

CONFERENCES AND REPORTS

Report from the workshop: Historical and New Approaches to Legal Interpretation¹

On 14 September 2018, the international workshop entitled “*Historical and New Approaches to Legal Interpretation*” was held at the Faculty of Law of Charles University in Prague.

The workshop was organized mainly by JUDr. Pavel Ondřejek, Ph.D., within the Charles University programme Progres Q04 “*Law in a Changing World*” in cooperation with the Czech Section of the International Association for Philosophy of Law and Social Philosophy (IVR).

The special workshop was a result of a cooperation between the Faculty of Law, Charles University and the Faculty of Law, University of Eastern Finland. Its main aim was to explore new ways of searching for knowledge in the very important theoretical field of legal interpretation. The workshop speakers consisted of three Finnish and four Czech legal theorists. The first panel “*Reflections on ‘Savigny’s Canons’ of Interpretation*”, was opened by Professor Seppo Sajama (University of Eastern Finland Law School) with his speech “*The Systematic Canon*”. Prof. Sajama opened his speech with a historical classification of the systematic method of interpretation - with basics in Roman law and its modern meaning on the ground of Savigny’s concept of interpretation of law. He mentioned an important fact of distinguishing between grammatical, systematic and historical methods of interpretation by concentrating on whether the texture of a document (grammatical method) or its context while the context is normative for the systematic method of interpretation and factual for the historical method. Prof. Sajama stated a question: “*What is it that we want to systematize by systematic canon? Certain provisions of laws? Laws themselves? Legal knowledge?*” He stressed that an important role in this matter is coherence. If we want to understand the real meaning of legal text through the systematic method, we basically try to make certain words or sentences more coherent with other legally relevant documents; this is because we naturally need to logically perceive coherent stories, human behaviour and also law. He noticed a similarity between logical and systematic methods when the logical method of interpretation is just a systematic method applied to sentences. Prof. Sajama concluded that systematicity is a necessary condition for our process of understanding and it has a few more conditions that according to Ingeborg Puppe and David Hilbert, need to be fulfilled in order to be coherent and meaningful enough; this includes non-contradiction, non-redundancy, completeness.

Subsequently, Senior Lecturer Maija Aalto-Heinilä (University of Eastern Finland Law School) delivered a presentation entitled “*The Concept of Meaning*”. The starting point of the presentation was to describe how the idea of meaning is crucial for our understanding and thus interpretation of legal texts. In her presentation, doctor Aalto-Heinilä divided theories of meaning into three categories: externalist, intentionalist and conventionalist theories. After detailed assessment of merits of each theory (as well as the opinions of their critics) she concluded that the proper way of ascribing meaning is to apply the conventional model of meaning based on finding the conventional use of words that occur in everyday legal practise. The main problems with both semantic externalism and radical intentionalism is that both of these theories of meaning are not applicable unless we accept the fact that we understand the language. Hence, what is important is to analyse legal practise and not to search for meaning ‘outside’ the real world. This leads to the conclusion that an illustration of the conventional use of law can lead us to the actual interpretation of legal concepts.

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The first panel of the workshop was concluded by Assistant Professor Niko Soininen (Helsinki Institute of Sustainability Science, University of Helsinki) and his energetic presentation called *“The Concept of Interpretation”*. The key motive of dr. Soininen’s contribution is the relationship between meaning and interpretation. He was wondering about different ways and results of legal interpretation on the grounds of Ludwig Wittgenstein’s model of interpretation - as replacing one rule’s expression by another. That means every theory of interpretation has to explain its main rule of changing such meanings. To examine such rules, we need to ask what is the primary goal of interpretation, which concepts are the most relevant to achieve such a goal and what kind of evidence do we need to do that? The speaker outlined five doctrines to answer these very questions. Considering the classic interpretation methods we should say that these approaches vary according to different backgrounds when being explored. There is a difference between the source of interpretation consisted of statutory texts (textualism) or the legislature will behind it (intentionalism). These differently put approaches (compared to the standard model of legal interpretation) also count towards the scientific meaning of used language (externalism) and what is more, also on the social consequences of results of interpretation (social engineering). On top of that, all these directives should include something that can be called *“coherentism”*. That boils down the fact that the application of each theory of legal interpretation should result in as much of a coherent picture of meaning as possible.

The second panel *“Contemporary Approaches to Legal Interpretation”*, started with doctor Katarzyna Žák Krzyžanková (Charles University, Faculty of Law) who introduced her speech called *“The Logocratic Method of Legal Interpretation”* by stating the question of possible influence of logic on legal interpretation and argumentation. She firstly compared methodological approaches used in law and logic. In logic it is a “formal” language we use unlike a “natural” language used in law. What dr. Žák Krzyžanková was trying to say probably was, that these, shall we say, different languages, are a result of different criteria of evaluating logical and legal statements. Whereas in logic we consider the statements true or false, the value of legal statements is more of a matter of justification. This leads to outlining the key role of induction and abduction reasoning in legal interpretation and argumentation. As a result, these two methods could also (unlike description and analysis) lead us to probabilistic inferences, which are usually present during legal interpretation.

According to dr. Žák Krzyžanková, it is also important not to forget about the importance of analogy, which unlike deductive reasoning, could produce new arguments. It was said that the central part of the logocratic method of legal interpretation is identification of the argument’s mode of logical inference (logical form). Through describing the meaning of the four basic irreducible logical inferences, the speaker summed up some pros and cons of using different logical approaches in legal discourse. For example, a logical abstraction and closeness of logic comparing to law, could be used as an effective tool in legal argumentation, bearing in mind the fundamental differences between those two subjects.

“Modern ‘Extracanonical’ Methods of Interpretation, Namely in Constitutional Reasoning” was the title of doctor Pavel Ondřejek’s (Charles University, Faculty of Law) workshop presentation. A few key topics were brought up including the questions: why did the extracanonical methods even appear, what arguments are new and extracanonical and where is their place in recent methodological conception of legal interpretation? Dr. Ondřejek pointed out that to answer these very questions it is important to establish the role and nature of methodological approaches to jurisprudence itself in connection with the role of fundamental rights in contemporary legal doctrines. Apart from the interpretation of legal rules, the law also needs to work with principles and values. The role of aims and values in law strongly influences the way of thinking about the sources and purposes of the general idea of law; since the recent history of legal thinking could be viewed as tending to emphasize mere purposes to something what is more of a “Value Jurisprudence” with highly increasing importance of fundamental rights in the second half of the 20th century. Such legally philosophical “settings” of jurispru-

dence thus works as a starting point for any modern method of legal interpretation. According to dr. Ondřejek, changes in the methodology of legal reasoning are influenced by various accents on the purposive character of law, principles and values in law and fundamental rights. He summarized that the current law could be characterized as relatively autonomous with specific methods of legal interpretation, based on arguments depending on a subject of certain methodological accent as above-mentioned. Hence it can be distinguished between a pragmatic interpretation (consisting of result-oriented methods); methods of interpretation based on an efficiency of law as an essential value in law; methods based on specific judiciary tests (proportionality, discrimination); or a consistent legal interpretation aimed at overcoming problems associated with current legal pluralism. Thus, extracanonical methods of legal interpretation could produce new arguments and also new interpretations of the old ones.

Subsequently, doctor Jan Tryzna (Charles University, Faculty of Law) gave a speech entitled *“An Influence of Extralegal Arguments on Methods of Interpretation of Law”*. Firstly, dr. Tryzna stated a question: “What are the legal interpretation methods actually good for?” Then he answered that the main purpose of the interpretation methods is to find the content of law. In the speaker’s opinion, the sources of inspiration for Savigny’s methodology of legal interpretation were Roman law and two of the earliest European civil codes, namely German *Codex Maximilianeus Bavaricus Civilis* from 1756 and Austrian Civil Code (*ABGB*) from 1811. A possible influence of extralegal arguments on the methods of legal interpretation came from largely political nature of interpretation rules contained in above-mentioned legal acts, as well as in relevant commentary literature from the 20th century. Dr. Tryzna continued that partly political nature of some legal arguments opens space for two models of law which Jerry Waldron referred to as *“Partisan”* and *“Neutral”*, where the partisan model is unlike the neutral completely dependent on current political situation. It was also mentioned that introductory provisions of the Czech Civil Code (containing a few rules of interpretation) are not so much different from the rules previously used pursuant to Austrian *ABGB*. This brought dr. Tryzna to the conclusion that the current methods of legal interpretation are not as politically neutral as we most likely think they are. We could consider them as at least partly (as would Waldron say) *“Partisan”*, which also the speaker himself found rather disturbing.

The final workshop presentation *“Methods of Interpretation in Czech Private Law”* was given by Associate Professor Karel Beran (Charles University, Faculty of Law). Associate Professor Beran aimed at comparing the methodology of interpretation of legal provisions contained in private law with an interpretation of a legal conduct (legal transaction). This comparison was demonstrated on the selected provisions of the Czech Civil Code. The major difference between those two is a share of the legal text on an object of interpretation being in question. This is a result of comparing a general object of interpretation (the legal provision containing legal norm) with an individual object (the legal conduct from which rights and duties of legal entities arise). In the introductory provisions of the Czech Civil Code we can find a few basic rules of how to interpret provisions of the Czech private law. What we find there is mostly the standard conception of interpretation starting from grammatical and ending with the teleological method of legal interpretation. However, the author noticed that the same rules are not fully applicable to interpretation of legal conduct. The main problem is that the content of every legal conduct pursuant to Article 556 of the Czech Civil Code does not need to be wholly contained in the legal text. The provision in question aims at finding out the actual will of the acting person. Thus interpreting the expression of the person’s will according to the person’s intention, while the intention works as the source of the subsequent factual expression. Only in the case of the impossibility of ascertaining the person’s intention, we should attribute the usual meaning to the expression of her/his will. Another interesting conclusion from the presentation of Associate Professor Beran could be made when thinking about the similarity of using the interpretation methods when interpreting legal conduct and when making a law. The reason for this similarity could be that during the interpretation of legal conduct, we actually try to recon-

struct the person's will behind its actual expression, which demands the same teleological thinking as when starting to make a law because first we need to think about its general purpose and the real aim. This led to the conclusion that the order of interpretation methods of legal conduct is reverse to the order used in interpreting laws and legal texts. That means the interpretation of legal conduct starts from the teleological method and through systematic and logical methods ends with the grammatical method.

Viktor Gazda*

* JUDr. Viktor Gazda, Faculty of Law, Charles University, Department of Legal Theory and Legal Studies, Prague, Czech Republic