

INTRODUCTION TO LAW

Lesson 13

INTERPRETATION OF LAW; LEGAL SYSTEMS



Dr. Heliona Miço

The topics

- Interpretation of law
 - 1. interpretation of law according to the body which interprets the law
 - 2. interpretation of law according to the methods used in interpretation
- Law enforcement by analogy
- Legal systems

The retroactive power of law

- It is recognized that **the law has no retroactive effect**.
- This means that for any event of fact of relationship the law under which this event took place applies.
- The new law will apply to those events that occurred after its entry into force.

The interpretation of law

- Any source of law, directive or other act of state power that establishes rules of conduct can be interpreted.
- Legal norms are rules of conduct and provide for **typical cases on which legal norms apply**. The norms of law set aside the peculiarities of each case, fact, particular relationship and determine their typical main treatments.
- For example: Articles 757-760 of the Civil Code regulate the contract of sale and set out a set of conditions to which this contract must meet.
- **But these articles do not regulate every possible sales contract.**

Interpretation of the law

- Clarifying the meaning of the content of the law or another act of state power is called interpretation of the law.
- Before interpreting the law, the body applying the legal norm must verify the existence of the relevant law and its original text.
- The existence of the law and its text must be verified by the person applying the norm **according to the official publication of a particular law or code** and not according to the reprint of the law in any official article, manual or summary.
- Once the existence of the law and its text is ascertained, it is necessary to verify whether the legal norm contained in that law is in force and whether it is binding.

Verification of the effective legal force of the norm

- When a legal norm is applied, it is necessary to verify **whether this norm has effective legal force** and **whether it has been issued by a government body that, by law, has the right to issue such norms.**
- When a law, decision or instruction of the Council of Ministers is implemented, such issue does not arise; the procedure for issuing these acts, the competencies of the Assembly and the Council of Ministers are precisely defined in the Constitution.
- But when the legal norms issued by other bodies are applied, such as orders and instructions of the ministers, etc., there may be a need to make sure if this norm **is issued by an authorized body and if this body has acted within its competencies.**

Verification of the effective legal force of the norm

- Once the existence of the law or any other act is verified, regarding their authentic text and their legal force, **the state body that enforces the law interprets the law in the true sense of the word**, i.e. determines the content and meaning of the legal norm expressed by law.

Types and ways of interpretation

- 1. The interpretation of law is classified according to the body and the person who interprets the law:
 - - legal interpretation
 - - judicial interpretation
 - - doctrinal interpretation.

Legal interpretation

- **Legal interpretation is the interpretation made by the competent body of state power which is mandatory whenever the law is applied in the cases provided by it.**
- Article 16 of the Law on Main Constitutional Provisions stipulated that the interpretation of laws is done by the People's Assembly.
- This means that the People's Assembly had the right to provide mandatory explanations regarding the laws.
- This is an authentic interpretation, ie. the interpretation of the norm made by the body that has issued this norm.

Legal interpretation

- However, with the amendments made in **April 1992** to the Law on Main Constitutional Provisions and the establishment of the Constitutional Court, **the interpretation of laws has passed into the jurisdiction of this Court.**
- **This interpretation is legal and mandatory,** but **it is not authentic,** because it is not done by the same body that issued the legal norm.

Legal interpretation

- **The Constitutional Court makes the legal interpretation of the laws.**
- The Constitution , in Article 124, stipulates that the Constitutional Court guarantees the observance of the Constitution and makes its final interpretation.
- This is mandatory and legal interpretation but not authentic interpretation as it is not done by the body that issued the laws.
- **The Constitutional Court guarantees the respect of the Constitution and makes its final interpretation.**

Judicial interpretation

- Judicial interpretation **is the interpretation of the law that the court makes when resolves a concrete court case where this law applies.**
- Judicial interpretation is expressed by the court decision and **it is binding only for the case for which this decision is being taken.**

Judicial interpretation

- Analogous interpretations of the law are made by other bodies that apply the law, but judicial interpretation is a special type of interpretation of the law, because the decision of the court that has become final **takes as well the legal force**, i.e., the same binding character of the law.
- Therefore judicial interpretation cannot be identified with the interpretation made by any administrative body or official whenever they apply the law.

Doctrinal interpretation

- **Doctrinal interpretation is the interpretation based on the scientific study of the law in force.**
- The scientific elaboration of the law is of great importance for the correct explanation of the meaning of the content of the law.
- In the Republic of Albania, **the interpretation of the law is done in scientific works, in the comments of codes, in the texts of various legal subjects.**
- It is important for the further elaboration of the law in force, for the improvement of the legal activity of various state bodies (judicial, administrative, etc.) and for strengthening the rule of law.

The methods used in interpretation

- **2.** According **to the methods used in interpretation** we have the following types of interpretation:
 - a) grammatical interpretation,
 - b) logical interpretation,
 - c) systematic interpretation;
 - d) historical interpretation.

Grammatical interpretation

- The grammatical interpretation lies in determining the content of the legal norm by analyzing the **expression of its words in the law** and by analyzing the law and its expressions **based on grammatical rules**.
- **Grammatical interpretation is done by analyzing the placement and connection of the words of the law** or any other act, punctuation marks, parts of the sentence, etc.

Logical interpretation

- **The logical interpretation determines the content of the legal norm,** starting from the meaning of the expressions with which the relevant norm is formulated in the law, analyzing the meaning of the law.
- Therefore, **during the logical interpretation, a general analysis of the law is made; the hypothesis, the provision and the sanction of the norm are set,** these three elements are compared between them and the limits of the application of law are explained.

The systematic interpretation

- The systematic interpretation clarifies the meaning of the legal norm by **comparing it with other norms of law, determines the connection of this norm with other norms**, as well as determines the place of this norm within the system of norms of the respective branch of law.

The historical interpretation

- **The historical interpretation** clarifies the meaning of the legal norm **by studying the circumstances in relation to which the norm has been accepted** (report on the draft law and discussions related to it in the legislature, press discussion of proposals on the new law, etc.).
- A comparison of the legal norm with the text of the previous norm repealed in relation to the same issue is also made.
- The types of interpretation as mentioned above should not be considered as independent and unrelated to each other. These are different ways of interpreting, which are often used simultaneously and in the same case to interpret a law well.

Law enforcement by analogy

- The application of the law by analogy is as follows:
 - For example: during the review of a civil case it comes to light that the case under consideration **is not expressly provided by law**.
 - Since the court cannot refuse to resolve the issue due to a gap in the law, it must resolve the **issue based on a law that provides for a case that resembles (which is analogous) to the case under consideration**.
 - The application of the law that provides for the most similar case, when **there is no law that directly provides for the case under consideration**, is called the application of the law by analogy.

Law enforcement by analogy

- When the law does not directly provide for the case to be examined by the court, but provides for another case that resembles the first one in its essential characteristics and differs from it only in secondary, non-essential characteristics, **the court resolves the case on the basis the law provided for the similar case.**
- The use of a legal rule in an analogous way means **the application of a rule which covers a particular case to another case which is similar to the first but itself not regulated by the rule.**

The concept of the legal system

- The right that is in force in each state represents a certain unity of norms that constitutes the right.
- Legal norms are diverse and different, they deal with different social relations, they have different forms, but since they are all united in some general principles, they have a common basis.
- All the legal norms of a state are not mechanical accumulation of rules of conduct unrelated to each other,
- They **are united and regulated as a whole body**, the parts of which are interconnected with each other.

The concept of the legal system

- The law of a state is diverse according to the character of the relations that are regulated by it.
- Consequently, **it is divided into many sectors, parts, branches, where each of them has its own special shape, according to its object** (i.e. according to the relations it regulates) and at the same time **is organically related to all other branches of law of the same society.**

The concept of the legal system

- Therefore, in the system of law, it is expressed not only the unity of law, but also its differentiation, its division into many parts, branches.
- **The system of law is the union of legal norms into separate groups (branches), it is their difference and their union into a single whole.**
- In this way, the system of law determines the place and object of each branch of law, its limitation with other branches of law, its connection with all these branches.