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PRACTICAL ISSUES REGARDING THE INTERPRETATION OF CRIMINAL AND CIVIL RULES

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Abstract: *The authors, after presenting a set of contradictory opposing judicial practices as an indisputable judicial and social reality, attempt to substantiate the types, principles, forms, techniques and methods of interpretation of the law, presented - usually - through general formulations, on realistic criteria and by critically distancing themselves from positivist clichés. From such a perspective, it seeks and sketches a conceptual model through which to describe the law (norm) subject to interpretation, the legal professions that indicate the subjects with competence to interpret, as well as jurisprudence starting from their social foundation: the set of values, interests, principles and laws structured in a confused hierarchy and in continuous movement, evolution. Interpretation in situations of uncertainty can only be achieved by searching for the real foundations of the legal institution in which the norm is located. The judge, the protagonist of the interpretation, as well as his professional will, is given preferential space: his will is sovereign – his independence is the effect of his sovereign will – because he has the fundamentally statutory mission of ruling on atypical situations, in which no one can know in advance how to proceed nor can he offer uncontestable interpretations.*

Keywords: *interpretation of the norm, legal professions, status of the judge, opposing jurisprudence, legal construction, evidentiary system*

I. Explanatory notes

a) It is generally accepted as an indisputable fact that "the primary source of law becomes the law" and then the doctrine or jurisprudence. However, it has been observed that "the formal sources of positive law are not exhaustive and, therefore, cannot claim in any way to solve all the legal problems that arise in a society". It would be "important to establish **a truly scientific method** that would allow them to be solved - these problems - "independently of the law" so as to avoid abuses of logic and abstraction of additional methods in its interpretation (Chazal, 2010:85-133). Practices related to the interpretation of legal norms highlight types (of the legislature, the executive, the judge, the doctrine), principles**,** forms, techniques and methods of interpretation (Dogaru et al., 2015). Branches of law admit more or less each of these formulas of interpretation.

It is also admitted that the interpretation of the penal norm is done restrictively; this, as a result of the specificity of criminal law, a model that captures the effects of the legality of criminalization. **The restrictive method** , specific to criminal law, shows that **a)** if the text of the law goes further than the reason for the law itself, the reason for the law is taken into account

- cessante ratione, cessat lex ipsa; **b)** if the law does not distinguish, neither will the interpreter distinguish - ubi lex non distinguit, nec nos distinguere debemus; **c)** if the legislator makes a limiting enumeration then, a contrario, all unstated cases are excluded from the provision of the law - qui dicit de uno negat de altero (Dogaru et al., 2015:277).

The idea that criminal law has a strict interpretation and application is even insisted on. "The field of criminal law (a matter with the maximum restrictive potential for the fundamental rights and freedoms of the human being) must function with precise and punctual regulations, the interpretation and application of which will be as exact as possible, in order to leave no room for interpretative arbitration, since so many (and important) legal issues are at stake". However, there are situations when "an extended interpretation is justified, although this practice tends to contradict exactly the principle of pre-indicated interpretation. What is even more surprising is the fact that, in such cases, doctrine and practice admit the extended interpretation as a natural fact, seeming not to notice the apparent incongruity of the respective solution to a general interpretative rule unanimously accepted as a premise" (Dunea, 2019:107-122). The doctrine emphasizes that "the problem of legal interpretation is central today, given that it constitutes the central point in the evolution of contemporary law"; that "the law, of imperfect essence, cannot simply be applied, that it must be interpreted and even, sometimes, corrected"; that "the notion of law ceases to be identified in the legislative act"; that "the requirement of respecting superior inviolable principles is imperative"; that "these principles do not originate in the text of the law"; and "that the judge cannot limit his work to a syllogistic application of the texts" (Rabault, 1997:8).

b) The civil domain also goes through the same debate doctrinally and uses the same concepts: we interpret according to the result obtained; or, as the case may be, methods of interpretation (grammatical, logical, systemic, teleological, or historical) are indicated (Cojocaru, 1989:148-156). Finally, a text that contains a norm and sets a standard must be understood, its meanings are sought, the meanings found are publicly affirmed and, then, applied to a subject or to a specific legal or factual situation. The need to observe the purpose of interpretation is emphasized: the search for the will of the issuer, the legislator or the current social need, at the time of application of the text; or, why not, the meaning and application must be sought even in the autonomous existence of the law with all its imperfections (Dănișor et al., 2008:459-464).

c) Practically, any subject interested in interpreting the norm finds itself - whether it wants to or not - between its general expression, between the abstractions found by the doctrine, on the one hand, and the concrete reality for which the interpretation is made, on the other hand. The civil law records the same reality: "the formal sources of positive law are not exhaustive"; therefore, too often constructions must be sought so that, "without the support of law or custom", you can produce "a legal solution for a certain problem, while ensuring the scientificity and rigor of the approach". That is, in interpretation you must affirm "the primary concern to discover, in the absence of the help of formal sources, the objective elements that will determine any solution imposed by positive law" (Chazal, 2010:85-133).

d) So, such formulations distance the interpreter from the positive norm and, inevitably, bring him closer to reality. That is, the norm does not always produce certainty; on the contrary, it usually offers equivocation. And the abstractions of interpretation concepts, although useful, are insufficient. And the realistic formula allows for creative legal constructions.

Are such situations verified in court practice?

II. Criminal practice and its problems

a) The criminal norm is supported by an essential principle, very current and undisputed by its formulation: the principle of the legality of incrimination. In schematic terms, it is stated that the repressive effects sought by incriminating a crime cannot be recognized unless it - the crime - is defined as such and with reference only to acts committed prior to the suspected act. Then, there are references to concepts, detailed legal expressions and jurisprudential applications, more or less motivated.

We are created with a general framework in which legal practitioners operate: they observe and present the practical consequences, all affirming a noble goal: the defense of the state and the rule of law (Dongoroz, 1969:27), a defense that is carried out through specific, repressive, yet coercive and re-educational means (Fodor, 1970:8).

Although such approaches consistently and overwhelmingly provide clarity, unambiguousness and effectiveness, practice highlights - even if only occasionally, accidentally - atypical situations in which a clear conflict occurs between the clear literal expression of the incriminating criminal norm and the social effect affirmed by stating the purpose of the incrimination. Given the limits of the presentation, I exemplify with a single case law - out of many possible others - contained in its entirety in decision no. 374/2021 of 16.06.2021 of the Alba Iulia Court of Appeal, final, unpublished - The following decision - by which - among other things - the defendant's appeal against the criminal sentence no. 30/01.02.2021 of the Alba Iulia Court - The Sentence - was admitted, and by which the defendant appellant was acquitted - based on art. 396 paragraph 5 Criminal Procedure Code reported to art. 16 paragraph 1 letter d Criminal Procedure Code - for committing the crime of sexual intercourse with a minor, provided for by art. 220 paragraph 1 Criminal Code.

b) The adult defendant, coming from a social environment with particularities, maintained – in a cohabitation fully consented by the woman, specific to the notorious culture, accepted and cultivated by the community – intimate relations with a minor; this from the moment when she – the concubine – was 12.6 years old. The cohabitation resulted in two minors who were cared for by the parents in very good conditions – the references of all the authorities related to minors were excellent. The judicial bodies took action ex officio, the concubine was sent to trial and, in essence, was sentenced to detention. The convict had to revoke the remainder of the sentence for crimes that were not related to intimate or family relations. Since the victim – the concubine – still a minor – did not want to become a civil party, the prosecutor correlatively carried out the specific necessary steps. In the appeal, the victim had a very clear position: she has no pretensions, she wants a good father for her children – as he always has – and a man in her domestic life on a daily basis. All this, in a context in which the defendant was the only one who had a job and earned a good income that he spent only at home.

c) The problems of applying the criminalization norm produced a lively debate at all levels: lawyer, prosecutor, judges. It was certain that a sentence with detention – there was no alternative – would destroy the couple’s domestic life and destabilize the comfortable life of the minors. On the other hand, in the immediate future, the budget assumed patrimonial tasks

whose necessity and effects were questionable: the subsistence of the convict in the place of detention and the maintenance of the minors that the mother, lacking income, could not provide.

d) First, the prosecutor raised the issue of the defendant's acquittal, developing - explicitly and, obviously, provocatively - in his written conclusions (N**o**. 274/III/2/2021 of 7. 06. 2021 of the Prosecutor's Office attached to the Alba Iulia Court of Appeal**)**, an eminently civil thesis (Thierry, 2004). He supported, as a theoretical premise, the idea that the civil is - of course by exception, and insisted on the exceptional situation - common law and for criminal law. Then, contextually, he affirmed the need for a free interpretation of the definition of the offense. That is: the interpretation should also be made in relation to the purpose for which the incriminating norm was issued. More precisely, it was observed that the literal interpretation of the norm gives exactly the undesirable social effects of incrimination.

Thus, in detail, he said that the concrete application of the criminal norm must not produce a greater social harm than the very harm evoked by the criminal norm: the potential situation of the minors after the father's conviction indicates precisely the undesirable effect. They will be deprived of the father's affection and income. Even if the criminal norm protects the mother's sexual freedom, the protection of this value - conjuncturally and by exception - cannot be separated from the subsequent, inevitable and obvious effects, regarding children produced through sexual acts that the father and obviously the mother, with civil discernment, should not have initiated and committed.

In legal terms, it has been argued that in criminal law too - along with the interpretation of the law - the one who offers a solution must also focus **on the foundations** of legal liability and, then, on those of criminal liability, which cannot function outside the general framework of liability.

More precisely, it was said that the essence of retaining legal responsibility lies precisely in the weighing of interests that clash in a subjective legal situation - here, exceptional - and that the judge - sovereign in his decision - has exactly the social mission that defines him: to carry out such weighing (necessary, within the meaning of art. 53 par. 3 of the Constitution). The weighing is done by comparing the values and principles in competition and in a hierarchy.

As a result of this comparison, we would be in a position to choose between applying a punishment pursuing, on the one hand, some general interests - expressed in an abstract way - through the incriminating definition and, on the other hand, the defense of the family - even if there is only one family in fact. In such a framework, the option towards the concrete interests of minors and domestic privacy would be pragmatic and justified.

From here, the consequence would be gathered: "sexual intercourse with a minor" cannot constitute, in this case and by exception, the typicality of inappropriate behavior that would then justify the application of the punishment; we would therefore be in a situation of blocking the criminal action as indicated by art. 16 para. 1 letter b, sentence I, C. criminal procedure.

e) the appeal judge took note of the atypical situation and – through his methodology – simplified the approach: he shifted the debate from the interpretation of principles to the interpretation of evidence. In other words, he moved away from the doctrinal nuances, from the principles set out and located himself only in the immediate area, the concrete. He avoided the sensitive area of a creative but exceptional interpretation, he respected his established,

indisputable competences, he formulated his reasoning on the facts and, then, he located himself strictly on the literal meaning of the positive regulation.

It held that, at the time of the commission of the acts – contextually – the defendant was not aware of the existence of a "state, situation, or circumstance on which the criminal nature of the act depends". More precisely, through a judicial presumption, questionable but uncontested – and it is the sovereign attribute of the judge to do this – it held that there was no indubitable evidence from which it could emerge that the defendant truly knew the age of the victim. The situation fell within a model of non-imputation: art. 30 par. 1 of the Criminal Code.

g) the decisions and arguments in the appeal have produced criticisms, observations and questions of a professional and, above all, **methodological nature**: how broadly can the criminal incriminating norm be interpreted? What does a teleological interpretation mean, in practical terms, from the perspective of the principle of the legality of incrimination? How creative could the judge be in making legal classifications? According to what criteria does the judge select the methodology for resolving a case and what would be the benchmarks according to which he opts for or not for a certain method of interpreting the norm?

In the technique of teleological interpretation, the legal norm is seen in a framework that contains two indisputable and unavoidable elements: the purpose of issuing the norm and its logic. Only the purpose of the norm directs its meaning and ensures its rational coherence.

Practically, in the appeal – even if the decision was not upheld, the prosecutor's interpretation was not denied, nor was the idea of interpretation through an exceptional methodology, necessary contextually. Practically, it was explicitly stated that sometimes, even if less frequently, there is a need to understand the definition of the crime in a particularizing sense so as to achieve the concrete – and not abstract – purpose for which the incrimination was made; this is in order to avoid other subsequent effects that would ultimately distort the very effect desired in the incrimination.

However, the prosecutor opted for precisely such a model of understanding the incriminating norm; the judge, however, modified the methodology of analyzing the case by placing the support of his solution only in the area of the unfolding of the facts – and, obviously, on the analysis of the evidence – thus avoiding engaging in the interpretation of the incriminating text.

We therefore note two types of problems: **x)** in the sense of the prosecutor's expression, how do you identify the purpose of issuing such general norms as those of the criminal code; and **xx**) in relation to the judge's motivation, within what limits can the methodology for establishing the basic elements of the criminal process be modified to credibly justify the solution.

III. Civil practice and its meanings

a) The following examples come from the field of civil nullities and call into question the application of art. 4 par. 4 of Law no. 422 of 18 July 2001, an application that provides us with a rich amount of contradictory jurisprudence. The law captures the legal regime for the protection of historical monument buildings (Luha et al., 2025), (Luha. 2024:465-475).

Among other protective and general interest rules, the norm obliges the owners of such properties – individuals – to respect the pre-emptive right to purchase of the State and local

communities when selling. That is, before any sale is completed, the pre-emptors have preference in the acquisition. Failure to comply with this imperative rule makes **the non-compliant act null and void**. The trial of such cases is placed under the civil regime of nullities: failure to respect a general interest renders an act null and void.

Although the text, in its letter, is unequivocal – failure to comply with the preemption leads to nullity – there are judges who go beyond the abstraction of notions and particularize the interests of the preemptors by contextually placing them in the context of the set of interests at stake and, especially, in the set of civil principles. Other courts do not depart from the letter of the law. Different interpretations, as well as methodologies for analyzing different cases, inevitably give rise to opposing practices.

b) in one case (Sentence no. 718 of November 2, 2010, Caraş Severin Court, Commercial and Administrative Litigation Section), the judge rejected the request for the nullity of the contract based on the failure to carry out the pre-emption procedures because the pre-emptor did not pay the sale price; the contractual behavior of the pre-emptor was in opposition to the third-party buyer who had already paid the price. The solution was also given against the explicit statement of the law: the lack of the pre-emption procedure produces the nullity of the sale deed.

In another case (Tomescu, 2021), the contract was declared null and void, against the interests of the third party who had fulfilled the tasks assumed even though the buyer had not paid the price nor outlined any possibility of obtaining financing for it. The court considered that the statement of the law was sufficient by itself to record the absolute sanction of the contract.

In civil trials too, we find moments when the judge transfers the task of interpreting the norm to the field of understanding the facts, the administration and interpretation of evidence. Thus:

In a case in which a declaration of nullity of the non-compliant sale was requested - for omitting the pre-emption procedure - the court decided that - in relation to the well-known fact that the building was a monument - the pre-emption procedure should have been followed. Omission of this procedure would be sufficient to hold that the sale deed is null (Civil decision no. 85/2017 of May 11, 2017 of the Timișoara Court of Appeal, Civil Section). In other words, the well-known fact - an element of evidence, a state of affairs - that the building is in a district with an ancient history removes the duty of the monuments agency to make public its classifications for buildings of historical interest.

Such a solution is in complete contradiction with other practices according to which preemption would be mandatory only when the classification of the building as a monument is undisputedly public, through notation and in the land register (Decision no. 402/2008 of 17. 04. 2008, irrevocable, of the Timișoara Court of Appeal).

IV. The reality of interpretation

a) I did not select these contradictory, opposing jurisprudences – for identical situations – by chance. I described an almost everyday reality that affects social, private or public relations: the same norm – criminal or civil – gives different meanings in the hands of subjects who are forced to understand it, to apply it through interpretation.

Reality makes us understand more nuanced the positivist cliché according to which everything is done in the name of the law and by respecting the law (the norm).

We take the first part of the speech without reservation as a postulate. After all, the law constitutes the resistance structure of any social organization. There is no human relationship without a norming of conduct and without observing their social consequences (of behavior) in relation to the requirements imposed by the norm, by the law: human subjects are responsible for their actions.

We have reservations about how any subject can behave according to the law. And the presented jurisprudence demonstrates it exemplarily, abundantly.

As long as the law is presented - in principle - through broad general expressions, as long as the law is issued in an interested, incomplete, confusing, or - why not - wrong or in bad faith, we must accept as inevitable the fact that the law itself, its interpretation, can produce insecurity, uncertainty.

In other words, the interpretation of norms, the gathering of the consequences of this interpretation is a much more voluminous and complex phenomenon than the textbook currently presents to us. Although the presentation of the methods of interpretation is very laborious, no one tells the subjects of interpretation when they must select one method or another, when they submit to a certain principle or another.

b) In practical terms, any norms produce standards of a broader or narrower generality and rules.

It is not the rules that pose problems. What concerns us now is the way in which subjects – professionals or not – understand, interpret the standards and, above all, the way in which the subject in need and faced with the abstraction of the law deduces his own rules.

From here we remember another reality: any realistic analysis of the phenomenon rests on two methodological premises. What matters is who interprets and, only then, how they interpret (Tomuleț, 2018:64-105), (Chazal, 2010:85-133).

When we stop at the realistic interpretation model – its broad meaning –, we notice something else: the interpretative intellectual activity practically goes through two stages; on the one hand, understanding the meaning of the texts – interpretation in a narrow sense – and on the other hand, achieving a logical construction, applied through which the text interpreted and understood in a certain way is placed on a situation (Tomuleț, 2019:89-122). A certain factual situation is also made by mentally comprehending it: the judge through the evaluation of evidence, legal professionals through prior professional investigation and the others – if they know about the existence of the norm and want to apply it – in an intuitive manner (Tomuleț, 2019:72-74).

When interpretation comes from an authority – and especially from a judge – its product (of interpretation) is presented to us as rules (Tomuleț, 2019:93). It is therefore necessary to investigate against whom such rules are opposable and, why not, whether they are valid and for how long.

The model would like to present – even if only at the level of a sketch – the interpretation process in all its realistic complexity and, separately, would like to emphasize the inefficiency of the clichés much appreciated today according to which the notions used by

the law – the letter of the law – can fully and satisfactorily encompass any situation, fact or relationship. All in a context in which reality presents itself to us as infinite in diversity.

We admit that in most of them the laws give satisfaction and do not produce uncertainty. Methodologically we are not interested in such situations. We are concerned with atypical, exceptional realities for the simple reason that only exceptions can verify the validity of the legal statement produced by the interpretation.

V. Subjects who interpret

a) Each person subject to the state order – willingly or not, consciously or not – reaps the beneficial effects of the standards contained in the law or, as the case may be, bears the consequence of non-compliance. Indirectly, people interpret the norm, either when adapting their behaviors or when they are subject to the repression of responsibility. If the interpretation is adapted, the subject benefits; the error in interpretation is assumed by the one with non-compliant behavior as a risk in relationships or as a business risk.

The recognition of any person as a subject of the interpretation of the law results unequivocally from the provisions of art. 1349 par. (1) Civil Code: " *every person **has the duty to respect the rules of conduct** that the law or local custom imposes and not to harm, through his actions or inactions, the legitimate rights or interests of other persons"*. That is, a subjective behavior will always be evaluated in relation to **the observance of the rules** deduced by each person - through personal interpretation - from the standards set forth by the law.

b) The executive power that constitutionally implements the laws - that is, the administration, the institutions, through their agents, organized hierarchically and by fields - that is, the administration officials - is obliged to interpret the law through its acts. Interpretation is therefore done, first of all, according to the Constitution, through government decisions. An inevitable question follows: does the administration, from the top down to the operative agent, implement - therefore interpret - through individual acts - the law?

We argue that yes. We base our argument on what is generally accepted in administrative doctrine through the concepts of administration, public power, administrative function, central and local administrative bodies, and administrative subordination (Clipa, 2021), (Podaru, 2022:8-13).

Is an individual act – i.e. with an indicated recipient – also enforceable against third parties? The law (Art. 7 of Law No. 554/2004 on administrative litigation) and doctrine (Podaru, 2022:10) answer in the affirmative: an individual administrative act "is enforceable - against third parties - from the moment the third party becomes aware of the act in question..." (Podaru, 2022:11).

We deduce, from this, that an administrative correspondence – that is, the response to a request for interpretation of a standard – being issued by a higher-ranking administrative agent who interprets the law and is intended for the person asking becomes opposable to all those who would be in an identical situation; the act will remain valid for all until it is explicitly withdrawn by the administration or until it is annulled by the judge.

c) legal professionals, in interpreting it, produce an uncomfortable, not very recognized interpretative paradox.

Although everyone is qualified to interpret, although - in positivist terms - everyone must respect the same law, not everyone is obliged to interpret it in the same way. Their

professional mission, their social function obliges them to produce that interpretation that will lead precisely to the achievement of this function. The lawyer, the legal consultant are someone's representatives and will be deontologically obliged to interpret in relation to the interests of the person who mandated them. The administrative official aims to operationalize the interpretation that his superior provides him.

From such a perspective, the notary public has a special and difficult situation: he is, first and foremost, a representative of his clients (Popa et al., 2013:26); separately, as a bearer of state authority (Art. 3 par. (1) of Law no. 36/1995), he is forced not to deviate from an interpretation of civil law, accepted and acceptable by the one who delegated (Olaru, 2021) the authority service to him. Thus, he is placed between the free civil will of his clients and the demands imposed on him by the government authority, directly - the relevant minister - or through their professional implementation entity (Olaru, 2021).

d) **the judge** – as an authority and as a professional of interpretation – has a special, completely unique situation in society, in the state organization, as well as in the definition or exercise of his profession: the status, prerogatives and the product of his work define the very essence of the judicial power. Although he does not fulfill his mission individually but systemically, within a broader jurisdictional framework, the way in which he exercises power and is obliged to interpret the law defines him as a true protagonist of interpretation. This, both from the perspective of the foundation of his existence and functioning and from a practical point of view.

More precisely, the judge - the magistrate - is the only one who can definitively and operationally rule on atypical, exceptional situations, regulating the unknown unforeseen by the norm.

Although the fundamental law presents him as functioning independently and operating only in the name of the law (Art. 124 of the Constitution; para. (1)), this characteristic – in ruling on unknown, exceptional situations – constitutes him as a sovereign operator on his professional will: his professional will is produced by his personality, by his interiority, not by others, whoever they may be. Hence the consequence: his independence – underlined by the fundamental law itself – is the effect of his power to be truly sovereign statutory on the decision produced.

Such an understanding of reality will be able to explain the difference between the independence of the civil servant, the prosecutor, the notary, the lawyer, on the one hand, and the independence of the judge: although all are indicated by law as being independent in interpreting the law, each has a professional obligation to interpret it differently.

And the judge, regardless of the presentations of others, rules on what is atypical, unknown, exceptional, directing the course of society - solely through his will - in a certain direction.

In other words, the law - which establishes rules or standards - rules on the usual situations that it can foresee at the time of its issuance, and the judge rules - only by his will - on what was not foreseen, what could not be foreseen by the law, on something that is not normal but which, nevertheless, recognized or not, in reality appears and exists at a given time.

VI. The reality of the law

a) The presentations so far seem contradictory: on the one hand we praise the will of the judge, on the other hand we describe the jurisprudential chaos, also as reality. We have at least one dysfunction. Where do we locate it? In the vision of the judge's position or in the defects of the law?

b) each of the summarized jurisprudences shows that the judges, in order to motivate their decisions - through interpretation, construction and analysis of the evidence - resorted to something additional that does not explicitly result from the text of the law that had to be applied.

The model shows us that behind the law, closer or deeper, there is something else than the writing of the norm: another law in a normative hierarchy, a principle, a general interest - seen abstractly or in particular, a particular interest placed in a hierarchy, a value - ethical, ideological, artistic -, all situated in a society in continuous evolution. Moreover, the issuance of the law is not always free from arbitrariness or undeclared hidden interests.

The legislative power has only one limit when issuing a law: the constitutional principle - naturally abstract - and the judgment of constitutionality. In practical terms, not all inaccuracies of the law clash with the constitutional norm. The adaptations, the corrections will be made by the one who applies the law and, finally, the judge, considering the interpretation of the parties in the process as exceptional situations.

The correction of the inconsistencies of the law by the judge through a broad interpretation, with the observation of what is real behind the law – through a teleological understanding in the sense of interpretation methodologies – involves finding, in a casuistic, adapted manner, something that would direct a relationship in a sense generally accepted by society. That is, in an exceptional situation, the judge would indicate something credible, would fulfill a kind of "general interest", appropriate to the moment and acceptable to a sufficient mass of subjects of a collectivity. In pragmatic terms, the judge seeks and finds the foundation of the legal institution, a foundation linked to real life and offers a solution, through interpretation.

c) The recognition of the judge's decision-making sovereignty in exceptional situations thus explains the opposing jurisprudence on the same topic. In such a situation, the lack of law is evident: although different interpretations are predictable, the law does not provide institutional tools, neither to align jurisprudence nor to avoid possible ethical slippages by the judge (which are possible, by the way).

They still insist – even though some studies describe something else – on a rigid, positivist model according to which we all act according to the law in a realistic context that demonstrates that all laws provide unknowns, exceptional situations and in which no one knows how to proceed. The administration refuses – of course, there are exceptions – to answer – for fear of making a mistake – to questions from individuals or subordinates regarding the interpretation of the rules and the judiciary always pronounces its decisions post factum and expectedly contradictory.

This is instead of admitting the reality: the law is always flawed and, therefore, must be accompanied by a priori correction mechanisms for officials; and for the trial, mechanisms for unifying jurisprudence on the spot are necessary. More precisely, if a practice that has already been issued – for an identical situation – is submitted to the judge, **the fact** of its existence cannot be disregarded: the jurisprudence is accepted as a rule or is removed with justification.

VII. Instead of conclusions

a) I have presented here only a few practical ideas related to the interpretation of norms. More precisely, I have tried to present **the outline of an interpretation model** based on **realistic foundations** and less on positivist clichés of understanding the law and its application. In practical terms, I have tried to suggest realistic criteria according to which, from a set of typologies, principles, forms or techniques and methods of interpretation, we select the methodology that would have the closest chance of being credible and generally accepted.

In such logic, I observed and affirmed that the law does not exist by itself and that its production is too often based in an arbitrary manner but always on a set of pre-existing values, interests, principles, whether or not told to the public, all situated in a complex and, above all, confused, undefined hierarchy.

In turn, those who have the task of interpreting the law, the norm – professionals or not – an interpretation that allows the deduction – here and now – of an operational **rule** from an always vague standard are naturally hierarchical in relation to the interests that send them to such a task. That is, the interpreting subjects are not obliged to interpret the norm uniformly: their interpretation is always and necessarily made in relation to the interests that underpin their very functional existence as interpreters.

Their professional independence – too often asserted under the cover of the abstract principle of legality – is relative: behind their independence lies **the mission** for which they are recognized as professional interpreters who are based on group interests and which must be assumed and respected.

b) There is only one exception: the magistracy, with reference to the defining and unique status of the judge.

Although the fundamental law declares it independent, this independence is based - since the beginning of time - on its power to **decide sovereignly on atypical situations** , situations in which no one in society knows and cannot know with authority how to interpret the norm covering this situation.

So the judge is not defined by the situation – factual or legal – ordinary – when everyone knows or should know – but by **the exceptional situation.** Or it can be said that the independence of the judge, legally recorded as a fundamental principle, is different from the independence of other interpreters and, realistically, describes an effect of the substantiation that I have exposed.

c) Practical consequences can be drawn from this.

The sovereignty of the judge positions him in the essential mission of selecting - ultimately executively - and, of course, motivatedly - from the confused hierarchy of values, interests, principles, norms that criterion that would justify his decision in an exceptional situation.

The sovereignty of the judge refers only to the interpretative solution – the meaning of the law, the logical construction, the evidentiary description of the facts – and in no way to the organization of the process when he operates as an official. The model shows that the same interpreter of the law – in this case, the judge – can perform different functions with different legal substantiation regimes in the same activity.

The judge's legal liability will be special: he will be held liable only for serious intentional misconduct or based on serious, generally unacceptable fault. Otherwise, no one will judge anymore.

The status of the judge, once affirmed, also requires the redefinition of the legal regime of jurisprudence. This would imply the abandonment of the positivist dogma according to which the results of the judge's professional practices are not a source of law even if they can contribute to the development of law. Jurisprudence - through interpretation - produces casuistic rules that cannot be disregarded even by the subsequent judge.

Jurisprudence is presented to all of us – including the judge – as a real and - in a specific way - opposable fact. More precisely, if the judge is the only one who rules on atypical situations, he will inevitably - in the sense of the presented model - be deontologically obliged to ascertain and motivate the acceptance or rejection of the consequences of the existence - by way of exception, of course - of the very exception of pre-existence of a jurisprudence.

d) Beyond our concepts, regardless of the formulations presented, the topic is very current even for judges, for their status.

The question was raised whether a judge can be convicted of abuse of office - with indirect intent - for the reason that he interpreted the criminal procedure norm atypically.

The national courts ruled differently: on the merits, the court decided that the judges of a criminal case did not commit the crime (Art. 297 Criminal Code, the crime of abuse of office, para. (1): those who interpreted the norm atypically cannot be considered criminals because they did not violate any norm in bad faith: " their *way of interpreting the evidence, of applying the law to the specific case represents judicial reasoning, and this reasoning can only be subject to censorship in legal appeals* ". On appeal, they were convicted: " *the magistrates* – subject to the procedure – *acted in violation of the principle of legality,* ***in bad faith*** *, namely when it was proven that they knew the manifestly illegal nature of their actions and that they pursued or accepted the harm to the legal interests of a person or showed serious negligence* " (Case no. 22198/18, judgment of 15 April 2025, Bădescu and others v. Romania, European Court of Human Rights – Section IV)

The international court accepted the final conviction of the national court, holding - among other things - that in " *interpretative jurisprudence* " - so, exactly what interests us - the requesting judges had *to "* ***discern to a reasonable extent*** *, in relation to the circumstances* - of the case - *that their actions* ***risk*** *bringing them a criminal conviction* ...."(point 148 of the reasoning of the ECHR decision of 15. 04. 2025).

This international jurisprudence is obviously instructive.

Its application by judges in a rigid manner - following the literal application of the formula "to a reasonable extent " - without reaching the foundation of legal institutions - will transform judges - an effect of the operationalization of the principles of responsibility and above any abstract formulations of the Constitution - from sovereign subjects on their own decision, into officials with a regime of joint liability, who in the interpretation activity will have to assume - like natural persons - **the risks** of professional "business".

Will such a subject of interpretation of the norm still be a judge?

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