

Teleological interpretation in private law

Abstract

This thesis deals with the problem of teleological interpretation in private law which, after the re-codification of private law in the Czech Republic has become a vital interpretative method in the process of interpretation of private legal rules. This PhD thesis describes the historical development of approaches to teleological interpretation and its relation to the other interpretative methods. Interpretation of the law is a complex process and individual interpretative methods cannot be approached separately but, on the contrary, in their mutual context. Such procedure is also encouraged by the interpretative provisions contained in the introduction to the new Civil Code. In this thesis, the so-called four-element scheme, namely the division of interpretative methods to teleological, historical, linguistic and systematic interpretation were chosen which also correspond to the categorization that can be inferred from the wording of the new Civil Code. The work is divided into chapters with the content of chapter two to seven forming the focal point, while the first chapter is the introduction and the eighth chapter is the conclusion.

In the second chapter, the question of private and public law and the concept of interpretation itself are examined. Delimiting interpretation for the purposes of this thesis, the four basic interpretative methods in the context of Czech and foreign jurisprudence are defined here. Also, the general conception of interpretation and its relation to the social request for clarity of the law are addressed in this chapter.

The third chapter already focuses on the teleological interpretation and it does so on several planes. First, the issue of the requirement of coherence among individual provisions interpreted and subsequently the objective teleological interpretation are dealt with. Then, the theory of four steps which may be used for the examination of the purpose of law ensues. The purpose of the law may, however, change over time, which needs to be reflected in the use of resources to ascertain the purpose of the law. In search of the purpose of the law, an inomissible role is also played by the thought processes of the interpreter him or herself; in particular by such effects as pre-understanding and hunch theory. In a situation where there is a plurality of interpretative conclusions based on a purposive interpretation, it is precisely the interpreter (the personality of the interpreter) who decides which they support. Purposive interpretation, however, always needs correction, in particular by systematic and linguistic interpretation.

The fourth chapter is reserved for an historical interpretation and its relation to the teleological interpretation. First, the boundary between the teleological and historical interpretation is examined based on the closeness and differences of the two interpretative methods in some aspects. The circumstances under which it is possible to speak of the actual real intention of the legislator, and those under which inferring the intention of the legislator is rather bent towards a thought construction of the interpreter, approximating rather a teleological interpretation are surveyed. Also discussed here are the various possible knowledge sources of the intention the legislator associated with the regulation passed.

The next, fifth chapter deals with the relation between the linguistic and teleological interpretation. In linguistic interpretation, a specific group of signs is associated with a meaning from which the purpose of the text is subsequently inferred. Taking this approach, a number of different situations which occur due to multiplicity of the meaning of words or, for example, when interpreting foreign words need to be dealt with. For best results, some rules may be used in linguistic interpretation, including, for example, synonymic interpretation, requirement of unified terminology or the use of legal definitions. These rules, however, often are not sufficient and while moving within various fields of a term's meaning, teleological interpretation may be used for the right choice of meaning.

Systematic interpretation as the last on the list of interpretative methods employed is described in the sixth chapter. It deals with the influence of the hierarchy of legal order and of its inherent qualities on the interpretation of law. The interdependence among individual provisions of the law and its relation to the legal order as a whole may provide significant leads in search of the meaning and purpose of the legal rule interpreted.

The use of teleological interpretation is then described on examples of application praxis in the one but last, seventh chapter. First, the approach of courts to teleological interpretation is discussed in general terms where an increase in the use of teleological interpretation can be seen the higher the jurisdiction of the court authority; however, the data of lower-jurisdiction courts are relatively difficult to obtain. The new Civil Code includes, as it happens in new comprehensive codifications, some provisions that hide in themselves some interpretative problems. On the example of some of these provisions, it is shown where such an interpretative problem may arise and how precisely by help of teleological interpretation, it may be overcome.

The conclusion is reserved for the evaluation of individual partial conclusions which individual chapters led to and for a reflection on the relation between the individual

interpretative methods. Despite some indications of the existence of certain priority rules (whether in legal theory or in the introductory interpretative provisions of the new Civil Code), a basis is constructed at the conclusion which asserts that the result of interpretation is a point which should be, albeit in differing strength, still supported by all four methods of interpretation.