



## The Interpretation of Law and Social Practice

Fejzulla Berisha<sup>1</sup>, Blerim Berisha<sup>2</sup>

**Abstract:** The legal interpretation of the legal norm is important for the normal functioning of state bodies' activity, respectively official persons, citizens and associations in the discovery of the will of the creator of legal norm. With other words, this process is an activity that is done by state bodies in the function of identifying the real meaning of the content of the legal norm. Interpretation in general, as a scientific-professional process, is an activity which explains the meaning of material phenomena with the purpose of their transmission. This material phenomenon is qualified as the carrier of the meaning that is presented by the sign. Therefore, for the interpretation of the right, respectively legal norm, the starting point is knowing the normative frame and then comes the analysis of its constitutional parts, the comparison other relevant laws and acts.

**Keywords:** Legal interpretation; legal norms; interpretation in general; interpretation of law

### 1. The Notion of Interpretation in General

The normative interpretation is a simplified explanation of the meaning and content of legal norms. The legal interpretation of legal norm is important for the normal functioning of the activity of state bodies, respectively official persons, citizens and associations in discovering the content of the will of the legal norm's creator. With other words, this process is an activity that is done by state bodies in the function of identifying the real meaning of the content of the legal norm. In this context, we have to deal with a systematic process directed towards clarifying the content and meaning of legal dispositions, their social value, their position and role in the system of the legal regulation (Buxhakoski, 2007). The most important

---

<sup>1</sup> Associate Professor, PhD, Faculty of Law, University Kadri Zeka Gjilan, Kosovo, Address: Zija Shemsiu n, 60000 Gjilan, Tel.: +381 280-390-112, E-mail: feyzulla.berisha@uni-gjilan.net.

<sup>2</sup> Master Candidate of Communication Sciences NMSE, Vrije Universiteit Brussels – VUB, Belgium, Address: Pleinlaan 2 1050 Brussel, Belgium, E-mail: be.blerim@gmail.com.

system of these signs, object of interpretation is undoubtedly the language which consists of sounds that can also appear in other forms, especially the written one.

The interpretation in general, as a scientific process, is an activity that clarifies the meaning of material phenomena with the purpose of their transmission. This material phenomenon is qualified as a carrier of the meaning that the sign represents.

### **1.1 The notion of interpretation in general**

The interpretation of law is one of the most important elements and an important prerequisite for the successful creation and implementation of law. As a rule, through the legal interpretation of the legal norm, the purpose of relevant acts is revealed and their role in the society is recorded (Sahiti et. al. 2018). Therefore, for the interpretation of law, respectively of the legal norm, the starting point is the knowledge of the normative frame and after that comes the analysis of its composing parts, the comparison with other laws and acts. The clarification of the meaning, of the content of law or another act issued by the authorities of the state bodies is called interpretation (Berisha, 2015). As a rule, every act issued by the authorized state bodies is an object of interpretation, of course under the reserve when it is required to find out the meaning of the content of this act. The interpretation of law, according to the rules, is done by language expression, so we can say with responsibility that the language is the road through which the process of the interpretation of law is realized. In the practice of everyday life we face extraordinary cases of the expression of some norm by using other measures except language, for example body movements.

According to the law on marriage, “Spouses have equal rights and obligations towards their children. They are obliged to jointly take care for their welfare, which means to feed them and educate them” (Omari, 2007). This clearly shows that in every concrete work related to feeding and education, the parents have to do it together, i.e. it can’t be done only by one of the parents. Then, the word ‘food’ has to be interpreted. The conditional norms require the interpretation, for example “The territory of the Republic can’t be changed without the consent of the Assembly of the Republic.” Even though the norm seems to be clear at first even without being interpreted, in reality it isn’t like that. It is very important to interpret the word “consent”. The consent means the reconciliation of the will of the subject. The Republic itself doesn’t represent a physical person that has its own will to give its consent, in the usual meaning of the word. The Republic, as a legal form of the expression of the form of political power, expresses its will in a special

form. It is exactly the bodies that constitute it that ensure the realization of the expression of including here the Assembly. In the context of the clarity of the norm we also determine the object of its interpretation. As a rule, only norms that are in force can be objects of interpretation. But let's use the legal maxim that in jurisprudence every rule has its exception, i.e. if the historical meaning of the legal norm is required, we have to consider the content of that norm since its genesis.

In this context the historical interpretation of the legal norm comes in surface, which will be examined later. But after existence of the law or of another norm or act is verified, their authentic (original) text and their legal force, the state body that will apply the law, will do its interpretation in the real meaning of the word, i.e. it will set the meaning of its content expressed by the law, or another relevant act (Radev, 1997). Upon all these, in order to achieve the most right and accurate meaning of the legal norm through interpretation, it is required to have a professional attention and commitment from the connoisseurs of the jurisprudence practice and theory. And, in this context, the interpretation of law can be seen as a special activity of law.

## **2. The Interpretation of Law and Legal Gaps**

The meaning of law often becomes difficult not only for the broad public but for the specialists as well. When legal norms contain legal gaps within them, this means that these norms have to be interpreted, respectively clarified to directly give their true meaning. The laws of logic are also subjected to interpretation, which require preliminary significant philosophical knowledge. This process of interpretation is conditioned by the political character of the society. The interpretation of the legal norm is part of the general interpretation of laws upon and based on which the human society is organized. The interpretation of the normative frame is helped enabled by the legal doctrine in general and is fed by the positive law, as an exclusive element of the content of the legal interpretation. Of course that a significant help in the process of interpretation is given by empiricism. When we talk about the interpretation of legal norms, we consider the interpretation of legal norms that are expressly given and appear in different legal acts. Therefore, by interpreting a single norm, in reality we interpret the whole legal system – a segment of which that norm is. The interpretation of law in general comes to expression by the existence of legal gaps or by the ambiguity of the character of the norm. In this case, we can implement the so-called

interpretation in the wide sense. The interpretation of law, legal norm can be supported in the empiricism gained by the treatment of similar cases and this is clearly expressed, especially in civil issues. Somehow, in a case like this we look towards creating what is known as valuable judicial precedent within other sources of law. In the concrete case we can say that even the judicial precedent presents an agreement with genuine legal value, as foreseen in the creation of norms of law (Constitution of Albania, article 127). Therefore we can say that in England, the general law is the law created by judicial precedent. In another way we would say that filling legal gaps can be realized through what is known as implementation of law by analogy. I.e. when concrete cases are not foreseen with legal norms, which as a rule have to be reviewed by the court, then this can be filled based on the law or the legal norm that foresees another case, respectively a similar case. The implementation of the process of interpretation is mostly reflected to the norms that are characterized by legal gaps. The cases of implementing the law by using analogy are not allowed when it is not authorized or forbidden by the law. In our positive law, respectively in the criminal code the implementation of law by analogy is not allowed. Continuing towards implementing the principle of legality, it is sanctioned "*nullum crimen, nulla poena sine lege*", that with other words means that no one can be punished criminally for a criminal offense which is not foreseen earlier in the positive law and for which exists a foreseen sanction by legal dispositions. Therefore, we use analogy only in cases when we confront inevitable legal gaps and this exclusively in civil cases, while solving cases with analogy is strictly forbidden in the criminal law. It is a characteristic to emphasize the interpretation is realized in the limited meaning and the broad meaning.

### **2.1 Interpretation in the Limited Meaning**

Here we have to deal with the interpretation during which the norm is interpreted because of its broad meaning, and in order to give a more detailed shape we enable the narrow interpretation of legal dispositions. For example, we have the case in parent-child relations. Children have to take care for their parents, especially when the parents are incapable from the health to work. Of course we are talking about grown children and capable to work, not minors.

### **2.2 Interpretation in the Broad Meaning**

It is that kind of interpretation that entails the content of the legal norm more broadly than it is set by the relevant legal norm. I.e. it explains the circumstanced of that legal norm when it is implemented (Constitution of Kosovo, Article 116). This kind of interpretation has a human, respectively a facilitating character, and

for this convincing arguments function. The purpose of the limited and broad interpretation of legal norms is done to help the right and efficient implementation of law. All manners of interpretation have only one purpose: to find the effective content of the law and to make it understood better.

### **3. The Object of Interpretation of Law**

With the object of interpretation of law we will understand the subjugation of the legal norms to the parameters of logic and reasoning, when something like this is dictated by legal gaps or the ambiguity in the text of the norm. So, the clarification of the content of the legal norm, law or subordinate acts with other acts of state power is called interpretation. As a rule, every legal norm, law or respectively an act of state power, which sets the manner of behavior of subjects against the normative frame, can be an object of interpretation. As to the object of interpretation, we can say that only the norms organized in the shape set by the state, respectively by the authorized bodies, have the mission to enable their implementation and to offer the dimensions of the legal interpretation. Through the process of interpretation legal gaps are filled. The concept of the object of interpretation exists as such, in the narrow and broad meaning. With interpretation in the narrow meaning of the word we will understand the situation when the legal norm functions in unity as one or several norms linked with each-other. While the object of interpretation in the broad meaning is the entirety of the legal system, the whole normative frame of the relevant field. Objects of interpretation are general and special norms. Usually it was considered that only general norms are objects of interpretation, but we can exclude concrete norms either. From the legal activity of special elements of state's positive law, the object of legal interpretation is set. During the process of interpretation, as set by its object, a number of practical rules are respected, that aim to implement the essential elements of the positive law. Objects of interpretation are only the written norms and not customary ones, because for the last one it is said that there must be special interpretation rules created.

Customary norms can be objects of the interpretation of norms, especially in those countries where customs are still considered as an important source of law, i.e. where the unwritten law dominates. When we have to deal with the implementation of a law, decision, instruction or something similar there is not a special procedure for the issue of these acts, in this context we have to deal with

giving instructions, explanations for the content of the norm. For example, when we have to deal with the implementation of some norm, the decision of local power such as subordinate acts, sometimes it is required to clarify if these norms are in accordance with law or not. The essences of the object of interpretation are: legal acts, international agreements, civil contracts and judicial acts.

#### **4. The Importance of Interpretation**

One of the most important parts of the process of interpretation of the legal norm is the knowledge of law, respectively the knowledge of the legal norm. In absence of the process of the recognition of the legal norm it is understandable that there it can't be implemented. The accuracy of the legal interpretation is in fair proportion with the level of the knowledge of the normative frame's reality. The essence of the legal norm stands in its meaning, the alienated meaning of a norm can lead to creating a new reality, totally unorganized. In this plan we see that the importance of interpretation takes a primary role. All manners of interpretation have the same purpose: to dismantle the content and purpose of the norm, in order for it to be applicable, the way its creator issued them. The importance of this process shows up with the occasion of realizing the scientific interpretation, which always has a creative character (Haxhiu & Sahiti, 2018). The obligation for the respective bodies is to implement the content of the norm according to the officially offered standards of interpretation.

#### **5. Manners of the Interpretation of Law**

##### **5.1. The Official Interpretation**

The process of the interpretation of law was considered as such when it was realized by state bodies or by researches of legal sciences, specialists of the doctrine (Kutleshiq and Marcenko, 2002). As to state bodies, the enable and realize: the legal interpretation, judicial interpretation and doctrinal interpretation. The official interpretation done by authorized state bodies has a general legal force, where a competent body clarifies with instructions and gives explanations for the implementation of law in certain fields, where it appear necessary. The importance of the official interpretation as an interpretation of state bodies unifies with the fact that we have to deal with the interpretation of authorized state bodies in certain social spheres. From the typological viewpoint, as official interpretations

we considered: the legal interpretation, authentic interpretation, judicial interpretation, administrative interpretation and the scientific or doctrinal interpretation (Omari, 2007).

## **5.2. The Legal or Authentic Interpretation**

The legal interpretation is realized by state bodies, which based on law have the right to do so. Legal interpretation means the interpretation that is realized by the body that issues the legal norms and in the same time the interpretive act. So, as it is clearly seen, we have to do with authorized state bodies.

The acts that subjugate to legal or authentic interpretation have full binding force only towards those persons and organizations that are under the jurisdiction of the bodies we cited above. So, this kind of interpretation is enabled and realized by the legislator. Article 16 of the Law for the Basic Constitutional Dispositions determined that the interpretation of laws is done by the Popular Assembly (Ballanca, 1974). This means that the Popular Assembly had the right to give valuable explanations related to the elements of the content for all state bodies, for all official persons and all citizens. The fact that the legal norm is interpreted by its creator doesn't mean that we have to deal with the creation of a new legal norm. The explanation of the authentic meaning of the legal norm in force is always realized for a more effective implementation of that norm in the practice of different bodies. Except the legal or authentic interpretation which is done by the body that issues the norm, we also have the interpretation done by the Constitutional Court, as the highest body which realizes the control of the constitutionality of legal norms through interpretation. The Constitutional Court guarantees in this deeply impartial process the respect of the authority of the constitutional normative frame. A competence like this makes the Constitutional Court to transform the legal interpretation to a final interpretation. It is known by everyone that in the model of the state of law, in every constitutional democracy the decisions of the Constitutional Court are binding for the judiciary and for all relevant persons and state institutions. The interpretation of the constitution can also be considered as a legal interpretation if this is realized by the Constitutional Court itself. Anyway, in every case we have to be clear that with all the prerogatives and other things known by law, the Constitutional Court cannot issue legal norms.

### **5.3. The Legal Interpretation**

With other words will be translated as an official interpretation of the legal norm, which is realized by the judicial power. As a rule, the interpretation of the law for the solution of a concrete case is done by the court, in the function of executing its legal function of the administration of law and the reference upon the normative legal frame. From this point of view, the judiciary is presented as the last body that interprets the legal norm, mainly with executive value and legal effects for the parties in a dispute. This kind of interpretation that is supported by the authorization that law gives to these bodies is based on professionalism, a necessary indicator to pronounce judicial decisions. The interpretation of legal norms done by the judiciary, has a special character and legally binding force. It is unified with the specific interpretation. The judicial interpretation, as a product of the judiciary, is the most fair and accurate official interpretation.

### **5.4. Administrative Interpretation**

In legal doctrines is known as an official interpretation. The bodies of state administration, besides their administrative activity, through which they execute their power in one side and in the frame of the activity of service with delegated power from central bodies, in the depended ones, as professionalized bodies, conduct the interpretation of law (Llukiq, 1986). This kind of interpretation is binding for the parties to which it is dedicated, while it is not apply for other cases. As a rule, objects of interpretation are material norms, respectively acts that are issued by the bodies of state administration. Administrative interpretation also appears from the need of controlling the state administration from the highest instance of state, which is put into action through regular legal measures, such as appeal. Competent courts, such as the Supreme Court, respectively as specialized courts, by evaluating the legality of the act issued by relevant administrative bodies, also conduct the relevant administrative interpretation of acts. This kind of interpretation by competent state bodies entails the official administrative interpretation that is unified as an interpretation with binding character. Therefore, in one way or another, the highest state bodies, in this context administrative courts (Ganev, 1990) conduct some kind of control and interpretation of norms – relevant administrative acts.

The legal interpretation, in order to ensure efficiency, has to be realized according to the principle of legal equality as a precondition for the respect of human's right and freedom.



### **5.5. The Interpretation of Non-Governmental Entities**

This can be done with the purpose of implementing a legal norm, created by someone else (Stavileci, 1997). Exactly this kind of interpretation is called personal interpretation and has a non-binding character. This kind of interpretation of law can be done by physical persons such as citizens and legal persons, non-governmental organizations. With other words, these norms are objects of interpretation from subjects that don't exercise state power. the interpretation of legal norms by unofficial persons, respectively incompetent, doesn't have a binding character and doesn't bring legal effects. The interpretations of authorized state bodies have legal effects, such as the authentic interpretation by the legislative, judicial and administrative bodies (Radev, 1990). The applicability of these legal norms in the meaning of the above bodies has binding effects.

The interpretation of legal norms as an unofficial interpretation is expressed in different forms such as: explanations, instructions, comments and recommendations etc. This category of interpretations is classified in:

- Ordinary (everyday) interpretation, which is realized as a result of everyday social needs of people.
- Professional (competent) interpretation is realized by experts and specialists in the field of law such as judges, lawyers, notaries, professors and academics of legal sciences.
- Doctrinal (scientific) interpretation is realized through different publications and comments, books, brochures, scientific papers by legal theorists (Kutleshqi and Marcenko, 2002).
- The interpretation of non-governmental entities – or the interpretation of private persons. This interpretation is not even close to being accurate, like the interpretation done by state bodies. This happens because of the simple reason that state bodies have professional qualities, that are not possessed by citizens.

### **6. The Doctrinal Interpretation**

Otherwise known as the contribution of the legal science, in the aspects of the normative frame, is very important. The actors that enable the doctrinal interpretation derive from the category of the most famous experts that have a long standing experience and have proved to possess and exercise the mastery of legal

interpretation. The authors that have studied in the field of the legal doctrine are known for their position and high social authority. This appears even in ancient times, where roman jurists through comments, suggestions and recommendations have had a huge impact in the development of the legislation by directly helping the development of the state and law in Roma. An important characteristic which is worth mentioning is that this kind of interpretation has an unlimited state character. It is non-governmental in the meaning that it is implemented in different places and has an emphasized role in the legal theory and practice of legal families and systems of different countries.

It is a characteristic to mention that the doctrinal – respectively scientific interpretation is an interpretation based on studying the conclusions of the scientific discipline of law. The doctrinal interpretation, although it doesn't have a binding character, has a special importance in the elaboration and improvement of the legal activity of different state bodies, and for the reinforcement of legality. The fact that the scientific interpretation doesn't have a binding force discharges the scientist of the field of law by the element of responsibility, like the case with the relevant state body, i.e. the doctrinal interpretation doesn't have a legal value, respectively it doesn't have legal effect for the bodies and persons that implement the law. In the end, for the doctrinal-scientific interpretation, different authors support the thesis that “the legal interpretation is experience as much as it is science”.

## **7. Conclusion**

The interpretation of law is one of the most important elements and an important prerequisite for the successful creation and implementation of law. As a rule, through the legal interpretation of the legal norm, the purpose of relevant acts is revealed and their role in the society is recorded. Therefore, for the interpretation of law, respectively of the legal norm, the starting point is the knowledge of the normative frame and after that comes the analysis of its composing parts, the comparison with other laws and acts. The clarification of the meaning, of the content of law or another act issued by the authorities of the state bodies is called interpretation. As a rule, every act issued by the authorized state bodies is an object of interpretation, of course under the reserve when it is required to find out the meaning of the content of this act. The interpretation of law, according to the rules, is done by language expression, so we can say with responsibility that the

language is the road through which the process of the interpretation of law is realized. In the practice of everyday life we face extraordinary cases of the expression of some norm by using other measures except language, for example body movements.

## References

- Ballanca, Z. (1974). *E Drejta Administrative e RPSSH, II/ Administrative Law of the SSSR, II*. Tirana.
- Berisha, F. (2015). *Hyrje ne te drejten (Fillet e se drejtes)/ Introduction to law (The beginnings of law)*. UNHZ- Faculty of Law, Peje.
- Buxhakoski, S. (2007). *Fillet e së Drejtës si disiplinë shkencore/ The beginnings of Law as a scientific discipline*, Dr.
- Ganev (1990). *Uçbenik po obshca teorija na pravoto/ A textbook by the general theory of law*. Sofia, 1990.
- Haxhiu, S., & Sahiti, A. (2018). Financing of Political Parties and Electoral Campaigns in the Western Balkans. *Acta Universitatis Danubius. Relationes Internationales*, 11(1), 98-111.
- Kutleshij, V. & Marcenko, M.N. (2004). *Terija gustarstva i prava/Government and law theory*. Moscow, 2002, Osnovni prava, Belgrade, 2004.
- Llukiq, R. (1995). *Teoria drzava i prava I/ State theory and law I*. Belgrade, Serbia.
- Omari, L. (2007). *Parime dhe institucione të së drejtës publike*, tenth edition, “Elena Gjika”, Tirana, 2007.
- Radev, D. (1997). *Obshca teorija na pravoto*, Sofia, 1997.
- Sahiti, A., Ahmeti, S., & Ismajli, H. (2018). A Review of Empirical Studies on FDI Determinants. *Baltic Journal of Real Estate Economics and Construction Management*, 6(1), 1-11.
- Stavileci, E. (1997). *Hyrje në Shkencat Administrative*, Prishtina.
- Stefan Buxhakoski (2007) publishing house “Çabej”, Tetovë.
- The Constitution of the Republic of Albania (1998). Tirana, Albania
- The Constitution of the Republic of Kosovo (2008). Prishtina, Kosovo.