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On logical interpretation²

Abstract

The issue of legal interpretation is one of the most important research matters of jurisprudence. In order to be able to apply written legal texts, we need to be able to determine their meaning or possible range of meanings. Perhaps the most interesting method is the so-called logical interpretation, which helps to determine the meaning of legal texts with formulae derived from formal logic, but in fact also containing the evaluation of the person performing the interpretation. The present study reviews the basic characteristics of logical interpretation and then analyzes its different formulae. Its final conclusion is that the so-called logical type of legal interpretation is only a quasi-logical one, and by using different formulae, based on the individual evaluation of the interpreter, the different meanings of the given legal text can also be derived in ways that are all legitimate and can be equally protected in legal practice too.

Keywords: legal interpretation, logical interpretation, logical formulae, argumentum a fortiori, argumentum a contrario, argumentum a simili, argumentum ad absurdum, analogy, teleological reduction.

I. Introduction

The term ‘interpretation’, according to Wróblewski, can be considered at three levels. In the broadest sense (*‘largissimo sensu’*), it covers the understanding of all ‘cultural objects’, i.e., things or phenomena created by humans. In the broad sense (*‘sensu largo’*), this concept includes only the interpretation of expressions of the written or spoken language or any manifestation thereof. Finally, in the strict sense (*‘sensu stricto’*), we use this concept for exploring the meaning of a text only if we have doubts about the ‘correct’ meaning thereof and we wish to explore this ‘correct’ but at first sight not obvious meaning.³ In the following, we use the latter, strict sense of the concept of ‘interpretation’.⁴

Logical interpretation is a particular argumentation⁵ which has the feature that one, most often, applies it tendentiously when wishing to reach an interpretation result (which, regarding

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³ Cf.: Wróblewski, Jerzy: Legal reasonings in legal interpretation. In *Logique et Analyse*, N. S. 1969. 45. Nauwelaerts, Louvain; Paris, 1969, p. 4.

⁴ Based on Wróblewski’s theory, MacCormick understands this concept also similarly: “By ‘interpretation in the stricter sense’, I thus mean entertaining some doubt about the meaning of proper application of some information, and forming a judgment to resolve the doubt by deciding upon some meaning which seems most reasonable in the context.” [MacCormick, Neil: *Argumentation and Interpretation in Law*. In *Ratio Juris*, Vol. 6, No. 1, March 1993, pp. 19-20.]

⁵ There is a distinction between interpretation and argumentation which, being out of scope of the matter of the present paper, cannot be discussed here. For this distinction in detail, see: Tóth J., Zoltán: *Interpretation of Fundamental Rights in Central and Eastern Europe: Methodology and Summary*. In Tóth J., Zoltán (ed.): *Constitutional Reasoning and Constitutional Interpretation: Analysis on Certain Central European Countries*. Ferenc Mádl Institute of Comparative Law – Central European Academic Publishing, Budapest – Miskolc, 2021, pp. 17-20.

its genesis, is merely *felt* to be proper in an intuitive manner) *opposing* the unambiguous literal meaning of the text.⁶

Employing “logical” maxims in practice, however, cannot be deemed as strictly formal logic, only a *quasi* one. Logical interpretation actually *is not* formal logic since it always refers to concrete cases the classification of which (for example determining what is ‘bigger’ and what is ‘smaller’) is necessarily subjective. However, the applied thinking *schema* has logical *origin* that is why we simply call these techniques ‘logical interpretation’, in accordance with the main part of the scholarly literature.

It should be noted that the view according to which the ‘legal logic’ is not formal logic is not definitely endorsed; hence, for example, Georges Kalinowski explicitly accepts legal logic as formal logic.⁷ Perelman, partly arguing also with Kalinowski, enlightened the lack of the logical nature of maxims, as follows: ‘[Legal logic] is not a logic of formal demonstration but a logic of *argumentation* which uses, instead of analytical proofs which are compelling, dialectical proofs (in the Aristotelian sense of this distinction) which aim at convincing or at least persuading the audience (in this case: the judge) to arrive at a solution of and determine a legal controversy. Judicial decisions, with their findings and grounds, constitute ideal texts the analysis of which will provide the arguments proper to legal logic. A moment’s thought is enough to establish that here is not a case of theoretical reasoning, where starting from true premises one reaches, by means of the laws of logic a conclusion equally true, but a *decision* which the judge justifies on stated grounds, including the reasons which have enabled him to set aside the parties’ objections to his findings.’⁸

The use of the (quasi) formal logic usually provides a rational solution that can be ‘figured out’ by common sense. In this sense, the maxims of (quasi-)formal logic as universal laws of human rationality and the aspects of common sense are actually the same. A further feature of the logical interpretation (but not exclusively of this method) is that its application often is not explained; thus, logical arguments are mostly used in practice so that the formula invoked to interpret the text is not expressly referred to. Whether, however, the logical arguments are referred to or not, they have outstanding importance in administration of law; not even primarily in terms of their application frequency but rather of the *weight* of their arguments. Thus, formal logic is one of the few things the rules of which cannot be either questioned or refuted, which, therefore, are objective (if their application conditions can be clearly defined),⁹ generally applicable and valid anywhere and anytime (in all legal systems).¹⁰

⁶ For a comprehensive classification of methods of interpretation, see: Tóth J., Zoltán: The Methods of Statutory Interpretation in the Practice of the High Courts of Hungary. In *Annales Universitatis Mariae Curie-Skłodowska, Sectio M Balcaniensis et Carpathiensis*, Lublin – Polonia, Vol. 1., 2016, pp. 175-180. For the evolution of these techniques, see: Tóth J., Zoltán: Excerpts from the development of methods of legal interpretation. In *Law, Identity and Values*, Vol. 2, 2022/1., pp. 241-264.

⁷ Cf. e.g.: Kalinowski, Georges: Y a-t-il une logique juridique? In *Logique et Analyse*, Vol. 2, No. 5, 1959, p. 53.

⁸ Perelman, Chaïm: What Is Legal Logic? In *Israel Law Review*, Vol. 3, No. 1, January 1968, p. 3

⁹ If the fulfilment of these application conditions is not clear because, for example, the previous assessment of the nature of the given situation is needed, then, of course, even logical formulae cannot help us to determine in an objective manner what the text in question means [or often instead: does not (surely) mean].

¹⁰ Nevertheless, it does not (cannot) mean that logic is able to provide solution to all ‘hard cases’, in fact, it is also possible that, on the contrary, it provides several, mostly equally plausible solutions from which we cannot choose objectively. These solution directions, principles, guidances are called ‘meta-norms’ by von Wright [Wright, Georg Henrik von: Is there logic of norms? In *Ratio Juris*, Vol. 4, No. 3, 1991, p. 277]. The function of these ‘meta-norms’ is to help the law application and to allow a decision to be made on the questions being regulated by ambiguous or contradictory norms or being not regulated at all; hence, they serve the legal certainty and foreseeability of administration of law. But there are cases in which more of these ‘meta-norms’ are usable. For example, the arguments *a contrario* and *a simili* may lead, in the course of deciding the same legal interpretation dilemma, to contradicting conclusions. In order to reduce (or, in a case which is ideal but in its purity is quite rare in practice, to eliminate) the uncertainties arising from legal gaps and the contradictions of positive law, we also need a rule determining how to choose from the several, potentially applicable ‘meta-norms’, that is, we need a

Accordingly, in cases when reference to them is well-founded, they, typically, count as the *strong arguments* of solving an interpretation dilemma.¹¹

II. Formulae of legal (statutory) interpretation

The most often used logical formulae are *argumentum a minore ad maius*, *argumentum a maiore ad minus* (these two are collectively called: *a fortiori*), *argumentum a contrario*, *argumentum a simili* and *argumentum ad absurdum* but further logical maxims also exist.

The *argumentum a minore ad maius* is an inference from smaller to bigger. On the one hand, it applies to prohibitive legal norms: if the smaller, i.e., less serious conduct (conduct with a lower impact) is prohibited, or if the smaller value is legally protected, then the bigger, i.e., more serious conduct (conduct with higher impact) is even more prohibited, and the bigger value is even more protected, even if the latter is not literally included in the text of the legal regulation. (If, for example, a person with limited legal capacity is not allowed to do certain things then an incapacitated person is, obviously, even less entitled to do the same.) On the other hand, the same maxim applies to the expressed exemption from the fulfilment of obligation granted by law: if an act states that the smaller is not the obligation of someone, it obviously also means that neither the bigger (including the smaller) is his/her obligation.

The *argumentum a maiore ad minus* is an inference from bigger to smaller. This principle states that if the bigger is allowed, permitted, legally not prohibited then the smaller is even more allowed, permitted and even less prohibited legally.¹² [If, for example, an assaulted person, under certain conditions, is allowed even to take, lawfully, the assailant's life in case of justifiable defence, then, in the same circumstances, he/she may also cause battery. Or, if certain

'meta-meta-norm' which says when and which one from the several 'meta-norms' the court has to call for help. However, this guidance goes to infinity, since even 'meta-meta-norms' cannot avoid conflict with each other which would need a 'meta-meta-meta-norm' to be resolved, and so on. We can break free from this *regressus ad infinitum* if we admit that law cannot be perfectly objective and predictable. It means that there necessarily have to be cases when it is unknown which (positive) norm to apply. (According to von Wright, we have to simply accept that a decision can be arbitrary. Cf.: von Wright: op. cit., p. 278). Agreeing with Wright's 'acquiescent' position, we have to admit that there is an element of uncertainty in the law which no interpretation of the law can completely eliminate, so that the correctness of the judgment of the law enforcers can only be based on probability. At least in 'difficult cases' (which may occur, inevitably, even in legal systems having the most detailed provisions), the legal interpretation (the precondition of the law application) is, to some extent, based on value judgement which unavoidably brings subjectivity to the judicial activity and, for this reasons, also the decision will be, to a certain extent, subjective. In law, this subjectivity can be limited (excluding e.g., arbitrary, indefensible decisions from the possible result of law application) but not entirely eliminated.

¹¹ It is important to distinguish the so-called fallacies from logical interpretation. As for the former, they may not be applied in statutory interpretation, or even if they may be, they cannot be regarded as logical reasons. Kevin W. Saunders enumerates the sorts of informal fallacies, specifying eighteen ones. According to him, these are the following: 1) *argumentum ad hominem*; 2) *argumentum ad misericordiam*; 3) *argumentum ad populum*; 4) *argumentum ad vericundiam*; 5) *ignoratio elenchi*; 6) *petitio principii*; 7) *post hoc ergo propter hoc*; 8) *argumentum ad ignorantiam*; 9) *argumentum ad terrorem*; 10) *argumentum ad antiquitatem*; 11) accident; 12) hasty generalization; 13) composition; 14) division; 15) complex question; 16) *tu quoque*; 17) ambiguity; 18) *non sequitur*. (See in detail: Saunders, Kevin W.: *Informal Fallacies in Legal Argumentation*. In *South California Law Review*, Vol. 44, 1992-1993, pp. 343-382.) Besides these, Saunders mentioned another one, namely, *argumentum ad baculum* which is – at least as per him – so rarely used in legal argumentation that he did not deal with it. Actually, fallacies 1)–3), 5), 9), 15) and 16) (and, of course, *argumentum ad baculum*) are not even in theory able to play a role in statutory interpretation because they presuppose a dispute over factual issues between two parties with counter interests; 4) merges into the interpretation by concrete works of jurisprudence or legal literature; and 10) is, in part, indeed acceptable in legal interpretation (however, not as a logical one) since, for example, subjective teleological ('historical') interpretation or the interpretation in accordance with former judge-made law count, in fact, in *argumentum ad antiquitatem*.

¹² „Cui licet quod est plus licet utique quod est minus.”; „Plus semper in se continet quod est minus.”

things can be done even by an incapacitated person (e.g., even an eight-year-old child can conclude contracts of minor importance aimed at satisfying their everyday needs, namely can buy, e.g., a loaf of bread in a shop) then, obviously, the same is also allowed for a person with limited legal capacity (e.g., a fifteen-year-old child).] Furthermore, if a legal norm specifies the bigger as obligation for someone, the smaller included by the bigger obligation also occurs as the obligation of the certain person. (This might be absolute formal logic: if statement *n* is true for a set then this statement *n* must also be true for any subset of that set).

According to the maxim of *argumentum ad absurdum*, if conclusions resulting from the application of the meaning establishable on the basis of a certain interpretation method would lead to absurd, impossible, contradictory or obviously undesirable legal practice or case judgements,¹³ this meaning must be rejected as obviously groundless. (If, for example, a provision on child protection does not protect but, on the contrary, makes children more vulnerable, this meaning cannot be applied; through other methods, a meaning, different from the grammatical one, has to be sought.) This is a purely negative method: it does not say what a given provision means but can say what it definitely does not mean.

The *argumentum a contrario* is the inference from the opposite. It considers the complementary life situations; where two life situations are possible but one excludes the other. In this case, if a rule exists for one of the complementary life situations but does not for the other one, the rule being contrary to the regulated life situation apply to the other (literally not regulated) one, even if it is not included in the text of the legal norm. [For example, if two categories (adults/minors, legal capacity/incapacity, capacity to bring legal proceedings/lack of capacity to bring legal proceedings, etc.) exist in a legal system and legislator defines only the one of them, with that, *a contrario*, the other one will also be subject of regulation, since the second category covers the situations not belonging to the first. If only the concept of minors is defined, it can also be figured out that who does not meet these conditions that is an adult; or, if only the cases of incapacity are defined by the regulation, it follows, *a contrario*, that in all other cases people have legal capacity, etc.]¹⁴ This maxim also covers *argument from silence*.¹⁵ In practice, this primarily concerns the interpretation of taxative enumerations, i.e., the conclusion that, in relation to the life circumstances not included in the exhaustive list (or understood as such by the judge), the legal practitioner concludes that the provision applicable to the life circumstances included in the taxative list is not applicable to the life circumstances not included in the list. (Most often: when a law defines and prohibits a specific conduct, it also provides – without stating this in the text – that conduct not covered by this prohibition is permitted, i.e., it is recognised as lawful.)

The *argumentum a simili* (or *argumentum a pari ratione*)¹⁶ is the inference from the like. This means that if there is a legal rule for a given life situation, this legal rule will also govern (be extendable) to a life situation which is similar in its relevant factual elements to this life situation, but which is not literally regulated. The key question regarding the applicability of this formula is the assessment of relevance: in what case can we consider, in some respect, the similarity of two facts to be relevant in the course of interpretation (since, to some extent, all facts are similar to any other facts). There is no guidance to that; it, basically, depends on the perception of the judge and inevitably brings subjective element into the process of adjudication (just as, for example, the examination, in case of *a contrario*, whether the enumeration is closed, namely exhaustive, or merely exemplary or whether the life situations are complementary or not; the assessment, in case of *ad absurdum*, whether a social

¹³ Regarding the cases of absurdity, see, e.g.: Scalia–Garner: op. cit., pp. 234-239.

¹⁴ This formula does not apply to non-complementary (mutually exclusive, disjunctive) life situations.

¹⁵ Cf., e.g: Jakab, Andras: Judicial Reasoning in Constitutional Courts: A European Perspective. In German Law Journal, Vol. 14, Issue 8, August 2013, p. 1240.

¹⁶ Further (longer) names of that maxim: *argumentum a simili ad simile* and *argumentum a similibus ad similia*.

consequence is ‘obviously undesirable’ or not; the deciding, in case of the two formulae of *a fortiori*, what is ‘bigger’, ‘more serious’, ‘more dangerous’ and what is less, etc.).

Finally, there are also *other formulae*. For example, the principle of ‘*implied powers*’ according to which if a given legal regulation prescribes a task for an organ, this organ has to be considered to be authorized with the necessary power even if neither the norm regulating such task nor other norms in the legal system specifies it expressly.¹⁷ the *argumentum ab inconvenienti* requires „law to be used to bring about, as efficiently as possible, good and useful effects in society”;¹⁸ and, as, virtually, a part of this method, *argumentum ab impossibili* means that impossible inferences are not permissible, *i.e.*, it is impossible and, consequently, improper to attribute a certain sense and its opposite meaning to a given legal text at the same time.¹⁹ A further example is the principle of *eiusdem generis* by which the range of cases of an exemplary enumeration covered by the legal norm can be broadened beyond the factual elements specified exhaustively in the list, by a factual element, but not by any, only with ones which are, regarding their relevant characteristics, similar to the specified elements.²⁰ (If we think about it, we will see that the principles of implied powers, *argumentum ab inconvenienti* and *argumentum ab impossibili* are, actually, intended to serve the avoidance of absurd application of law; hence, it can be considered as the part of the *argumentum ad absurdum*; while the principle of *eiusdem generis* is, essentially, the special type of *argumentum a simili*.)

III. On analogy and teleological reduction

Analogy (*argumentum per analogiam*) is a theoretically important (but, in fact, in continental law systems, rarely used) case of the *argumentum a simili*. As a consequence, we do not consider interpretation by analogy (which is not really interpretation, but hidden legislation) as a separate method of interpretation, but as part of a *simili* argument.²¹ We apply analogy if we have to make a decision but there is no specific rule which could be fitted to the given fact (because there is a legal gap) so the rule has to be created by the court on the basis

¹⁷ According to the principle developed in the constitutional law, primarily that of the United States (cf.: Skubiszewski, Krzysztof: Implied Powers of International Organizations. In Dinstein, Yoram – Tabory, Mala: International Law at a Time of Perplexity. Essays in Honour of Shabtai Rosenne. Martinus Nijhoff Publishers, Dordrecht, The Netherlands, 1989, p. 855), and introduced into international law, into the practice of international and supranational law enforcement bodies and is now also upheld in the practice of the ECJ (cf.: Eeckhout, Piet: EU External Relations Law. Oxford University Press, 2012, pp. 70-119), ‘in international organizations the doctrine of implied powers means that the organization is deemed to have certain powers which are additional to those expressly stipulated in the constituent document. These additional powers are necessary or essential for the fulfilment of the tasks or purposes of the organization, or for the performance of its functions, or for the exercise of the powers explicitly granted’. (Skubiszewski: op. cit., p. 856) ‘Implied powers are, by definition, supplementary to those expressly granted’ (Skubiszewski: op. cit., p. 857; see also: op. cit., p. 858). Implied powers is a principle of interpretation developed by legal doctrine for practical purposes; ‘the theory of implied powers serves as a rule of interpretation of the constituent instruments of international organizations’ (Gadkowski, Andrzej: The doctrine of implied powers of international organizations in the case law of international tribunals. In Adam Mickiewicz University Law Review, 2016/6., p. 46.)

¹⁸ Cf.: Leff, Arthur Allen: The Leff Dictionary of Law: A Fragment. In Yale Law Journal, Vol. 94, 1984-1985, p. 2056.

¹⁹ Ibid.

²⁰ ‘The *eiusdem generis* rule applies when there is a clearly ascertainable class or category or genus, at least two particular words, having a common characteristic or quality, or common and dominant feature, followed by general words which on their own are not clear and unambiguous words.’ (Samuels, Alec: The *Eiusdem Generis* Rule in Statutory Interpretation. Statute Law Review, Volume 5, Issue 1, Autumn 1984, p. 180.)

²¹ In this respect, we follow Szabó, Miklós who itself also understands *argumentum a simili* as the ‘base case’ of *argumentum per analogiam*. (Cf.: Szabó, Miklós: A jogdogmatika előkérdéseiről. [On preliminary questions of legal dogmatics.] Bíbor Kiadó, Miskolc, 1999, p. 171.)

of a similar existing fact. We can talk about *legal gap* if legislator regulates a life situation as a whole (it means there is legal norm regarding the relation and its substantial parts) but, accidentally, forgets to regulate a segment thereof. It causes literally ‘gap’ in the system of legal norms: while no rules exist regarding the considered one, the other segments of the life situation are regulated.

It is an important criterion that a legal gap can occur accidentally; if the legislator intentionally leaves a sub-area unregulated that cannot be considered as legal gap but something that the legislator deliberately allows, where the entities are free to act (since, everything which is not unlawful is allowed). With more or less regularity, it can happen that the legislator, as it can be determined from the regulatory environment, wanted to regulate the whole of the life situation in question but regarding a segment, it did even not draw up a rule. This gap may occur at the adopting of the regulation (this is the so-called original legal gap) or later due to the impact of social-economic-technical changes (the so-called derivative legal gap).

Analogy is the method of filling legal gaps. In case of analogy, therefore, there is no regulation of a life situation, unintended by the legislator, and therefore the judge himself must establish it in the course of applying the law in order to decide the case in question. Therefore, analogy is nothing more than filling the legal gap, a quasi-judicial legislation, remedying the legislator’s omission.²² (There is no legal gap or legal lacuna if the legal regulation exists but is not unambiguous; in this case, the doubtful or ambiguous norm has to be interpreted). Depending on the basis of which the judge creates the missing norm, we can distinguish statutory analogy and legal analogy.

In case of statutory analogy (*analogia legis*), there is no regulation on a given life situation but a rule exists regarding a similar one. In such case, the judge fills the gap of regulation with using the other existing legal norm, as an aspect, and decides the case before the court on the basis of the norm found (made) this way. So, it is the task of the judge to step into the legislator’s shoe and to make a decision which the legislator, according to the judge, would also have made (which norm the legislator would have incorporated into the statute) if it had not forgotten to regulate the given life situation. [I.e., the judge does not fill the legal gap on the basis of his/her own values, legal concept, etc. but in the way how, according to him/her, the legislator itself would also have filled it if it had recognised the gap. For this purpose, the judge does not apply the norm of other but similar life situation, i.e., the decision is not made on the basis thereof (that would be a simple extensive interpretation of that other norm which would be conducted by any of interpretation methods except grammatical) but considers the justificatory principles of the other norm and the legal policy reasons of the creation thereof and, considering all of these, makes a hypothetical regulation which, probably, would have been made also by the legislator itself if it had not forgotten to regulate the given situation.]

²² It is interesting that there are, as exceptions, regulations in (the continental) Europe where the legislator, in a given legal norm, provide explicit authorization to judges to fill the possible legal gaps during law application if otherwise the decision-making is not possible. The best known of such regulations is the Swiss Civil Code of 1907 being still in force today [*Schweizerisches Zivilgesetzbuch (ZGB)*] the Article 1 of which declares, as principle of interpretation, that court is entitled and obliged to decide, in the absence of legal provision or customary law applicable in the case, in accordance with the rule that it would make as a legislator. But this authorization is, as the possibility to apply analogy in general, not limitless since the court is bound by the prevailing doctrine and case law determining the Swiss law regarding the given issue. [‘The law applies according to its wording or interpretation to all legal questions for which it contains a provision. In the absence of a provision, the court shall decide in accordance with customary law and, in the absence of customary law, in accordance with the rule that it would make as legislator. In doing so, the court shall follow established doctrine and case law.’ Swiss Civil Code of 10 December 1907, Art. 1. In original language: ‘Das Gesetz findet auf alle Rechtsfragen Anwendung, für die es nach Wortlaut oder Auslegung eine Bestimmung enthält. Kann dem Gesetz keine Vorschrift entnommen werden, so soll das Gericht nach Gewohnheitsrecht und, wo auch ein solches fehlt, nach der Regel entscheiden, die es als Gesetzgeber aufstellen würde. Es folgt dabei bewährter Lehre und Überlieferung.’ Schweizerisches Zivilgesetzbuch vom 10. Dezember 1907 (Stand am 1. Januar 2021)]

On the contrary, legal analogy (*analogia iuris*), which is no longer imaginable, would be applicable if the given legal system would not contain any regulation on relation(s) of life similar to one accidentally not regulated. Then, the judge should deduce from the general principles of the legal system, the characteristics of legal culture that, supposedly, how the legislator would have regulated the concerned life situation.

As, at least in modern legal systems, it is hard to imagine that no legal regulation exists not only regarding a given life situation but even regarding another one being similar in any way, hence, today in practice, it is not possible to apply *analogia iuris*. However, *analogia legis* exists and judges practically carry out law-making activity when they apply it (with the filling of the legal vacuum, the replacement of the missing norm). Since judges have decision-making obligation (they cannot say that they do not decide the case before them), *analogia legis* may sometimes be applied even in legal systems having the most accurate legal regulation and if it is applied, the judge carries out quasi legislation activity, namely further develops the existing legal system.²³

The opposite of the analogy is the teleological reduction when there is a rule which should not be. According to Larenz, there can be ‘legal lacuna’ (*rechtliche Lücke*) not only if no regulation exists but also if legal expectations would result from a general principle which were contrary to the existing rule. In this case, the meaning and the purpose (*Sinn und Zweck*, together: *Telos*) of the legal regulation (*Regelung*) have to be taken into consideration and, on the basis thereof, the existing rule cannot be applied. At this time, the legal lacuna is hidden (*Verdeckte Lücke*) and the technique of teleological reduction (*teleologische Reduktion*) has to be applied to eliminate it, i.e., on the basis of the general principle (the purpose of the regulation) the concrete legal norm opposing that has to be ignored.²⁴

IV. Conclusion

It is to be stressed again: these formulae, as mentioned above, are not purely logical ones, since preliminary (subjective) assessment of the interpretation situation is required for their application, including the judging of the characteristics of the situation to be regulated, the attempt to determine *ratio legis* and considering the moral and other non-legal aspects leading to the ‘proper’ decision. The interpreting person’s legal concept, values, attitudes, preferences, etc. unavoidably affect all of these elements. It is also necessary to *choose* from the (quasi) logical formulae, and this choice is not yet a logical but an evaluating operation which,

²³ At legislative level, the denial of justice was first time explicitly prohibited by section 4 of the French Code Civil in 1804: ‘*Le juge qui refusera de juger, sous prétexte du silence, de l’obscurité ou de l’insuffisance de la loi, pourra être poursuivi comme coupable de déni de justice.*’ Translation of Sheldon D. Elliott: ‘A Judge who refuses to decide a case on the pretext that the law is silent, obscure or insufficient, may be prosecuted as being guilty of a denial of justice.’ Elliott, Sheldon D.: *Techniques of Interpretation* In: Schwartz, Bernard (ed.): *Code Napoleon and the Common-Law World: The Sesquicentennial Lectures Delivered at the Law Center of New York University, December 13-15, 1954*. New York University Press, New York, 1956, p. 83. The classical translation by Blackwood Wright includes that ‘does not cover the case’ instead of expression ‘insufficient’ and on the basis of its commentary, according to the reference of Roscoe Pound, ‘[t]his Article abolishes the old practice of the judges of refusing to decide a case on the ground that the law was obscure, and referring the case to the legislature so that it might elucidate the particular law by laying down a general rule for its interpretation.’ See: Pound, Roscoe: *Readings in Roman Law and the Civil Law and Modern Codes as Developments thereof*. Harvard University Press, Cambridge, 1914, p. 17)

²⁴ Cf.: Larenz, Karl – Canaris, Claus-Wilhelm: *Methodenlehre der Rechtswissenschaft*. Dritte, neu bearbeitete Auflage. Springer Verlag, Berlin – Heidelberg, 1995, pp. 210-211.

depending on the chosen interpretation technique, can result in legal solutions being different from each other (but equally defensible).²⁵

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²⁵ Citing the example of Pierre-André Côté, Devenish asks how we can interpret, in case of a cheetah, the by-law according to which ‘dogs to be held on a leash in public places’. The reasoning set out says: ... ‘Firstly [...] it can be argued that the cheetah must be leashed because the reason justifying the rule for dogs (protection of person and property) applies equally to cheetahs. This is reasoning by analogy or *a pari* argument. Secondly it could be argued that the cheetah must be leashed because it is more threatening than a dog to persons and property and thus the justification is even greater for the application of the by-law. This *a fortiori* reasoning (with stronger reason or more conclusively). Thirdly it could be argued that the cheetah need not be leashed, because the by-law applies only to dogs. This is *a contrario* argument (by the way of contrast or in the opposite sense).’ (Devenish: op. cit., p. 227.)

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