmer is manifestly referring to the purpose of the law, and his *interpretatio logica* is in today's conception of interpretation no longer termed logical,[10] but rather teleological. In this connection one may speak of the legislative intent (*intentio*), the purpose of the law (*finis legis*) and the historical motive (*movens ratio legis historica*).[11] In this bipolar scheme one may include in the category of logical interpretation every kind of interpretive method that goes beyond a grammatical interpretation.[12]

This distinction between grammatical and logical interpretation comes very close to the classical distinction between the letter of the law and the spirit of the law, which is stated in the biblical *"The letter kills, but the Spirit gives life"*.[13] Even before, Roman law had distinguished between the words of the law (*verba legis*) and the sense of the law (*mens legis, sententia legis, ratio legis*). In the Digest, the Justinian codification of Roman law from the 6th century AD, we find a number of pronouncements by famous Roman lawyers on the interpretation of laws, most of them in the third title of the first book (*De legibus*) and in the seventeenth title of the fiftieth book (*De diversis regulis iuris antiqui*).

[6] THOMASIUS, Ch. *Ausübung der Vernunft-Lehre*. Halle, 1691, p. 175. Cf. VOGENAUER, S. *Die Auslegung von Gesetzen in England und auf dem Kontinent*. Tübingen: Mohr Siebeck, 2001, p. 439.

[7] Cf. OGOREK, R. *Aufklärung über Justiz II. Richterkönig oder Subsumtionsautomat? Zur Justiztheorie im 19. Jahrhundert*. 2nd ed. Frankfurt 2008, pp. 108–111.

[8] "To know the laws is not to be familiar with their phraseology, but with their intent and purpose." (Dig. 1, 3, 17). BOEHMER, J. H. *Exercitationes ad Pandectas*. Hannover, Göttingen 1745, p. 22. Celsus' thinking here is also explicitly accepted as "permanently applicable" in the reasoning for Sec. 2 in the statement of reasons for the Czech Civil Code of 2012; cf. the consolidated version of statement of reasons, available at: http://obcanskyzakonik.justice.cz/tinymce-storage/files/DZ_NOZ_89_%202012_Sb.pdf.

[9] "Logical [interpretation] refers to what led the lawmaker to such a [legal] norm and for what purpose he created that norm and the broadness or narrowness of the words he uses." BOEHMER, J. H. *Exercitationes ad Pandectas*. Hannover, Göttingen 1745, p. 28.

[10] That logical interpretation in this sense is most certainly not limited to logic in the ordinary sense of the word is a conclusion agreed upon by a range of authors. Cf. VOGENAUER, S. *Die Auslegung von Gesetzen in England und auf dem Kontinent*. Tübingen: Mohr Siebeck, 2001, p. 440 and PERELMAN, Ch. *Logika prawnicza*. Warsaw: Nowa retoryka, 1984, p. 32 ff.

[11] See BOEHMER, J. H. *Exercitationes ad Pandectas*. Hannover, Göttingen, 1745, p. 27: "…sed intentio eiusdem eousque haud pertingat, quae potissimum ex caussa finali legis et mouente ratione eius historica cognoscitur."

[12] Similarly in Vogenauer VOGENAUER, S. *Die Auslegung von Gesetzen in England und auf dem Kontinent*. Tübingen: Mohr Siebeck, 2001, p. 441.

[13] 2 Corinthians 3:6.

According to Ulpian (Dig. 50, 16, 6, 1)[14] the phrase "according to the laws" encompasses both the sense of the law (*sententia legis*) and the words of the law (*verba legis*). But what if there is a conflict between the letter of the law and the spirit of the law? We find in the Digest two fundamental answers. Paulus says, "Where there is no ambiguity in the words made use of, no question as to the intention of the testator should be raised".[15] (Dig. 32, 25, 1). According to Vogenauer, however, this approach, which may be expressed by the later Latin formula *clara non sunt interpretanda*,[16] did not in practice prevail,[17] not coming into force until the 18th century.[18] In several places in the Digest we find formulations implying the possibility of digressing from the letter of the law. "Although the Edict of the Prætor is perfectly clear, still its interpretation should not be neglected",[19] writes Ulpian (Dig. 25, 4, 1, 11). And again Celsus says, "Laws should be interpreted liberally, in order that their intention may be preserved".[20] Most famous of all, however, is the pronouncement of Celsus cited above: *"Scire leges non hoc est, verba earum tenere, sed vim ac potestatem"* ("To know the laws is not to be familiar with their phraseology, but with their intent and purpose"; Dig. 1, 3, 17).

By a teleological interpretation of the law or its provisions, we understand an interpretation aiming at the purpose of a legal norm expressed in the law or at the purpose of legislation of which the interpreted norm is a part.

Each rule of the law has its purpose. Lon Fuller defines law as "...the enterprise of subjecting human conduct to the governance of rules";[21] according to Fuller, the law is "...obviously a purposive thing, serving some end or congeries of related ends."[22] Fuller goes on to say, "... in nearly all societies men perceive the need for subjecting certain kinds of human conduct to the explicit control of rules. When they embark on the enterprise of accomplishing this subjection, they come to see that this enterprise contains a certain inner logic of its own, that it imposes demands that must be met (sometimes with considerable inconvenience) if its objectives are to be attained."[23] Similarly, Rudolf von Jhering begins his famous work *Law as a Means to an End* with several sentences dealing precisely with purpose in law: "The fundamental idea of the present work consists in the thought that Purpose is the creator of the entire law, that there is no legal rule which does not owe its origin to a purpose…"[24]

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[14] *"Verbum 'ex legibus' sic accipiendum est: tam ex legum sententia quam ex verbis."* (The expression "according to the laws" must be understood to mean the spirit as well as the letter of the law.).

[15] *"Cum in verbis nulla ambiguitas est, non debet admitti voluntatis quaestio."*

[16] "What is clear need not be interpreted." This principle is particularly popular in Polish scholarship. Cf. e.g. MORAWSKI, L. *Zasady wykładni prawa.* 2nd ed. Toruń 2010, pp. 51–60.

[17] VOGENAUER, S. *Die Auslegung von Gesetzen in England und auf dem Kontinent.* Tübingen: Mohr Siebeck, 2001, pp. 466–467.

[18] VOGENAUER, S. *Die Auslegung von Gesetzen in England und auf dem Kontinent.* Tübingen: Mohr Siebeck, 2001, p. 475. For the 18th century he cites Montesquieu, e.g. "In a republic the nature of the constitution presumes in judges the duty of guiding themselves exactly by the law." (MONTESQUIEU, Ch. *O duchu zákonů.* Dobrá Voda: Aleš Čeněk, 2003, p. 110).

[19] *"Quamvis sit manifestissimum edictum praetoris, attamen non est neglegenda interpretatio eius."*

[20] Dig. 1, 3, 18: *"Benignius leges interpraetandae sunt, quo voluntas earum conservetur."*

[21] FULLER, L. *The Morality of the Law.* 2nd ed. New Haven and London, 1969, p. 106.

[22] FULLER, L. *The Morality of the Law.* 2nd ed. New Haven and London, 1969, p. 146.

[23] FULLER, L. *The Morality of the Law.* 2nd ed. New Haven and London, 1969, pp. 150–151.

[24] JHERING, R. *Der Zweck im Recht.* Leipzig 1877. English trans. HUSIC I. *Law as a Means to an End.* Boston 1913, p. liv.

We may also consider the interpretation of a legal norm in the spirit of the purposes and values of the entire legal system as a teleological interpretation. This broader conception of teleological interpretation then also includes consequential interpretation, one that takes into consideration the social and economic consequences of the various interpretive possibilities. To that we may also add the use of the *reductio ad absurdum* argument which excludes any interpretive alternative that is absurd, that is, those which lead to absolutely unacceptable conclusions from the perspective of the values of justice and the purposefulness of the law. The use of analogy is also based on teleological considerations and the presumption of a coherent set of values in the legal system. In addition, the majority of comparative arguments aim at the reasonable purpose and sense of any given legal institution in foreign legal systems.

What holds this broadly conceived teleological interpretation together is the presumption of a coherent set of values in the legal system.[25] In American legal philosophy, this presumption is related to Dworkin's concept of *integrity in law*; and in German jurisprudence with the concept of the internal system of law. Ronald Dworkin compares the role of the judge to the role of the creators of a "chain novel", whereby in writing a new work one has to respect the overall work as a whole, carrying on from the preceding episodes and maintaining the continuity in the inner development of the characters. The judge must decide in a similar way so that his judgments taken together with preceding decisions (those of legislators as well as of judges) form a meaningful whole.[26]

The internal system of law, in contrast to the external system of law as described above, is defined as an axiological or teleological system of common legal principles,[27] sometimes as a consistent system of value decisions;[28] it is not then a question of an external compartmentalization of the law but rather of the internal interconnectedness of legal concepts, of the deduction of one from the other, of the justification of one by the other, of the unity of their aims, of a standpoint based on values. From the standpoint of the internal system of law, that network of legal principles, values and teleological connections between legal norms, it is essential that the legal norms taken together create a coherent system.

One of the best presentations of the content of the internal system of law is Franz Bydlinski's attempt to describe the internal system of private law in his work *System und Prinzipien des Privatrechts*, where he follows the line leading from the concrete aims of individual legal norms to more abstract principles and values. At the top of the pyramid Bydlinski places twelve fundamental legal principles deriving from the major values in law, those being freedom, justice, legal certainty and the purposefulness of the law.[29]

Teleological interpretation is the way to the discovery of an objectively present-day interpretive goal.[30] It is not then a question, as with an historical interpretation, of the mean-

[25] On coherence cf. SOBEK, T. *Právní myšlení*. Praha, Plzeň: Aleš Čeněk, 2011, p. 91 ff.

[26] DWORKIN, R. *Law's Empire*. Cambridge (Massachusetts), 1986, p. 225 ff. On Dworkin's integrity of the law cf. also SOBEK, T. *Právní myšlení*. Praha, Plzeň: Aleš Čeněk, 2011, pp. 112–118. An interesting view of Dworkin's thinking here is offered from the viewpoint of law and literature by ŠKOP, M. *Právo a vášeň. Jazyk, příběh, interpretace*. Brno: Masarykova univerzita v Brně, 2011, pp. 66–72.

[27] Cf. CANARIS, C. W. *Systemdenken und Systembegriff in der Jurisprudenz*. Berlin 1969, p. 47.

[28] Cf. KRAMER, E. *Juristische Methodenlehre*. 3rd ed., Bern 2010, p. 90.

[29] BYDLINSKI, F. *Fundamentale Rechtsgrundsätze*.Vienna: Springer-Verlag, 1988, pp. 291–295. Cf. WINTR, J. *Říše principů. Obecné a odvětvové principy současného českého práva*. Praha 2006, pp. 255–257.

[30] MELZER, F. *Metodologie nalézání práva*. Praha: C. H. Beck, 2010, p. 152.

ing which some author connected to his interpretation of a text of his law; it is a question rather of what objective meaning a legal text has for the person it concerns today: "It is then a meaning about which we can assume that with any given legal regulation the person whom it concerns, one who is knowledgeable about the legal system, society and the world at large, would associate with it".[31] The objective meaning of the text interpreted is then sought *hic et nunc*.[32]

A teleological interpretation thus gives preference over an historical interpretation to the advocate of an objective interpretational theory, whose motto might well be that of the famous pronouncement about the law being wiser than the lawmaker as it was expressed by among others Gustav Radbruch (and, as we shall see, as is also advocated by Czech legal theory and practise): "The will of the lawmaker is not a method of interpretation but rather the goal of interpretation and the result of interpretation, the expression for an *apriori* indispensability of a systematic concordant interpretation of the whole legal system. It is for that reason possible to declare as the intention of the lawmaker something which was never present as the conscious will of the author of the law. The interpreter must understand the law better than did the person who created it; the law can be wiser than its author – it really must be wiser than its author".[33]

2. TELEOLOGICAL INTERPRETATION IN CZECH CASE LAW

Teleological interpretations are being applied ever more markedly in the proceedings of Czech courts. Already in its very first judgment, ÚS 19/93 (No. 14/1994 Sb.) of 21 December 1993, in which the Constitutional Court ruled against the proposal of leftist members of parliament to annul law No. 198/1993 Sb., on the illegality of the Communist regime and on opposition to it, we read: *"The Czech Constitution accepts and respects the principle of legality as a part of the overall conception of a state based on rule of law. Positive law does not, however, bind it merely to formal legality; rather, the interpretation and application of legal norms are subordinated to their substantive purpose. Law is qualified by respect for the basic values of a democratic society and also measures the application of legal norms by these values."*

Frequently cited are the opinions of the Constitutional Court on the relationship of textual and teleological interpretation from opinion Pl. ÚS-st. 1/96, from judgment Pl. ÚS

[31] MELZER, F. *Metodologie nalézání práva*. Praha: C. H. Beck, 2010, p. 84.

[32] Ibid.

[33] Supreme Administrative Court judgment 1 As 31/2009 of 16 July 2009. It cites from RADBRUCH, G. *Rechtsphilosophie. Studienausgabe*. 2nd ed. Heidelberg: R. Dreier, S. Paulson, 2003, p. 107; according to HOLLÄNDER, P. *Filosofie práva*. Plzeň: Aleš Čeněk, 2006, p. 85. Holländer also uses this quotation on p. 227 of the work cited in the chapter titled Právní jazyk a právní hermeneutika (Legal Language and Legal Hermeneutics), one of the most important Czech texts on this topic. MELZER, F. *Metodologie nalézání práva*. Praha: C. H. Beck, 2010, p. 127, also uses it. The statement about the law being wiser than the lawmaker, however, is much older. Already in the middle of the 19th century. It was pronounced by Johann Heinrich Thöl (cf. his second chapter), and even in the 18th century a similar statement can be found in philosophy and general hermeneutics about the reader, who must be wiser than the author; cf. MEDER, S. *Mißverstehen und Verstehen. Savignys Grundlegung der juristischen Hermeneutik*. Tübingen: Mohr Siebeck, 2004, p. 107.

21/96 and from judgment Pl. ÚS 33/97.[34] *"The court… is not absolutely bound by the literal wording of a legal provision but rather may and must diverge from it in cases where such is demanded for compelling reasons by the purpose of the law, by the history of its creation, by its connection to a system or by any of those principles that have their basis in a legal system conforming to the constitution as a meaningful whole. It is however necessary to avoid arbitrariness; the decision of the court must be grounded in rational argumentation,"* writes the Constitutional Court in judgment Pl. ÚS 21/96.[35]

In a later judgment (I. ÚS 50/03) the Constitutional Court even calls failure to respect the purpose and meaning of a legal norm a violation of the principle of a democratic state based on rule of law (art. 1, par. 1 Constitution), the limitations on state power by the laws (art. 2 par. 2 Charter of Fundamental Rights and Basic Freedoms) and says, *"… the Constitutional Court in its ongoing practise has many times already shown that it does not stand for public authorities and in particular for common courts to take an overly formalistic approach in their proceedings by using an essentially sophisticated justification for what are obviously injustices. (…) In interpreting and applying legal provisions they must not overlook the purpose and sense, which are not to be found only in the words and sentences of legal provisions; rather in each of these they must also find the legal principles recognized in a democratic state based on rule of law."*

A number of other judgments of the Constitutional Court based mainly on teleological interpretation are listed in his book by Libor Hanuš.[36]

The need for teleological interpretation is also stressed in the practise of the Supreme Administrative Court in its theoretical passages. The latter court issued an unambiguous pronouncement on theoretical questions concerning interpretation of the law in its judgment 1 Afs 86/2004: *"First and foremost it is imperative to stress our fundamental interpretational procedure: the interpretation of legal regulations and their institutions must not be undertaken merely from the point of view of the text of the law but rather above all according to their meaning. (…) We derive from a teleological interpretation those fundamental interpretive guidelines, which have already been mentioned: the decisive point is the sense and purpose but certainly not just the wording of the law."*

In recent years there has also been an increase in decisions of the Supreme Court, in which the court shows preference for a teleological rather than a text-based interpretation. Such is the case for example in judgment 15 Tdo 1035/2011 by the greater panel of the Supreme Court, which rejects processing a single act as several counts of the crime of theft in accordance with Sec. 205 par. 1 and par. 2 of the criminal code. In regard to this interpretation "in the spirit of the law", the Supreme Court explains: *"The meaning of the interpretation in the area of law is not so much the ascertainment of the sense of the provisions of the laws but rather in so far as possible the assurance of the principle of uniform procedure of the courts and of their bodies applying law, this being an important attribute of con-*

[34] Cf. WINTR, J. *Metody a zásady interpretace práva.* Praha: Auditorium, 2013, pp. 169–172.

[35] This passage is quoted for example in three judgments by the Supreme Administrative Court (5 Afs 28/2003, 4 As 1/2008 and 1 As 110/2010); and in several decisions by the Constitutional Court (Pl. ÚS 24/06, I. ÚS 846/07, III. ÚS 384/08, I. ÚS 2920/09 and I. ÚS 1595/10).

[36] HANUŠ, L. *Právní argumentace nebo svévole. Úvahy o právu, spravedlnosti a etice.* Praha: C. H. Beck, 2008, pp. 45–53.

stitutionality and legality. Whether it be a question of the method of interpretation (something admitted only rarely) or whether it be based on the general principles of law and on considerations of reasonableness, seeing that in this particular case we have a situation where the text of the law might lead to illogical and irrational conclusions, the court is in the interpretation of such a legal provision duty-bound to choose not a literal interpretation but rather one conforming to the purpose and sense of the law and taking into account relevant principles of law."

Let us now examine in more detail several court decisions in which a teleological interpretation plays a critical role. We shall see that in these cases teleological interpretation appears in several differing configurations.

3. TELEOLOGICAL INTERPRETATION AS THE DECIDING FACTOR WHEN THE TEXT IS AMBIGUOUS

An example of the first approach is Constitutional Court judgment II. ÚS 277/99 of 9 October 2001, which has recourse to teleological interpretation as a subsidiary method, which in principle is applied only in a case when a textual interpretation leads to two equally valid interpretations.

In this particular case of restitution, the Constitutional Court deliberated on a constitutional complaint against the decisions of common courts deciding against the plaintiffs' lawsuit demanding that a pigsty be given over to their possession in accordance with Sec. 22 par. 8 law No. 229/1991 Sb., on the readjustment of rights of possession of plots of land and other agricultural property according to provisions in effect until 31 December 2002. The provision therein cited, however, at the time in question specified among other things: *"If there is on the owner's plot of land a structure in the possession of a different juridical person engaged in agricultural production or a structure belonging to the state, and if the owner of the plot has unsettled claims against the owner of the building on the provision of indemnification according to this law or on the handover of a portion of property according to law No. 42/1992 Sb. which amounts to at least 50% of the value of the structure, at the suit of the owner of the plot of land, the court can decide about the transfer of the structure to the owner of the plot."*

The problem in the case under discussion proved to be the fact that the pigsty in question stood on two plots of land, one of which belonged to the plaintiffs and the other of which belonged to Mr and Mrs N. The crux of the matter was the question whether the provision just quoted above allowed a ruling on the transfer of the pigsty to the plaintiffs when they are not the exclusive owners of the plot of land (or both plots) under the entire structure.

The decisions of the common courts had at that time proceeded in two directions. One set of decisions derived from a purely textual interpretation and stipulated thus that the provision requiring the transfer of the owner's structure to the owner of the plot of land cannot apply only to one co-owner's share because this is a *sui generis* lawsuit relating to the whole. In contrast to this, the second set of decisions concluded that the provisions of the property law quoted above do not rule out the court's deciding on the transfer of possession of the structure to the owner of the plot of land, even if the structure stands on plots of several owners.

In this case the Constitutional Court adopted the following legal opinion. First of all, it acknowledged that a textual interpretation of the provision cited above might allow two interpretations, one restrictive and the other extensive. On that basis the Constitutional Court deduced that it must apply a teleological interpretation. *"It must be said from the outset that both interpretations clearly respect the rules of textual interpretation, for the provision quoted above speaks of 'the owner of the plot of land' without any further specification. When one has at one's disposal two equally valid interpretations, of which one is extensive and the other restrictive, the court must choose the one of them that corresponds to other methods of interpretation and in particular then to a teleological consideration."*

Consequently, applying a teleological argument based on the declaration of purpose in the preamble of the law on the adjustment of ownership of land,[37] the Constitutional Court deduced that its purpose was to redress inequities, having accordingly already in its previous decisions reached the opinion that the rights of the proper owners may not be interpreted restrictively.

This approach calls to mind the classification of interpretive methods into standard (textual, logical and systematic) and extraordinary (historical, teleological and comparative), which is favoured by Aleš Gerloch, who adds with regard to extraordinary methods: *"From the standpoint of legality, it is important that argumentative conclusions reached in this way cannot withstand challenges if they are in obvious contradiction with the text (letter) of the law or an international treaty and with the interpretive conclusions reached through standard methods."*[38]

This position can also be observed in court practise, for example in Constitutional Court decision II. ÚS 427/04 of 18 June 2008. Referring to Gerloch's textbook *Theory of Law*, it states the following: *"The methodology of the interpretation of law proceeds from a premise according to which interpretive methods have a hierarchy; one can thus distinguish standard methods (textual, logical and systematic interpretations) and extraordinary methods (historical, teleological and comparative), with the provision that extraordinary methods may be applied only in cases where standard methods do not lead to clarification of the sense of the text of the law. They are then merely supplementary methods."*

In all other conceptions to be discussed below, however, courts judge a teleological interpretation to be of greater weight.

4. TELEOLOGICAL INTERPRETATION AS ONE OF SEVERAL EQUALLY GOOD METHODS OF INTERPRETATION

An example of the concept of teleological interpretive method as just one method from a palette of methodological interpretive instruments is the Supreme Administrative Court's

[37] The preamble of law No. 229/1991 Sb. on adjustment of ownership relations for land and other agricultural property in effect until 31 February 2002 stated: *"The Federal Parliament of the Czech and Slovak Federal Republic in an attempt to mitigate the consequences of certain property inequities which occurred in relation to agricultural and timber properties in the period between 1948 and 1989, to achieve better husbandry of agricultural and forested properties by renewal of the original ownership relations of those properties and to adjust the ownership relations to land in accordance with the interests of economic development of rural areas and in accordance with the requirements for the landscape and environment has decided on this law."*

[38] GERLOCH, A. *Teorie práva.* 6th ed. Plzeň: Aleš Čeněk, 2013, p. 137.

judgment 1 As 50/2010 – 96 of 5 October 2011. In this case the plaintiff brought an action to overturn the decision of an administrative body, by which that administrative body had decided not to revoke a part of the Bečva 2A - Staré toky Oldřichov – upper section fishing area. The plaintiff in this case was the co-owner of the plot of land, on which the fishing area was located.

Central in deciding this case was Sec. 4 par. 3 let. b) of law No. 99/2004 Sb., on fisheries, in effect until 30 June 2008, from which follows that a fishing area is declared at the request of the owner of the plot of land on which the body of water is located. If however there is more than one owner of that plot, the appropriate administrative body declares the fishing area on the basis of the requests of all owners. This provision is furthermore related to Sec. 4 par. 7 let. b) of the law on fishing, which states that the administrative body revokes a fishing area on the basis of the requests of the persons listed in par. 3 let. a) or b) of the law on fishing.

At issue in this particular case was reaching a relatively persuasive conclusion about the fact that if the administrative body decides about the annulment of a fishing area according to the provisions cited above, such a request must be submitted by all the owners of the land on which the body of water is located, this on the basis of a simple textual interpretation. The Supreme Administrative Court, however, found it fitting and necessary to use in this particular case a broader methodological instrument for the purpose of an even more persuasive legal opinion: *"A merely grammatical interpretation, however, is in this case insufficient. (…) The final interpretation of the legal norm should then be the intersection and balancing of several different interpretive methods: logical, systematic, historical, teleological, comparing legal systems, etc."*

Subsequently the Supreme Administrative Court also supplemented its arguments with a teleological interpretation on the basis of which it supported the conclusion stated above with an appeal to the fact that from the text of the law as well as from the statement of reasons it follows that it is in the public interest to use those waters for fishing.

This conception might be termed methodological pluralism.[39]

5. THE PREFERENCE FOR A TELEOLOGICAL INTERPRETATION OVER A TEXTUAL ONE

The third configuration is the preference for a teleological interpretation over a textual one. Here we are already dealing with the formation of the law, with an approach *contra verba legis*, with a teleological reduction.[40] As an example of this we might take Supreme Administrative Court judgment 4 As 1/2008-220 of 30 March 2009.

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[39] Cf. e.g. CROSS, F. B. *The Theory and Practice of Statutory Interpretation.* Stanford: Stanford Law Books, 2009, according to whom methodological pluralism clearly prevails in the U.S. Supreme Court (ibid. p. ix). Cf. also WINTR, J. *Metody a zásady interpretace práva.* Praha: Auditorium, 2013, pp. 202 ff.

[40] Teleological reduction is treated in detail by Melzer. MELZER, F. *Metodologie nalézání práva.* Praha: C. H. Beck, 2010, pp. 248 ff. For a critique of his views, see GERLOCH, A., TRYZNA, J. Závaznost právních textů při interpretaci a aplikaci práva soudy a argumentace *lege artis.* In: GERLOCH, A., TOMÁŠEK, M. et al. *Nové jevy v právu na počátku 21. století II. Teoretické a ústavní impulzy rozvoje práva.* Praha: Karolinum, 2010, pp. 58–64.

This case concerned a dispute over trademarks settled in the Office of Industrial Property. A coffee manufacturer had registered the trademark "TCHIBO CAFE CLASSIC". Another competitor on the coffee market objected to this registration and insisted that this trademark be cancelled on the grounds of the law of priority (i.e., a prior registration) because this competitor had registered the name "CLASSIC" as the trademark for his coffee product.[41]

The crux of this dispute thus lay in the question whether the names TCHIBO CAFE CLASSIC and CLASSIC as two trademarks were interchangeable or not, in other words, whether the expression TCHIBO CAFE CLASSIC is sufficiently capable of being distinguished from the name CLASSIC.

The decisive provision for the judgment of this question was the wording of Sec. 3 of law No. 174/1988 Sb., on trademarks in effect until 30 September 1995.

According to Sec. 25 of the law on trademarks, a trademark must be cancelled in cases where it was registered in contradiction with the law. According to Sec. 3 par. 1 let. e) of the law on trademarks, a trademark may not be registered if it is identical with a trademark registered for another juridical or physical person for products or services of the same nature. The wording of Sec. 3 par. 2 of the law on trademarks then complemented the provision cited above stipulating that a trademark may also not be a name containing elements mentioned in par. 1 let. c) to h).

In other words, on the basis of a literal, textual interpretation, one can quite definitely come to the conclusion that if the suggested trademark contains as one of its elements a feature identical with a feature that has already been registered as a trademark by some other competitor, it is not possible to register such a trademark or such a trademark must be cancelled.

At this point however the Supreme Administrative Court again stressed that it is not always possible to proceed merely from a textual interpretation: *"A textual interpretation, although it is absolutely indispensable in interpretation of the law (condicio sine qua non), is merely one of several methods which interpreters have at their disposal. When the result of a textual interpretation raises questions, it is necessary to re-examine it with other interpretive methods and in their light to confirm it as a just one that fulfils the sense of the law and of the natural understanding of justice (common sense) or else reject it as erroneous and at odds with its meaning."*

This sentence favours a teleological interpretation over a textual one to a greater extent than does the opinion of the Constitutional Court in Pl. ÚS-st. 1/96. The latter limits the preference for a teleological interpretive method over a textual interpretation only to cases of a) ambiguity or incomprehensibility of the text or b) a contradiction between the literal wording of a given provision with its meaning and purpose, about the clarity and unambiguity of which there can be no doubt whatsoever: *"In applying a legal provision one must primarily proceed from the literal wording. Only on the condition of its lack of clarity and comprehensibility (those which would for example permit several interpretations), as also in cases where the literal wording of the provision in question is in contradiction with its meaning and purpose, about the clarity and unambiguity of which there can be no doubt*

[41] Even if this competitor had always sold the product under the name NESCAFÉ CLASSIC.

whatsoever, is it possible to prefer an interpretation e ratione legis *over a textual interpretation."* In contrast to this, the sentence quoted from the judgment of the Supreme Administration Court states outright that provided the textual interpretation contradicts the meaning of the law (that is, a teleological interpretation), then it must be rejected as erroneous.

Consequently the Supreme Administrative Court proceeded from the purpose of the institution of trademarks and from their basic functions, one privileged form of which has the function of distinguishing. The Supreme Administrative Court reached the conclusion that the sense of trademarks is obviously their competitive purpose, that is, their help to competitors in promoting themselves in the market, maintaining themselves in the market or strengthening their position vis-à-vis their competitors. Consequently, the Supreme Administrative Court opined that the purpose of the law on trademarks was to make it possible to register names serving to distinguish the products or services coming from different producers. In contrast to this, it was not a purpose of the law to protect the registration of names even if they did make such distinctions possible but also contained in certain aspects identical elements with a previously registered trademark.

In view of the fact, however, that in this particular case the teleological consideration was completely at odds with the obvious textual interpretation, the Supreme Administrative Court had no choice but to use a teleological reduction: *"The court today is fully aware that the settlement it has reached is* contra verbis legis*; it is at the same time, however, convinced that it is* secundum rationem legis. *The court has herein had recourse to a methodological instrument extremely rarely used but nevertheless fully valid, one called teleological reduction. This consists in the text of a legal provision not being applicable even though from the standpoint of its words, it seemingly should be.*"

After applying teleological reduction, then, the Supreme Administrative Court concluded that it would not be proper to permit the annulment of the trademark TCHIBO CAFE CLASSIC since the purpose of the law does not call for such.

6. PREFERENCE FOR A PRESENT-DAY TELEOLOGICAL INTERPRETATION OVER THE INTENTION OF LAWMAKERS

The example of these decisions shows that a teleological interpretation can also serve as a tool of time adjustment. Interpreters may namely find themselves in a situation where they must interpret a legal regulation that is many years old and that can no longer be interpreted according to its textual wording.

A teleological interpretation then makes it possible to carry out the interpretation of a regulation of relatively older date in such a way that its enforcement corresponds to present-day conditions, a conclusion that follows from the assumption that one must seek the present-day purpose of the law. On this level then a teleological interpretation also provides the courts with an extensive area for development. It may on the one hand result at a certain point in a shift away from the traditional line of court decisions because of different social and period circumstances, in which some critics perceive interference with the principle of legal certainty (compare for example the previous judgment that found a direct relationship between the stability of court practise and legal certainty), but on the other hand concomitantly with that shift, it can happen that court practise adapts itself to legal consciousness (such as it currently is) of the recipients of legal norms.

This role too is fully granted to teleological interpretation by the Constitutional Court. It did so for example in judgment IV. ÚS 1133/07 of 20 December 2007: *"The Constitutional Court shares the opinion that the laws in force are collections of rules written for the present and are not just historical relics from the time when they were created. Many laws from the period before 1990 must therefore be interpreted in the light of the principles on which our legal order and indeed our whole state are founded, principles which the law previously in effect did not recognize when those regulations were created."*[42]

Indeed, this was precisely the case when the Supreme Administrative Court made its judgment 4 As 1/2008-220 of 30 March 2009 cited above, i.e., the dispute about annulling the TCHIBO CAFE CLASSIC trademark.

As was stated above, the case was legally judged according to the law on trademarks of 1988 whereas at the time of deliberation (that is, in 2009), law No. 441/2003 Sb. on trademarks, one with a later formulation of regulations, had been in effect for fourteen years. The Supreme Administrative Court then made its decision in circumstances when at that particular time a quite different legal conception of trademark law had developed.

The Supreme Administrative Court in its judgment took the approach, as we have outlined it in the introduction of this chapter. First of all it identified the purpose of trademarks *hic et nunc*. Based on the description of its functions, it then stressed that its most important and fundamental function was that of furthering competition. And yet it is obvious that historically lawmakers (when we consider the date of those legal norms) did not consider this function. The Supreme Administrative Court then deduced: *"There can be no doubt that the intention of legislators in the past was not to stress the competitive function of trademarks, for functioning competition is the underlying mechanism of the system of market economy. Only in systems of market economy can we speak of competition in its true sense, for based on historically proven systems, only market economy has the potential to stimulate competitors in the market to compete with the price and quality of the products and services they offer."*

For all the reasons cited above, then, the Supreme Administrative Court came to this conclusion: "*We must for that reason conclude that even though we are interpreting a legal regulation from 1988, we must not view it from the standpoint of values favoured at the time it was adopted but rather of the values acknowledged at the time it is being applied.*"

Accordingly, the Supreme Administrative Court argued that today's economy is a market economy (a fact made explicit in many points of current Czech and European legislation). The goal is then to ensure free competition unhindered in so far as possible by restrictions imposed by the power of the state. The Supreme Administrative Court thus reached the unanimous conclusion that the purpose of the law cannot be to protect the registration of trademarks which on one hand fulfil a distinguishing function (that is the basic assumption for their registration) but on the other hand exhibit an identity in some parts of their names with other trademarks. The Supreme Administrative Court then rejected categorically such an interpretation. *"Such an approach would be purely formal and would*

[42] The Constitutional Court, however, here cites and agrees with the thinking earlier expressed by Z. Kühn. Cf. KÜHN, Z. *Aplikace práva ve složitých případech – k úloze právních principů v judikatuře*. Praha: Karolinum, 2002, p. 110, footnote No. 176.

in the extreme hamper market economy relations and would in the economic sphere (and consequently thus also in the legal) interfere to an excessive degree with the freedom of competitors in the market." On the contrary, it denounced such an interpretation as harassment since it would for no good reason restrict competition.

7. PREFERENCE FOR A TELEOLOGICAL INTERPRETATION BASED ON A REDUCTIO AD ABSURDUM ARGUMENT

Argumentation *ab absurdo*, which eliminates any absurd interpretations, was known already in early modern times.[43] This kind of argument is undoubtedly a teleological one, absurdity being understood actually as a glaring contradiction between an interpretive result and some legal value, typically purposefulness, i.e., justice. The formation of the law through teleological reduction is most often supported by this argument.[44]

The example chosen here shows this argument in conflict with another teleological argument, which is *in dubio pro libertate*. In reference to this argument of teleological interpretation then, the Constitutional Court made a pronouncement in judgment I. ÚS 2254/07 of 8 April 2008: *"Should there be at our disposal several interpretations of a public law norm, we must choose the one which does not at all interfere or which interferes as little as possible with basic rights and freedoms. The principle of* in dubio pro libertate *derives directly from constitutional order (art. 1 par. 1 and art. 2 par. 4 of the Constitution of the Czech Republic or art. 2 par. 3 and art. 4 of the Charter of Fundamental Rights and Basic Freedoms). It is a matter of a structural principle of a liberal democratic state, expressing the preference of individuals and their freedom over the state."*

Supreme Administrative Court judgment 2 Afs 101/2007-49 of 19 February 2008 manifests not only a preference for an *ad absurdum* argument over an *in dubio pro libertate* one, but also the potential risks deriving from the use of the *ad absurdum* argument. The case here under discussion involved a dispute between a tax payer and the tax office. The tax office levied a tax on the tax payer in question, thus issuing an additional personal income tax assessment. The tax payer wanted to protect himself from the assessment charge by appealing. On the very last day of the time allowed to him, the tax payer submitted his appeal addressed in the letterhead to the Tax Office in Znojmo and on the envelope to the municipality of Chvalovice, where it was delivered to the Chvalovice Municipal Office. It was then in this case indisputable that the appeal was not submitted to the competent authority. Nevertheless, it was a matter of contention whether in this particular case the provisions on the procedure for forwarding tax submissions also applied to the time limit for the appeal.

The question under examination here was then of a procedural nature and was judged according to law No. 337/1992 Sb. on tax administration and fees (Rules of Tax Procedure) in effect until 31 December 2010. According to the rules of tax procedure of that time, the time limit was observed if on the last day of the time allowed, some action was taken with

[43] Cf. SCHRÖDER, J. *Recht als Wissenschaft. Geschichte der juristischen Methodenlehre in der Neuzeit (1500–1933).* 2nd ed. Munich: C. H. Beck, 2012, pp. 34–44.

[44] For more details see WINTR, J.: *Metody a zásady interpretace práva.* Praha: Auditorium, 2013, pp. 157–161.

a tax official or a letter or package was submitted to the post office containing a tax submission.

The definition of a "tax official" was stated in Sec. 1 par. 3 of the rules of tax procedure, which under that concept included among other things the local authorities materially competent according to special laws to administer taxes. In contradiction to this, provision Sec. 22 of the rules of tax procedure dealt with situations where a submission is made to an inappropriate tax official: *"In a case where a tax official receives delivery of tax-related materials or of payment, and that tax official is not competent in handling that matter nor in deciding about it, he is required forthwith to forward materials submitted on to the proper tax official.*"

At this point then two interpretations seem admissible. The tax office argued that according to provision Sec. 1 par. 3 of the rules of tax procedure, a municipal authority is the tax official only in relationship to that matter in which it is materially competent; and since personal income tax does not fall within its competence, it is thus not a tax official. Counter to this, the tax payer (and also the administrative court which decided the suit in his favour) argued that every authority mentioned in Sec. 1 par. 3 of the rules of tax procedure is always a tax official. That interpretation was suggested as well by provision Sec. 22 of the rules of tax procedure, which makes no distinction at all between geographical and material competence and was thus valid in the absence of either one of these.

There can be no doubt that if the argumentation of the tax office prevails, it goes against the principle *in dubio pro libertate* resulting in a restriction on the rights of the tax payer (if it is not possible for him to have his returns forwarded, they will be considered to be late thus bringing about the drastic result of the loss of his court case); on the other hand, if that line of argument is admitted, it could according to the Supreme Administrative Court lead to absurd results, and for that reason the argument *in dubio pro libertate* may not be used: *"In this particular case, that rule may not be used. It is of course true that legal redress would theoretically allow two ways of interpreting; however, the interpretation which is most favourable for the protection of the fundamental rights and freedoms of individuals leads to such absurd results that its application is impossible.*"

The Supreme Administrative Court thus ranked the priority of the *reductio ad absurdum* argument above the *in dubio pro libertate* argument. The absurd results of the interpretation favoured by the tax payer then consisted in the fact that, *"The interpretation offered by the court would thus mean that is possible to submit any tax returns at all and to remit any tax payments at all to any government offices at all that in even only a marginal part of their activities function as a tax official.*" As a result of this, courts and public offices (even those which only exceptionally in a few cases act as tax officials) could be overwhelmed with the tax returns of individual physical persons and flooded with improperly sent payments, all this resulting in the paralysis of their main activities.

The case discussed here also however reveals to us one of the weaknesses of the *ad absurdum* argument. This is that the persuasiveness as well as the legitimacy of an *ad absurdum* argument depends on the extent to which any given conclusion is absurd. The degree of absurdity is then determined by how laborious any given conclusion is to imagine by those whom the legal norms affect. In this specific case however it is precisely the persuasiveness of the *ad absurdum* argument that is diminished. It is namely possible to argue that for those affected by the legal norms, it would to the contrary be possible to imagine (and possibly even such an interpretation would be preferable to them) that local administrative offices would send their tax returns on to the appropriate tax authority.

8. TELEOLOGICAL FORMATION OF THE LAW IN CASE OF SO-CALLED UNINTENDED GAPS IN THE LAW

From 2009 on it is possible to find in court decisions references to Filip Melzer's book *Metodologie nalézání práva* (Methodology of Legal Findings, first published in Brno in 2008). As a rule courts refer to this book when they want to proceed *contra verbis legis*, be it with the help of a teleological reduction or with the help of analogy. Filip Melzer, drawing on the works of Karl Larenz, Franz Bydlinski and Ernst Kramer, accepts the formation of the law in the case of gaps in the law, whether they be normative or teleological (open ones when the literal interpretation is from an objectively teleological standpoint too narrow; and closed ones when it is too broad), with the exception of gaps intended from the beginning.[45] One can already find more than twenty judicial decisions that cite this work of Melzer's.

Let us now turn to two cases that make problematic use of the concept of unintended gaps in the law.

The Supreme Administrative Court in its quite famous judgment 8 As 7/2008 interpreted Sec. 10 par. 1 of the law on free assembly, according to which the government can forbid assembly "if the announced purpose of the gathering tends towards appeals a) to deny or restrict the personal, political or other rights of citizens because of their nationality, sex, race, origin, political or other thinking, religious confession and social position or to the incitement to hatred and intolerance for these reasons; b) to commit violence or crudely indecent behaviour; c) otherwise to violate the Constitution and laws". The Supreme Administrative Court extended the possibility of forbidding an assembly because of the impropriety not only of its announced goal also to apply to what was discovered to be the real purpose of the assembly.[46]

First of all, with a reference to Filip Melzer's methodology, it acknowledged an unintended teleological gap in the law there from the beginning: *"The lawmaker obviously intended to make it possible for an administrative body to prohibit an assembly in a case where its purpose would lead to that foreseeable result. And yet in accordance with the principle of a rational lawmaker, we can assume that the legislation proceeded from the supposition of standard conditions. Such is the situation when the announced purpose is identical to the real purpose. We can find no reasonable grounds why in the case of differing announced and real purposes of assembly it should come to the prohibition of an assembly only because of a discrepancy between the announced purpose and the rights protected in Sec. 10 par. 1 on the law of assembly but not however because of the discrepancy between the real purpose of the assembly and those rights. If the announced goal is merely pretence, it does not threaten those rights and interests protected by law, the protection of which is legitimized by a ban on assembly – for the very reason that it is not real. In such a case these interests can be threatened only by the real, existing purpose, for which the assembly has been called."* (point 36 of the judgment).

Because nothing of essence could be ascertained from either the statement of reasons or the minutes of the Federal Assembly, the Supreme Administrative Court concluded that

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[45] MELZER, F. *Metodologie nalézání práva*. Praha: C. H. Beck, 2010, pp. 232–234.

[46] This judgment, informally referred to as Crystal Night II, thus confirmed the Supreme Administrative Court's judgment pronounced in its Crystal Night I judgment (8 As 51/2007). Both judgments involved the ban on the infamous parade by right-wing extremists through Prague's Josefov on 10 November 2007.

"…this is an instance of an unintended teleological gap in the law. The lawmaker assumed that the announced purpose of the gathering would always be identical to the real purpose, and his will inclined toward making it possible to forbid gatherings, should they lead to the threatening of rights protected in Sec. 10 par. 1 of the law on assembly" and found that in contrast to an intended gap in the law, the court can fill in an unintended gap.

This judgment is however at odds with art. 19 par. 2 and art. 4 par. 2 of the Charter of Fundamental Rights and Basic Freedoms, according to which one may restrict the right to free assembly only by a law. The reservation of the law here forms a configuration similar to the principle *nullum crimen sine lege*: one may not use analogy to broaden restrictions on fundamental rights and freedoms against the text of the law.[47] The Supreme Administrative Court did, it is true, deliberate on both this argument and the argument of the existence of a different, proportional solution, and rejected them both. Instead it took the liberal assembly law from the first months of free Czechoslovakia after the Velvet Revolution, a law which in the face of the communist dispersal of demonstrations expressly established the principles of announcing and of not allowing, and bound the forbidding of assembly with very strict conditions and extended the improper "announced purpose" intentionally *contra verba legis* so as also to apply to "a covert real purpose", thereby fundamentally broadening the possibilities for forbidding assembly. Its deliberations on the unintended gap in the law did not in this case sound very persuasive.[48]

The Constitutional Court too used the unintended gap as argumentation in judgment III. ÚS 2264/13 of March 2014. *Contra verba legis*, it pointed to Sec. 37 par. 1 of the rules of criminal procedure, according to which "should the accused not use the right to choose an attorney and should his legal representative not choose one for him either, then one can be chosen for him by a directly related relative, his sibling, adoptive parent, adopted child, spouse, partner, companion or participating person". The Constitutional Court broadened this list by analogy also to include a former wife and quashed the opposing judgment of the Supreme Court because it violated the right to a fair trial.

The Constitutional Court, with a reference to Melzer's book, states: *"The boundary between the creation of a law and the formation of a law is determined by whether the ungrounded differentiation between compared provisions is an intended decision of the lawmaker or not. In principle a judge is not justified in filling in the intended gap in the law. Provided some legislation of an incoherent value is really desired by the lawmaker (he is aware of its discrepancy with the teleological groundwork of the legal system, and in spite of that he accepts such an adjustment), this strengthens the principle of democracy and the principle of the separation of powers since the creation of law is primarily the task of a democratically elected lawmaker and by no means of a judge. The question whether the lawmaker's decision was intended or unintended (an intended or unintended gap) can be settled above all by the clearly transparent intention of the lawmaker; it represents the real*

[47] These doubts are also expressed by Vojtěch Šimíček in his commentary on art. 19 of the Charter of Fundamental Rights and Basic Freedoms: "It may nevertheless be objected that this interpretation does not have legal support, and in as much as it leads in its consequences to a restriction on the right to free assembly beyond the framework of the law, we have doubts about its constitutionality." Cf. WAGNEROVÁ, E., ŠIMÍČEK, V., LANGÁŠEK, T., POSPÍŠIL, I., et al. *Listina základních práv a svobod. Komentář*. Praha: Wolters Kluwer, 2012, p. 464.

[48] More details in WINTR, J. *Metody a zásady interpretace práva.* Praha: Auditorium, 2013, pp. 200–201.

will of the lawmaker (a subjective historical interpretation) and not a will which is only assumed (namely, the opposing presumption applies, i.e., the assumption of a rational lawmaker)."

In this case it sees an incoherence of values in the rules of criminal procedure in the ungrounded discrepancy between this Sec. 37 par. 1 and Sec. 100 par. 2 (the right to refuse deposition, should the witness thus create the danger of criminal prosecution for the same list of people and furthermore also for "other persons in a familial or similar relationship, the detriment of whom would justly be felt as their own detriment") and Sec. 163 par. 1 (the impossibility of criminal prosecution for certain crimes without the consent of the person damaged when that person is in some relationship with the suspect corresponding to that list). The Constitutional Court perceived in all three of these provisions a similar purpose, that is, the protection of those who might suffer from the criminal prosecution of a person close to them. And the approach of the lawmaker who with law No. 178/1990 Sb. added "persons in a familial or similar relationship, the detriment of whom would justly be felt as their own detriment" to Sec. 163 (that is, Sec. 163a) and not to Sec. 37, was judged to be an inconsistency and thus as an unintended gap in the law. It thus used analogy, which in this case is not excluded since we are dealing with procedural law and besides that, it aims at the benefit of the accused.

This manner of using teleological interpretation quite clearly goes *contra verba legis* and cannot even defend itself alleging the absurdity of a literal interpretation. We suppose for that reason that it should be used only exceptionally and with extraordinary circumspection.

9. CONCLUSION

The cases considered here demonstrate that the use of teleological interpretation in Czech court practise is notably diverse. One can follow a certain tendency whereby in more recent decisions teleological interpretation is used ever more boldly in a *contra verba legis* approach. This trend is at times criticized by judicial science.[49] Some works indicate the methodological procedures which might make interpretation more easily predictable.[50] It can be shown, however, that even the use of such methodological approaches do not always lead to convincing conclusions.

The solution can most definitely not be the rejection of teleological interpretation. In a democratic state based on rule of law, the law must be based on values, as the Constitutional Court has firmly ruled and as moreover say lawmakers too in Sec. 2 and 3 of the new civil code. All the more important then is the further elaboration of methodology, such that teleological interpretation might lead to reasonable interpretations to the benefit of legal certainty, justice and the purposefulness of the law.

[49] Cf. especially GERLOCH, A., TRYZNA, J. Závaznost právních textů při interpretaci a aplikaci práva soudy a argumentace *lege artis*. In: GERLOCH, A., TOMÁŠEK, M. et al. *Nové jevy v právu na počátku 21. století II. Teoretické a ústavní impulzy rozvoje práva*. Praha: Karolinum, 2010.

[50] Cf. especially the doctrine about the three areas of the meaning of the concept and about intended and unintended gaps in MELZER, F. *Metodologie nalézání práva*. Praha: C. H. Beck, 2010, and further the rules of preference in WINTR, J. *Metody a zásady interpretace práva*. Praha: Auditorium, 2013, pp. 206–216.