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Uncertainty doctrine of legal systems*

ABSTRACT

This paper explores the inherent uncertainty within legal systems, stemming from the nature of legal interpretation, judicial decision-making, and applied legal procedures. It highlights the variable, context-dependent nature of legal interpretation and the subjective judgments in judicial decision-making, influenced by both internal and external factors. The analysis reveals the limitations of legal predictability and completeness, emphasizing the lack of a legal system capable of addressing every possible situation. The paper also discusses the influence of subjective factors in legal interpretation and the challenges in adapting abstract norms to specific cases, underscoring the complex relationship between reality, truth, and the role of language in the social system.

KEYWORDS: *legal uncertainty, interpretation, judicial decision-making, legal systems, subjectivity in law*

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Introduction – uncertainty doctrine of legal systems

"Every legal system inherently contains elements of uncertainty, which stem from the nature of the interpretation of laws, judicial decision-making, and the applied legal procedures."

These elements of uncertainty limit the predictability and completeness of the law, as there exists a kind of *interpretative uncertainty* within the legal system. This means that the interpretation of laws and procedural regulations (internal normative acts) is variable, context-dependent, and possible through the application of multiple methods of legal interpretation, which can lead to different conclusions even in the same factual situations. Furthermore, *uncertainty in decision-making* is evident, as judicial and legal decision-making is based on subjective judgments influenced by both internal and external factors within the legal framework, where the value of precedent and changes in legal interpretation vary over time and space. Finally, the *lack of completeness within the system is* evident, as there is no legal system capable of handling every possible legal question and situation in a predetermined manner. New social, technological, and economic challenges raise new legal questions, to which existing legal norms do not always provide clear answers.

I. The roots of uncertainty

The legislative system is like the story of Cinderella. For the interpretation of the law works like a magic wand; it is individual and arbitrary, i.e. it bends in any direction the 'magician' (the interpreter) wants by means of semantic, logical, historical and taxonomic manipulation.[1] In the realm of legal interpretation, it is up to the legal practitioner to decide which method of interpretation to use, as there are no explicit rules dictating which method should be applied in a given case and which should not. An additional problem is that the various methods do not stand in a hierarchical relationship with each other, leading to potentially contradictory outcomes. Considering that our palette of legal interpretation can be considered unlimited, it can be concluded that unlimited results can also be created.

Let us recall the example of Bartolus, who was said to have first drafted the verdict and only then searched for the appropriate laws to justify it! Lawyers capable of employing methods of legal interpretation – similar to Bartolus – can retroactively create justifications for their decisions, which fundamentally can be considered a flawed intuitive method. In such cases, decisions that are inherently wrong but are equipped with sound reasoning can be made. Based on all these, a concise conclusion can be drawn regarding legal interpretation and decision-making:

[1] Takyoshi KAWASHIMA: *Japanese Way of legal thinking in Comparative Legal Culture*, Dartmouth 1992. "Our legal system is just like the Cinderella story. Interpretation is the magic wand witch which everything needed can be accomplished through some kind of semantic manipulation. CF: The taxonomic interpretation is based on the assumption that the legal system is a unified, uncontradicted order. MACZONKAI Mihály: A jogértelmezés módszereinek bizonytalansága a jogi pozitivizmusban. In BÉLI Gábor (szerk.): *Ut juris ordo exigit: ünnepi tanulmányok Kajtár István 65. születésnapja tiszteletére.* Pécs, Publikon, 2016. 175.

a) achievable goal: *A good decision with good reasoning*. If the decision itself is for the benefit of the legal subjects, then it is inherently "good," while the reasoning serves as guidance for further good decisions.

b) non-condemnable goal: *A good decision with bad reasoning*. In this case, the "good" decision is still absolute, i.e., positive, but the fallacy of the reasoning can lead to bad decisions in later cases (due to its precedent nature).

c) refutable goal: *A bad decision with bad reasoning*. If the decision is bad and the underlying reasoning is also flawed, then it can be contested if there is an opportunity for legal remedy, and the bad decision can be corrected.

d) condemnable goal: *A bad decision with good reasoning*. As seen in case c), if both the decision and its reasoning are bad, it is fundamentally correctable. However, in cases where the decision is bad, but the supporting reasoning is logically sound, the effectiveness of contesting it is limited, thereby endangering the fairness of subsequent decision-making and adjudication.

II. Subjectivity in the application of the law and interpretation

The proof of the pudding is in the eating. Just as in classical physics[2] we are aware that measurement itself counts as intervention, the same can be established in the field of law regarding legal interpretation. When a legal practitioner begins to interpret and examine the content of a law, the result of the examination can only be subjective.[3] The examination itself already alters the objective content of the subject under scrutiny, thus the process of interpretation itself shifts the content of the subject from the objective to the subjective realm.[4] The interpretation of law cannot be done as an indifferent spectator or impersonal observer; every judge is inevitably a participant and shaper of the justice process. Drawing the line between objectivity and subjectivity always requires some level of human intervention and decision. Law, as a science, is the result of a defined action, and truth, as a human creation, is not just the product of human intellect but something shaped by human experience and interpretation. The knowledge manifested in judges' decisions is not a pre-given, unchangeable entity but something that evolves and changes through human thinking and interpretation.

Our European legal system rests on the logic established by Aristotle, while the normative systems created by other states are based on a non-rational foundation of intuitive life philosophy.[5] Nevertheless, for society, *law is merely a tool, not the solution itself*. The game

[2] Note: In principle, it is possible to exclude the interference of the measuring instrument in the measurement of electromagnetic strength.

[3] CF: Husserl's thoughts on the objective space-time world. https://plato.stanford.edu/entries/husserl/ (07.01. 2023.) A similar conclusion is reached by Sartre, who, drawing on Husserl's doctrine, says that the results of an investigation can differ widely and will never be the same, since the observers differ J. L. Rodriguez GARCIA: *Sartre – a szabadság öröme.* Budapest, EMSE Edapp, 2022. 13.

[4] Note: *We may compare the observer of a physical phenomenon not with the audience of a theatrical performance, but with that of a football game where the act of watching, accompanied by applauding or hissing, has a marked influence on the speed and concentration of the players, and thus on what is watched. In fact, a better simile is life itself, where audience and actors are the same persons. It is the action of the experimentalist who designs the apparatus, which determines essential features of the observations. Hence there is no objectively existing situation, as was supposed to exist in classical physics.* Max BORN: *Physics in my Generation.* New York, Springer, 1969. 104-105.

[5] Note: This means that these legal systems rely less on strict logical structures and more on human intuition, cultural and social customs, and local traditions. This approach can allow more flexibility in dealing with individual cases and a greater emphasis on human experience and life circumstances.

rules created by the legal system are finite (of an *ultima ratio* nature), which means that the norms are impersonal, general, and abstract.[6] To know how to act in accordance with the law in a given case, we need to know what the norm prescribes for that case. Therefore, it is necessary to find the legal norm that is relevant to the specific case. However, the legal system does not directly contain this specific rule, nor can it. The circumstances of individual cases cannot be predetermined; they arise from actual events, which always appear anew and in different forms. The legal system, therefore, (as a general rule) establishes only general abstract norms that contain rules for predictable groups of facts. Even the possible groups of factual situations are too varied to establish appropriate norms for all of them in advance. Further simplification is needed by creating general concepts that are themselves facts or encompass a multitude of characteristics of facts.[7] Therefore, manipulative social regulation with legal (internal) norms should be avoided, as it cannot affect every member of society. [8] Based on all these, it can be concluded that fairness is not associated with rights and obligations, but with truth.[9] The logic applied in the field of law does not always lead to just results, as it cannot consider individual circumstances, and without them, it is too far removed from the actual state of affairs.[10]

III. Verdict – fairness and subjectivity

The creation of a judicial verdict is a complex, targeted creative activity based on understanding and evidence, consciously striving to grasp the relationship between reality and truth.[11] According to Tamás Lábady, interpreting legal text does not merely mean understanding the text, but also clarifying which of the possible multiple meanings is correct.[12] In László Blutman's view, interpretation or giving meaning is the process by which someone gives meaning to a legal text, or more narrowly, attributes significance to it, in a certain situation.[13] Within the structure of the social system, language not only has a substantive role but is also interpretable as the manifestation of the social reality created as a priori objects.[14] However,

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[6] Note: This means that norms generally define a set of cases, which implies that they do not have an impact on individual cases, leading to occasional injustices. However, such occasional injustices still generate a smaller social problem compared to the absence of regulation in a given set of cases, which would result in a legal hiatus. In the event of a hiatus, we cannot talk about a norm violation enforceable by the community, nor about sanctioning, which leads to a state of anarchy, less desirable for society as a whole than occasional injustices. Therefore, general legal service takes precedence over justice itself.

[7] CF: NAWIASKY, Hans von: *Allgemeine Rechtslehre als System der rechtlichen Grundbegriffe*. Einsiedeln–Köln, Verlagsanstalt Benigner & Co. Ag., 1941. 26

[8] CF: Kim CHIN – Craig M. LAWSON: *The Law of the Subtle Mind: The Traditional Japanese Conception of Law.* International and Comparative Law Quarterly*,* 1979/3. sz. 502.

[9] Op. cit. 502

[10] Op. cit. 496.

[11] Ambrus MOLNÁR: Az *emberi megismerés ismeretelméleti alapjai és jogi megismerési folyamat sajátosságai*. In *Összefoglaló vélemény. Ítéleti bizonyosság elméleti és gyakorlati kérdései.* Budapest, 2017. 9

[12] Tamás LÁBADY: *A magyar magánjog (polgári jog) általános része.* Budapest, Dialóg Campus, 2002. 221. In Hungarian: A *jogszabályszöveg értelmezése nem egyszerűen a szöveg megértését jelenti, hanem annak tisztázását is, hogy a lehetséges több értelem közül melyik a helyes.*

[13] *Az értelmezés, értelemadás az a folyamat, amelynek során valaki valamilyen helyzetben egy jogszövegnek értelmet ad, vagy szűkebben, annak jelentést tulajdonít* László BLUTMAN: *Hat tévhit a jogértelmezésben*. JeMa, 2015/3. sz. 83.; Judit BLEIER: *A jogértelmezés, valamint a logikai összefüggések szerepe a bizonyításra szoruló tények kiválasztásánál és a jogvita szempontjából szükségtelen bizonyítás mellőzésénél a polgári perben*. In *Összefoglaló vélemény. Ítéleti bizonyosság elméleti és gyakorlati kérdései.* Budapest, 2017. 3.

[14] Tamás GYEKICZKY: *A polgári peres bizonyítási eljárás és ítéleti tényállás néhány elméleti problémája.* Jogtudományi Közlöny*,* 2003/7–8. sz. 289.

according to György Csécsy and Andrea Csécsy, the interpretation of legal texts in law means determining the true content of a given norm.[15] Based on all these, it is undeniable that the element of subjectivity is inevitably present in legal interpretation.

Although legal norms provide objective frameworks, the personal perspectives, value systems, and experiences of the legal practitioner influence their decisions during the interpretation of specific cases. This personal intervention arises not only from the circumstances of individual cases and the language of the legal text but also from human emotions, ethical convictions, and social context.[16] Therefore, the process of legal interpretation is not merely a technical or mechanical activity; it is rather a complex, human cognitive process in which the subjective considerations of legal experts fundamentally shape the administration of justice and the application of law.

Conclusion

Legal interpretation as a magic: This metaphor suggests that legal interpretation often contains a degree of subjectivity and flexibility. Legal practitioners can apply various methods of interpretation, leading to different outcomes, and there is no uniform hierarchy or rule system that dictates which method should be used when.

Diversity of interpretation methods: The interpretation of legal norms can often be done in multiple ways, leading to contradictions and varying legal conclusions. This diversity creates a certain level of uncertainty and unpredictability in legal decision-making. *The objective of justice*; the dilemma of "a good decision with good reasoning" vs. "a bad decision with good reasoning" highlights that legal decisions are not always clear-cut, and the decision-making process itself can influence the fairness of the outcome. *Laws and individual cases*; the legal system establishes general and abstract norms, which do not always fully match the peculiarities of individual cases. This poses a challenge for legal practitioners when adapting legal regulations to specific cases. *Law as a social tool*; the role and impact of the legal system on society is complex and not always capable of perfectly handling or resolving social problems.

Every legal decision-making process and legal interpretation involves elements of uncertainty, which vary depending on the legal system and the context of its application. From this uncertainty, the following conclusions can be drawn:

[15] György CSÉCSY– Andrea CSÉCSY: *Jogalkalmazási módszerek és jogelvek a gyakorlati jogalkalmazásban*. Publicationes Universitatis Miskolciensis. Sectio Juridica et Politica. 1999. 15–20.

[16] F. Mallieux: *L'expérience des jurisconsultes*. (Revue de métaphysique et de morale. XV. 1907.) 793. 1.: „Sans la conscience morale, sans la perception vive des besoins sociaux, il n'est pas de ressource pour l'interprète. Quand la lettre d'une loi lui offre le choix entre dix solutions différentes, s'il en écarte neuf, c'est que, d'instinct, guidé par des aspirations morales, il a choisi

a) *uncertainty of legal accuracy*: Just as the simultaneous precise determination of a particle's position and momentum is impossible in quantum physics, the unequivocal application and interpretation of legal norms are impossible when considering all relevant factors and circumstances simultaneously.

b*) contextual and temporal variability*: Just as the variability of quantum states influences the behaviour of particles, the variability of the legal environment (static and dynamic legal systems)[17] and social context also affect the interpretation and application of laws.

c) *limited foresight of the legal system:* Just as the quantum system does not provide a complete forecast of particle behaviour, the legal system is not capable of foreseeing every possible legal situation and conflict.

Based on all these, the uncertainty doctrine of legal systems is validated:

Every legal system inherently contains elements of uncertainty, which stem from the nature of the interpretation of laws, judicial decision-making, and the applied legal procedures.

[17] See: Ádám Miklós BALÁSSY: *Uncertainties about the "Systemic" Nature of the Legal System*. In XXII. Jogász Doktoranduszok Konferenciája, 2022. XXII. 9–20.

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