INTERPRETATION OF THE LEGAL NORM. APPLICATIONS OF THE PRINCIPLE UBI LEX NON DISTINGUIT, NEC NOS DISTINGUERE DEBEMUS

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Abstract

The connection of casual reality to legal norm is complex and any legal solution implies a particular reasoning. The interpretation of law involves a legal methodology capable of providing specific methods of interpretation, with its own rules. One of the rules of logical interpretation is expressed by the principle "ubi lex non distinguit, nec nos distinguere debemus", i.e. "where the law does not distinguish, nor the interpreter must distinguish" or, in other words, the generality of the formulation of a legal text leads to generality of its application, without being able to make distinctions to which that text does not refer.

Keywords:

principle, logic interpretation, application of the legal norm, “ubi lex non distinguunt, nec nos distinguere debemus”

INTRODUCTORY CONSIDERATIONS

The rationale for the interpretation of legal norms is found in its principles, which in turn are based on the principles of law and on methodological rules. The purpose of the interpretation is to find both the authentic sense that the juridical norm has and the formal content connection of this meaning with the causal reality to be solved and this goal is evoked both in the plan of the theory of law and that of its application.

Legal interpretations aim at detecting the normative meaning of a source of law, in a theoretical purpose or in one related to solving a concrete cause. The judge may be only a performer without vision and reason [1: p.

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323], but only if the legislative system and the system of values imposed by the society operate within the same context, where the judge is obliged to follow the strictly derived meaning of the law. However, not least, there are cases where the legal norm is not clear and precise.

In this context, through the judge's interpretation, it is intended to achieve the standards imposed by principles or dimensions of morality, generated by natural law.

The interpretation is double determined: by the legislator, on the one hand, and by the judge, on the other hand, but this order is not immutable. Lae has its own ability to analyze and select social phenomena, quantify and qualify them, visualizing social values [2: p. 133].

Interpretation makes valuation, as it signifies not only the analysis of the legal fields, but also of those domains that, being part of reality, are relevant to the law [3: p. 130].

The logical method of interpreting the law has the widest use, being at the core the basis of any interpretation, the foundation of all other methods. Without logic the legal act is meaningless, the legal act cannot be qualified, the sanction is arbitrary and the legal interpretation is ineffective [4: p. 516].

Among the rules that the logical method operates with, I will refer in this paper to the one according to which where the law does not distinguish, nor does the interpreter have to distinguish, a rule which requires the interpreter not to introduce distinctions where the legal text does not.

In the presence of a law known in general terms, which orders without restrictions and without conditions, the interpreter has no power to reduce the substance by introducing requirements that would not be found in it, or to circumvent its implications on the grounds that it would be an exceptional case. Non-compliance with this principle will have the effect of diverting the law from its purpose [5: p. 267].

**APPLICATIONS OF THE PRINCIPLE *UBI LEX NON DISTINGUIT, NEC NOS DISTINGUERE DEBEMUS***

According to art. 413 par. (1) pt. 2 of Civil Procedure Law: “(1) The court may suspend the case (…) 2. when the prosecution started for an offense that would have a decisive influence on the judgment to be given, unless the law provides otherwise.”

The question was whether the dispositions of art. 413 par. (1) pt. 2 of Civil Procedure Law gives the judge the prerogative of suspending the
case only in the case of the initiation of criminal prosecution in personam, or it is sufficient only the commencement of criminal prosecution in rem.

We show that the suspension provided by art. 413 par. (1) (2) of the Civil Procedure Code is an optional suspension which is left to the discretion of the court and is based on the initiation of criminal proceedings for an offense which has a decisive influence on the judgment to be given. The text expressly and unequivocally imposes the condition for initiating criminal prosecution for a criminal offense, as well as the existence of sufficient evidence that would imply the following: the existence of the offense would have a decisive impact on the solution to be decided in the case subject to the suspension.

There was a non-uniform practice in interpreting these legal provisions. Some courts have found that the legal provisions confer on the judge the prerogative of suspending the case also in the event of the initiation of criminal prosecution, only in respect of the act, since the text does not distinguish as the criminal prosecution is initiated in rem or in person, the only condition imposed by the law being that the offense should have a decisive influence on the judgment to be given.

The opposite opinion was in the sense that the suspension can be ordered only in the case of the initiation of criminal prosecution in personam. This opinion was motivated by the fact that, in the presence of a criminal prosecution in rem, the civil court sees itself in the situation of not being able to conclude that the criminal trial would have a decisive influence on the solution that would be given in the civil process. If it was accepted that starting in rem criminal prosecution would be sufficient, the immediate consequence would be that any civil trial would be extremely easy to suspend, as in the phase of in rem prosecution the notification of the prosecution bodies is followed only by a check of the formal conditions of the notice, without giving evidence and without indicating the act committed by the perpetrator.

Through ICCJ Decision no. 21/2017, it was appreciated that the provisions of art. 413 par. (1) pt. 2 of the Civil Procedure Code confers the judge the prerogative of suspending the case also in the event of the commencement of criminal prosecution regarding the act, the law text making no distinction in relation to the two stages of the criminal prosecution, the interpretation thus following the rigors of the principle ubi lex non distinguit, nec nos distinguere debemus, the only condition being that the interested party to obtain the suspension, to inform the court of the
concrete elements that outline the existence of the offense and to what extent its finding would influence the solution for the civil cause.

The prescriptions, disqualifications and usucapions started and unfulfilled at the date of entry into force of the new law are fully subject to the legal provisions that have established them (art. 6, par.4 Civil Code).

The prescriptions started and unfulfilled at the date of entry into force of the Civil Code are and remain subject to the legal provisions that have established them. (Art. 201 Law 71/2011 for implementing the new Civil Code).

With reference to the interpretation and application of the above-mentioned norms, corroborated with the provisions of art. 2513 of the Civil Code, related to the provisions of art. 18 of Decree no. 167/1958 regarding the extinctive prescription, the question was raised regarding the obligation and the possibility of the court to verify the fulfillment of the prescription term and to invoke ex officio the exception of the extinctive prescription, as well as the possibility of the interested party to invoke the same exception in any procedural stage, in the case of prescriptions started and fulfilled or unfulfilled at the date of entry into force of the Civil Code from 2011.

In a first major jurisprudential orientation, it was considered that extinctive prescriptions that had begun before the entry into force of the Civil Code from 2011 and fulfilled or unfulfilled on 1st October 2011 remain entirely subject to the legal provisions that they have established, including under the regime of their invocation, so that in the litigations introduced after 1st October 2011, the courts can invoke, ex officio, the exception of the extinctive prescription as a content exception, peremptory and absolute, as the interested parties also have this right, regardless of the procedural stage dispute. This focus is motivated by the fact that, since the rules contained in art. 6 par. (4) of the Civil Code and art. 201 of Law no. 71/2011 for the implementation of the Civil Code make no distinction to the applicable legal regime, the law governing the extinctive prescription, under all its aspects, of material and procedural law, is the law under which it has begun to exist.

In a second minor jurisprudential orientation, some courts have considered that these prescriptions remain subject to the legal provisions that have established them, with the exception of the regime of invocation, which is subject to Art. 2.512 and art. 2.513 of the Civil Code, law texts that contain procedural rules for immediate enforcement, so that in disputes started after 1st October 2011 the court is no longer required to investigate whether the right to action or enforcement is prescribed and can no longer
invok the exception of the prescription term, whereas the interested party can do so only under the conditions and limitations provided by the two aforementioned articles of the Civil Code. This orientation is grounded on art. 5 par. (2) of the Law no. 71/2011 for the implementation of the Civil Code and on the interpretation per a contrario of the provisions of art. 223 of the same normative act, from which it results that the rules of prescription invocation refer to the domain of its procedural regime, being immediately applicable.

In the doctrine, it was considered that the immediate application of the new prescriptions started and unfulfilled, on the assumption that they represent situations in progress, is questionable because the new law, by amending or suppressing prescriptions born before its entry into force, partially or totally eliminates the effects the old law already produced, being thus partially retroactive [6: p. 247]. At the same time, since Law no. 71/2011 does not contain any special provision regarding the invocation of the extinctive prescription exception, which means that it is applied the rule established by art. 6 par. (4) of the Civil Code, which makes no distinction between the material and procedural provisions on the prescription [7: p. 499].

Following the resolution of the appeal in the interest of the law regarding these jurisprudential opinions, the High Court of Cassation and Justice, through Decision no. 1/2014, concluded that, as the transitional rule of art. 201 of Law no. 71/2011 uses no distinction, (and ubi lex non distinguit nec nos distinguere debemus), while that of art. 6 par. (4) of the Civil Code - which employs an identical solution, giving expression to the same principles of law - contains the phrase "entirely", it is understood that the law under which prescription has started to flow will govern both the material and procedural law aspects on prescription, even if it is done after the entry into force of the Civil Code.

According to art.135 par.2 from the Civil Procedure Code: "There can be no conflict of competence with the High Court of Cassation and Justice. The decision of declining or determining the competence of the High Court of Cassation and Justice is mandatory for the sending court."

In this case, the question of law over which there have been numerous disputes regarded the issue whether, after the High Court of Cassation and Justice has pronounced a regulator of competence, the court considered to be competent in relation to the rules governing territorial competence may still restore the discussion about the competence from the perspective of norms governing material competence.
Court of Appeal from Constanta, by Civil Decision no. 14 / C / 17.05.2017 stated that, whenever the determination of the competent court was made by a regulator of competence pronounced by the High Court of Cassation and Justice, the sending court is obliged to take it into account, even if there were, at the time of the competence conflict, other legal or factual matters that might have had an effect on the competence. Since the legal norm does not distinguish between the types of competences on which the High Court of Cassation and Justice could have pronounced, it is clear from the interpretation of the principle *ubi lex non distinguit nec nos distinguere debemus* that, in this case, the sending court cannot reissue the question of its competence, even if analyzed from another perspective.

This solution is justified by the legal doctrine through the existence of a full judicial authority of the competence regulator [8: p. 29]. Otherwise, it is allowed to reconsider again the competence, after it has been established; it would make possible the existence of contradictory final judgments on the same legal issue - the competence of the court in that case - but it would mean to empty the content and utility of the conflict resolution procedure, fact which is unacceptable.

In the case of annulment or invalidity of the contract concluded in authentic form for a cause of nullity of which existence results from the actual text of the contract, the prejudiced party may require the public notary to pay compensation for the damages suffered under the conditions of tort liability for their own deed (art. 1258 Civil Code).

Through this legal norm, a special form of liability has been established for the personal act of the notary public, to whom is imputed the existence of a cause of annulment resulting from the content of the contract.

The question arises whether, in order to engage the tort liability of the notary public, it is necessary for the authentic form of the act in question to be a condition for the validity of that act or the situation is identical even in the case when, even if the law did not specifically impose, the parties have chosen the authentication procedure for various reasons.

It is noted that the law does not specify whether authentication is an ad validitatem requirement for the exigency of the contract or only an option of the contracting parties, so that it will be applied the rule *ubi lex non distinguuit nec nos distinguere debemus* [9: p. 419].

The parties may request the court, at the beginning of the session, to postpone cases that are not in a state of trial if these requests do not cause
debates. When the panel of judges is made up of several judges, this postponement may be also made by a single judge. (art. 220 Civil Procedure Code).

The question arises whether the request for postponement can also be made if only one of the parties is present. In this respect, the courts share divergent views, meaning that some courts allow cases to be postponed by the procedure established by art. 220 of Civil Procedure Code, only if both parties are present, while other courts consider the procedure to be legal even in the case when only one party is present.

I appreciate that the first opinion is the result of an extremely rigid interpretation of the legal provisions. Taking into consideration that the law does not distinguish, or does not establish that the parties can only take the case for postponement together, it is incident the principle *ubi lex non distinguat nec nos distinguere debemus*. In support of this solution also resides the fact that there are many situations in which it is not possible for a party to be present, for various reasons, one of these reasons being the failure of the citation procedure [10: pp. 1317-1318], [11].

Violence can also lead to the annulment of the contract when it is directed against a close person, such as the husband, wife, ascendants or descendants of the party whose consent was vitiated. (art. 1216 par. 3 Civil Code).

In applying this norm, one aspect of the interpretation is the question whether the legal text concerns only the close person subjected to violence or his possessions. Given the fact that the text of paragraph 2 of the same article regards both the person and the goods (There is violence when the insulted fear is of such nature that the threatened party could reasonably believe that, in the absence of his or her consent, his life, person, honor or belongings would be exposed to a serious and imminent danger.) I consider that, in the interpretation given in paragraph 2, the principle *ubi lex non distinguat, nec nos distinguere debemus* is being applied.

Although there were also opinions of restrictive interpretations, according to which the victim of violence is the person and not her wealth, the tendency of the doctrine and jurisprudence was to include in the subject of threat also their assets. This solution was, moreover, acknowledged in art. 1402 par. 2 of the Civil Code of Quebec and found in art. 1140 of the French Civil Code amended. In the same sense, the Italian Civil Code stipulates in art.1436 par.1 that "violence is the cause of contract annulment also when the evil representing the object of the threat concerns the person
or the assets of one of the spouses or of one of his descendant or ascendant”.

CONCLUSIONS

The interpret does resort to just saying the law. He adapts it, constructively or restrictively, creates it to a greater or lesser extent. By interpretation, the legal norm is engaged in factual reality. The importance of solving any legal issue resides in the fact that the legal consequences that an imprecise provision may involve, depending on its extended or restricted concept.

Applying the principle \textit{ubi lex non distinguuit nec nos distinguere debemus} is particularly important, limiting the situations in which, through different interpretation of a legal norm, contradictory solutions are reached. We can not, however, talk about this principle as an absolute principle, since, depending on the concrete situation, sometimes certain distinctions can be made, even if they do not result expressly from the text of the law subjected to interpretation. The interpreter must take into account all the legal provisions likely to become incidents in the case, so that a possible systematic interpretation should also be considered. Moreover, in applying this principle, an equivalence between the spirit of the norm and the spirit of law, as a whole, must be sought.

References
