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Mihai LUPU¹

Abstract

Finding the truth is considered by many people involved in a lawsuit as the ideal of justice, beyond punishing those who are guilty for committing crimes, the obligation to recognize the subjective rights' violation or the compensation for damages. In certain situations, a partial truth becomes similar to injustice.

The legislators have turned the finding of truth into a fundamental principle of law, quite abstract in comparison to formal, direct norms, with provisions that require a minimum margin of interpretation. Taken in this formalism, law scholars, judges and lawyers, especially after a long period of time, may no longer relate to fundamental values, including the finding of truth. The compromised truth leads to a misapplication of the law and, implicitly, to a vicious court decision on litigation.

One of the arisen question is whether the legislator himself should be mindful of the truth in the law-making process. The approaches may be diverse: substantiation of norms, simplification of procedures, systematization of law towards the predictable and understandable solution to legal conflicts.

Keywords:

Truth, relativism, law, justice, formalism.

"The image is not the substance, but, without substance, the image is not created. The image of the moon is not the moon itself, but without the moon, the image does not exist. When we look at the water course, we see the moon's reflection in the water stream. Even if we catch the flowing water and it turns and we fill a bowl with it, the moon's image does not move. It can not be caught..." - Taisen Deshimaru

1. Our limiting and non-exhaustive approach to exhausting even a small part of the issue of truth in the realm of law has as a starting point a simple question: how important is the finding of the truth or the truth itself

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for the legal system? Idealists could respond simply: placed with justice and accountability, can be considered as the main value of the law. In the absence of these values, a legal system can be appreciated as having no foundation. Skeptics would come up with a series of counter-arguments, of course, but of relevance to these concepts until dissolution. One of them would be to establish formalism as the most important limit. The formal framework sometimes makes the investigation of the superfluous truth: the non-exercise of rights in a certain period of time "paralyzes" any intervention by the magistrate in deciding on the litigation brought to justice. The comprehensive investigation reveals its usefulness also from the perspective of a period beginning two decades ago, to which the attribute of "post-truth" is attributed. For the time being associated with the political and journalistic scene, the indirect influence on the legal world must not be underestimated.

From religion to science, truth has been imposed as an axiomatic value. Scientists of all time and in various fields have had consistent debates around questions: what is truth?; can truth exist? what are the methods that could lead to finding out the truth?

Truth can be imposed on the whole system of law, from the legislative process, through the execution and organization of law enforcement, to law enforcement in the case of conflicts involving a legal component, especially in the form of a sanction.

The formal framework of state intervention for the elimination of litigation is the process, in the two consecrated forms, civil or criminal. Truth is not, of course, a preoccupation with substantive law. What is not regulated or recognized is not positive. In procedural law we meet it as a rule governing the activity of the judicial authority. However, not only the judicial authority creates legal relationships. Any state authority that has the power to appreciate a reality and to take legal action should be concerned about the truth. Starting with the law-making process and ending with the reception report drawn up at the completion of a building, the truth can generate legal consequences.

The principle of finding out the truth, along with the active role of the judge, has been imposed in the sphere of procedural law. If we turn to law (Article 5 of the Code of Criminal Procedure - Published in Romania's Official Gazette, Part I, no. 486, July 15th 2010), the principle appears to play a secondary role, and it is more of an obligation on the part of the judiciary.

Finding the truth in the criminal process implies a convergence, up to the identity, between the conclusions reached by the judicial bodies and the objective reality of the act and its author. Thus, the legal truth must be the same as philosophical truth. Philosophers can have multiple perspectives on the truth. With the choice being difficult, the legal doctrine embraced the concept based on positivist gnoseology, according to which truth is the fair, verifiable reflection of objects and phenomena of nature and society, existing outside of consciousness and independent of it, having an objective character. As a result of this vision of truth, a series of procedural means were set up to reveal as much as possible to the magistrate the reality: the administration of evidence for both sides; sanctioning the rejection or bad faith recording of the evidence of the defendant or suspect; the judicial control, whether it is the one dispensed over the acts of the prosecutor or the ways of appeal against judgments are envisaged; the regulation of some institutions for judicial errors (Neagu, & Damaschin, 2015: 72-75), (Crișu, 2013: 63-65), (Mateuț, 2007: 170-171).

One of the most important effects of a court decision is the authority of the trial. Judicial truth appears even more important in the context of the principle of legal certainty from the point of view of the judgmental authority. In spite of the advantages of a court ruling, beyond judicial remedy, judicial infallibility is today a fictitious issue that is harder to bear because the principle that the judge does not commit errors has the same status as the principle that no one can invoke the ignorance of the law, the ignorance of the law, but the prohibition to rely on ignorance, likewise is not in question that the judge can not commit errors, but that he is forbidden to give them legal consequences. The procedure (Article 6 of the European Convention of Human Rights, for example) concerns the right for everyone to benefit from a judicial method that minimizes the prospect of error, but it is not necessary to go so far as to claim that there is a "right to truth" for which the right to the judge would be the form of access, but why would not even admit that there is a "right not to be subjected to the error" and the first right mentioned is not the mere inversion of the other right, since the latter protects the margin the judge's judgment, while the former does not. The impartiality that the judge has to prove does not imply that a judge behaves as though they did not know anything, but as one who, as a method, always doubts, until the moment they judge. (Alexe, 2008: 528-529)

By resorting to the mathematical principle of reducing absurdity, if we admit the existence of a direct relationship between the duty of the court to have an active role and the presumption of truth as the basis of the

authority of the work to be judged, the duty of diligence, means and not the result, set by the judge, would create serious, even insurmountable difficulties; it would be unrealistic to deny any connection between the active role of the court and the quality of the judgment (Alexe, 2008: 529).

The lawyers send the problem of truth fairly easily, placing it on the field of other fields, such as exact sciences, philosophy, psychology, with a reference to the notion of objective truth, correspondent of the description of reality. As an absolute value of a system of law, truth escapes to institutions that may appear to be taking more of an organized relativism. I only mention two of them: legal fiction (state) and opposition rule - exception. If the rule expresses objective, unique truth, why would the exception be necessary?

Truth is not limited to judicial investigations that lead to the dissolution of a litigated legal relationship. The whole legal system is marked by the truth-error-error contradiction, in a vicious circle that implies a continuous evolution. The sovereign state power is the people, who choose their representatives and censure acts of power through the referendum. Representatives are elected on the basis of a political program with the vocation to become act of government, law-making, enforcement and enforcement. Presenting facts as untrue, unfulfilled promises, forgotten once the elections are over, may be alterations to the truth that are likely to produce important legal consequences.

There is a presumption that the statements made in the public space express the truth, from advertising for some products to the electoral program. The ad determines conviction, conviction gives rise to the legal relationship, the contract. What happens when the product does not match the features presented? Exaggerating the qualities of a good in a certain margin is natural and perceived as normal. Beyond this exaggeration, the seller can be held accountable. For some products that may affect health, although the sale is not forbidden, advertising is prohibited. in the sense that Truth Equals Liability.

Truth can be perceived as the purpose, medium or even attribute of power.

2. In the vast field of truth, the reference to positivist conception of truth is, at the level of the development of science in the last few years, a little obsolete. At least, the truth is more complicated.

A single challenge to the "single truth" questions the objectivity of the "look" of the jurist, a relevant element in finding a legal solution. If

initiates of different domains cannot see the truth, how can someone with formal training know it?

Richard Rorty rejected, on good grounds, the idea of the possibility of a description without a presumption of reality and the idea of a theory that is isomorphic to reality. His thesis is that in knowledge we actually have to do with versions of the world that "the world is made." Hence the inevitably vague character of the rules and determinations, as a principle effect on the openings and the multiple possibilities of their interpretation and the regression to infinity, which cannot be stopped. (Rorty, 2000: 6-7)

Rorty's pragmatism has the following fundamental features:

a) anti-essentialism applied to a notion such as truth, knowledge, language, morality, and similar objects of philosophical theorization;

b) there is no epistemological difference between truth about what should be and truth about what it is, no metaphysical difference between facts and values and no methodological difference between morality and science;

c) there are no constraints on research than conversational - there are no global constraints derived from the nature of the objects or the nature of the mind or language, but only from the particular constraints provided by the remarks of our co-investigators (Rorty, 2000: 21).

The truth is presented in the form of three essential aspects: the result of a scientific / artistic / philosophical approach; a process related to the evolution of human spirituality; a value per se, with serious implications for the practical life. If truth remains somewhat at the "head of line" as a brilliant ideal without ever being touched, its presence rather fascinates rather than stimulates. Or, if we do not admit the existence of truths, it is impossible to legitimize normality and moral authority. (Vidam, 2005: 815)

There is a difference between the theory of correspondence truth and the coherence of the theory of truth. The former refers to what is truth, while the second is focused on the production and formulation of truth. The first is a theory of image and significance, the second is a theory of justification. When we consider the nature of truth, we cannot bypass the reference to reality in ourselves, and when we consider its means of realization, we cannot avoid its scope of validity, its extensional character, from some factual truth to the obvious truths in it the very professions of logic and mathematics. Truth has intrinsic and normative value. This means that facts and values are not distinctly separate. The truth must be expressed, verified, initially by establishing consensus among experts and finally applied,

taking into account its consequences. The truth must take note of differences. Therefore, one of the criteria may be the utility criterion. A singular application can lead to extreme relativism, because different things can be useful to different people.

From an axiological perspective, truth is a human value, alongside good, beautiful, sacred. By truth, man is actively or passively enrolled in social existence, struggling for the discovery and promotion of truth or for its blurring and distortion. Gnoseologically, truth is presented to us as the process of cognitive closeness of existence by the knowledgeable subject. The truth is the correspondence of our ideas with the reality, the concordance of the information content, our knowledge with the attributes, the relations of the objects and the events of existence. Starting from admitting progress in scientific knowledge, K. R. Popper has come to the conclusion of the possibility of approaching more or less the truth: a theory may better embody the facts, may be more coherent than another, so there are degrees of truth. Hence, a possible crowd of altering this value is born. The most handy ones are: false, error and error. False, the value opposite to truth, and which occurs by distorting and altering the truth, is intentional. The error is unintentional and is defined as the lack of consistency between our knowledge and the external reality, knowledge that does not reflect the truth, the reality. The error can be explained by a mistake, which in turn is interpreted by deviation from the truth. Logical errors result from a violation of logical rules or rules that are based on false premise or a false premise and thus result in the false conclusions. They can be divided into two groups: sophisms - when violation of the logical rules of demonstrations, judgments, and judgments is made with the intention of misleading; paralogisms - when deviations from logical rules occur unintentionally due to improperly used language; expression ambivalence, inattention, rush, lack of exercise and logical rigor. Errors can also be classified as: determining the state of the facts (related to the object investigated, standard or instrument, subject - false beliefs, defective calculations, insufficient knowledge, lack of experience in research, introduction of false premises or some unconvincing theses); related to the structuring and logical processing of the facts. The mistakes result from violation of laws, norms of social cohabitation, deviation from good, honor, duty, right. The consequences of mistakes reverberate both on those who commit them and their peers through the inconvenience and evil produced. That is why the fault is accountable, expressed by sanction both morally and religiously and judicially. A defining feature of the mistake is that it occurs in the process of action, labor, deeds,

and in the material, spiritual, and behavioral hypostases. For man, action is itself the sign of his existence. What is specific to man, the defining feature of humanity, is activity, initiative, practical achievement, behavior, and spirituality (Suciu, 1994: 52 – 56).

According to Kant, truth is the agreement of knowledge with its subject. (Kant, 1969: 96).

The criterion of truth could be understood as a set of rules or a standard procedure or a distinctive sign outside of the statements, the application or referral of which may be decided in each particular case if a statement is true or false. The theory of scientific knowledge raised the question of the truth, intermediate between truth and false. (Dima, 1981: 187)

3. The legal rule is made up of hypothesis, provision and sanction. The judge, having a dispute settled, verifies whether the facts fall within the hypothesis of the general rule, how the parties have complied with the provision corresponding to the hypothesis, and ultimately sanctions the party who breached the rule. The factual situation does not involve the judge's direct experience, as he is convinced on the basis of the evidence. Through the evidence, the judge forms his conviction of the truth. Relevance in the process does not acquire the truth itself, which is only mediated, but the judge's conviction of the truth, in order to find out that he is not held by the position of the parties. The judge has an active role in the process. By way of example, according to art. 22 par. (2) of the Romanian Civil Procedure Code (Republished in Romania's Official Gazzette, Part I, no. 247 of April 10th 2015), the judge has the duty to enforce, by all legal means, to prevent any error in finding the truth in question, on the basis of the determination of the facts and the correct application of the law, in order to pronounce a thorough and legal. To that end, with regard to the facts and the grounds of the law invoked by the parties, the judge is entitled to ask them to provide oral or written explanations to discuss any factual or legal circumstances, if not mentioned in the application or in the pleadings, to order the administration of the evidence they consider necessary, as well as other measures provided by the law, even if the parties oppose it. Judicial inquiry is declared closed when the judge counts clearly.

The alteration of truth is punished when it produces legal consequences. The Romanian Penal Code (Published in Romania's Official Gazzette, Part I, no. 510 of July 24th 2009) punishes, in art. 244, under the marginal name of deception, *misleading a person by presenting as true a false act or as a liar of a true deed in order to obtain for himself or for another unjust patrimonial*

benefit and if a loss was caused . It is also sanctioned the false witness statement in a trial (Article 273) or misleading criminal investigation bodies (Article 268).

A subjective positioning in relation to the process due to a special quality (kinship) obliges those involved to abstain (judges, experts, witnesses) from participating in the trial.

It should also be noted that sincere conduct and contribution to finding the truth can also be rewarded in the form of mitigated circumstances in the application of a punishment or even in the form of the removal of criminal liability (the situation of the denouncer).

An expression of the importance of finding out the truth in the process is also the many remedies introduced by the law to remove errors or to reform judgments based on detaining a factual situation that is not in accordance with the truth. According to art. 442 par. (1) of the Code of Civil Procedure, errors or omissions relating to the names, quality and submissions of the parties or the calculation, as well as any other material errors contained in the decisions or terminations, may be made ex officio or upon request.

A ground for review of court judgments (Article 509, point 3) is where a judge, witness or expert who took part in the trial has been finally convicted of a criminal offense or the judgment is given under a document declared to be false during or after the trial, when those circumstances influenced the solution in question. If the finding of an offense can no longer be made by a criminal judgment, the reviewing court will decide, incidentally, on the existence or non-existence of the alleged offense.

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