



Dignity, Democracy, Diversity

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Title: Judge Made Law and Judicial Interpretation as Systemic Element of Law in Civil Law Legal Systems: How Can Courts Strengthen or Weaken the Unity of a Legal System?

Abstract: In the late 19th century, jurisprudence in the countries of continental law began to abandon the cognitivist view of courts as mere “subsumption machines”. In “*hard cases*”, judicial interpretation of law is thus also conceived as its formation. Judicial decisions now, much more often than in the past, go against the very wording of the law. This approach is based on arguments relying on legal principles, values or purposes.

Such a manner of decision-making, however, gives rise to some issues: Excessively broad conclusions can lead to unwanted consequences and unpredictable impacts in future cases. Arguments *contra verba legis* raise the question of recognising the actual purpose of the law, and also a more general question of relationship between the judicial branch and the democratic legislature. On the other hand, it can be argued that, using applied principles and values, the courts can improve the coherence of the law, which is characterised by a great many regulations which are frequently amended. The courts can thus counter the postmodern “deconstruction of law”. The workshop should attempt to answer questions related to two interconnected issues: (i) what role is assumed by courts in democratic countries governed by the rule of law and (ii) what should their decision-making be like for it to improve general coherence of the law.

Such questions include, for example:

- What role can be played by the manner of use of interpretation methods in terms of strengthening or weakening the law as a system?
- Is it legitimate for the courts to formulate, in their decisions, general principles and rules which have a potential to impact a very broad circle of future cases?
- To what degree is it effective and possible to bind judges by legislative means to use a certain method of interpreting the law?

Organizer: Pavel Ondřejek, Charles University, Prague, Czech Republic

Keywords: Unity of a Legal System, Courts, Methods of Legal Interpretation, Judiciary in a Democracy, Fragmentation of Law

Schedule: Monday 8th July 2019, 14:00 – 19:00, Room Nr. 3.B55 (Main University Building)

List of participants:

1. doc. JUDr. Karel Beran, Ph.D. (Charles University, Prague): Rules of interpretation as competence norms (what constitutes systemic and anti-systemic elements of legal interpretation?)
2. prof. JUDr. Alexander Brörtl, CSc. (Pavol Jozef Šafárik University in Košice): Should *dikasterion* and not *ekklesia* be considered *kyrion panton* in law-making?
3. prof. JUDr. PhDr. Tomáš Gábriš, Ph.D., LL.M., M.A. (Comenius University, Bratislava): Judicial Interpretation under the Cognitive Decision Theory: Between Systematic and Casuistic Approaches to Law
4. Assoc. Prof. dr. Fruzsina Gárdos-Orosz (University of Eötvös Loránd, Budapest, Hungarian Academy of Sciences) and Prof. dr. Zoltán Sente (National University of Public Service, Budapest, Hungarian Academy of Sciences): Can the judicial power of (constitutional) interpretation be limited?

5. dr. hab. Milena Korycka-Zirk, Ph.D. (University of Nicolaus Copernicus, Torun): Ordinary meaning of constitutional provisions
6. JUDr. Martin Madej (University of Oxford, Charles University, Prague): Can emerging analytical jurisprudence help overcome the law and justice divide?
7. JUDr. Pavel Ondřejek, Ph.D. (Charles University, Prague): Maximalism and minimalism in judicial reasoning: How can courts strengthen or weaken the unity of a legal system?
8. doc. JUDr. Jana Ondřejková, Ph.D. (Charles University, Prague): Constitutional review as a tool for achieving formal, material and axiological coherence of a legal system in time – an example of the Constitutional Court of the Czech Republic
9. Mag. Lisa Sonnleitner (University of Graz): Evolutive interpretation: illegitimate law creation or vital harmonisation?
10. JUDr. Jan Tryzna, Ph.D. (Charles University, Prague): Legitimacy of Retrospective Effects in Judicial Decision-Making Process
11. JUDr. Katarzyna Żák Krzyżanková, Ph.D. (Charles University, Prague): Systemic Legal Interpretation (Model and Analytical Approach)

PAPER ABSTRACTS:

doc. JUDr. Karel Beran, Ph.D. (Charles University, Prague): Rules of interpretation as competence norms (what constitutes systemic and anti-systemic elements of legal interpretation?)

From the legislator's viewpoint, the best judge is one who operates, more or less, as a "subsumption machine". A judge who merely transforms abstract duties formulated in general legal rules into specific obligations borne by individually identified entities (natural and juristic persons). The legislator can achieve this status by creating highly detailed and specific rules – casuistic norms. However, there is a drawback to this concept as even a negligible deviation renders such a norm inapplicable, if construed literally. It follows that even casuistic legislation is not optimal in terms of the objectives that the legislator wants to achieve. This is why legal norms (comprised typically in laws – statutes) apply to cases of the same type and indefinite number (they are general), but nevertheless they are not formulated absolutely specifically (casuistically), but rather in, more or less, abstract terms. It also follows from the above that, when applying the law, i.e. transforming abstract legal duties into specific obligations in an individual case, the judge must always be endowed with certain discretion which manifests precisely in the competence to carry out such transformation, and thus also interpret the law. One of the aims of this paper is to explain why we actually speak about interpretation and how interpretation differs from mere "reading". Indeed, even in "simple cases", i.e. cases where there is no doubt that the purpose of the normative regulation conforms to the result of interpretation in an individual case, we speak about interpretation although it might seem that no interpretation is actually required, and it would suffice if the judge resorted to merely "reading" the wording of the legal norm. In contrast to such simple cases, those instances where the judge concludes that the result of interpretation of a legal norm in a specific case does not attain the desired purpose (telos) of the relevant legal norm, are denoted as "hard cases". In terms of application of the law, such hard cases are characterised primarily by the fact that the judge does not specify and individualise the case in conformity with the general legal norm, but rather takes a different path. In such a case, interpretation means that the judge does not apply the general norm ad hoc, and rather forms the law by his/her decision. Another objective of the paper is to explain the consequences of the above and point out the pro- and anti-systemic elements of interpretation of the law, enabling the judge to disapply a general legal norm ad hoc and replace it by his/her own decision in an individual case.

prof. JUDr. Alexander Brösl, CSc. (Pavol Jozef Šafárik University, Košice): Should *dikasterion* and not *ekklesia* be considered *kyrion panton* in law-making?

Main theme of the presentation: Description of the relationship between two branches of the government - the legislative power and the judicial power. An attempt with respect to the contemporary development to try to discuss the old question [To allow or not allow the people's court to quash a "decree" (law, statute, act, constitutional act) passed by the people's assembly?]

prof. JUDr. PhDr. Tomáš Gábriš, Ph.D., LL.M., M.A. (Comenius University, Bratislava): Judicial Interpretation under the Cognitive Decision Theory: Between Systematic and Casuistic Approaches to Law

The era of modern law codes of the 19th century was a symbol of the victory of systematic legal thinking over casuistic thought. However, new problems have emerged soon – the problem of gaps in law and of inconsistent interpretation. Different theories of interpretation without a single interpretative "canon" lead to legal uncertainty and even to legal realists' claim that law is "inherently vague" - i.e. unsystematic, indeterminate. In common law system, there is a relatively broad consensus on a list of several interpretative tools, belonging either

to the category of linguistic canons (working with the language) or to the category of material interpretive canons. However, it is being sceptically pointed out that the real extent of their use would deserve a special empirical research. Similarly, although certain principles of interpretation may be binding in continental European legal system for some legal branches (e.g. basic principles of the Civil Contentious Litigation Code in Slovakia), there is no single interpretation guidance. Additionally, one should also not forget in this context that not only the text of statutes, but also the facts are being interpreted. Naturally, all these elements lead to questioning the "scientificity of law".

We suggest that this situation reflects in fact a conflict between the idea of systematic, axiomatic (top-down) nature of law, and the rather casuistic (bottom-up) approach, with the principlist approach (weighing of principles) being situated in the middle. The main idea of the historical forms of casuistry was namely the "art" of taking into account specific circumstances of a case in order to reach a "just" and "fair" decision. The core of the casuistic method thus lies in the idea that general rules should be applied in a flexible way. Circumstances affect the applicability of the rules. Understandably, this sort of casuistic thinking was not acceptable in the world of modern (absolutist) states and of state monopoly of law, in which an individual (including the judge) was to obey law without any discretion. The end of the flourishing casuistry thus approached when the idea of systematization of law and of its codification emerged.

Consequently, one should not wonder that nowadays, in the era of postmodern doubts and legislative crises, the ideas of "free" interpretation of law resurface again, under the headlines of axiological gaps in law, of the defeasibility of legal norms and of interpretations *contra legem*. The general approach shared here with casuistry is that one cannot decide which rule has to be followed until all circumstances of the case are taken into consideration, possibly reaching even a decision *contra verba legis*. Within such an approach, even legal principles are constantly being "re-discovered" in each case, having themselves an "open texture", being always subject to further revision and re-articulation in the light of new cases.

This sceptical, but realistic approach to the category of so-called practical (phronetic) sciences, including law, is being widely embraced today. Cognitive scientists thereby suggest that "practical sense" serving to select the proper interpretation tool and to decide a case only develops through professional experience. Decision-making process in law is thus influenced by both goals and external events as well as it is a result of previous decisions and previous outcomes experienced by the agent. Under this view, decision making is a learning process in which decisions are made based on experience and are feedback-dependent. Simple deductive application of rules onto facts of the case is present only in easy cases. In contrast, the choice between interpretative methods in hard cases is a dynamic cognitive undertaking, in fact partially reconciling the systematic (top-down), casuistic (bottom-up) and principlist (both-ways) approaches to problem-solving (decision-making).

**Assoc. Prof. dr. Fruzsina Gárdos-Orosz (University of Eötvös Loránd, Budapest, Hungarian Academy of Sciences) and Prof. dr. Zoltán Szente (National University of Public Service, Budapest, Hungarian Academy of Sciences):
Can the judicial power of (constitutional) interpretation be limited?**

One of the interesting innovations of the Hungarian Fundamental Law of 2011 was to define authoritatively the methods of interpretation of its own text. According to this unusual but not unprecedented approach, the provisions of the constitution should be interpreted in accordance with their purposes, the preamble ('National Avowal') and the achievements of the historical constitution (i.e. the unwritten constitution effective before the end of the WWII) [Art. R para (3)]. In addition, when interpreting the provisions of Fundamental Law, it must be 'presumed that they serve moral and economical purposes which are in accordance with common sense and the public good' [Art. 28]., while the Constitutional Court, performing its duties, is obliged to respect 'the principle of balanced, transparent and sustainable budget management' [Art. N paras (1) and (3)]. Moreover, having introduced the German type of constitutional complaint into the Hungarian legal system, the Fundamental Law empowered the Constitutional Court to enforce these methods of interpretation towards the ordinary jurisprudence.

The first part of our paper discusses in detail these methods of constitutional interpretation laid down in the Fundamental Law, examining their antecedents and meaning in the Hungarian legal system.

Then we analyse how these methods are applied in the practice of the Constitutional Court in abstract review and in constitutional complaint procedures. In spite of the fact that the Constitutional Court as the authentic interpreter of the constitutional text is bound by the methods defined in the Fundamental Law, the body has in principle a considerable room of manoeuvre, since the constitution-maker did not establish a hierarchy of the different interpretative methods, which are very different in their (legal) nature.

In the third part, we examine the impact of the application of the obligatory canons of interpretation on the constitutional interpretation, and the coherence of the Constitutional Court's jurisprudence in this regard, which, according to some studies, was eclectic and inconsistent beforehand during the 1990s and 2000s years.

In the last part of our study we will summarize the deep theoretical implications of our observations. Does it violate the autonomy of constitutional adjudication, and in this way, distort the balance of the traditional system of separation of powers if the constitution-maker prescribes mandatory constitutional interpretation methods for the Constitutional Court? Should not be the Constitutional Court fully independent to decide in its own scope of responsibility how to expound the constitution? And what freedom of action does the Constitutional Court have, even if mandatory methods of constitutional interpretation are defined by the constitutional text?

We believe that answering these questions can make a significant contribution to the theoretical discourse on the nature of constitutional adjudication and on the proper internal institutional balance of the system of separation of powers not only in Hungarian circumstances, but also in general.

dr. hab. Milena Korycka-Zirk, Ph.D. (University of Nicolaus Copernicus, Torun): Ordinary meaning of constitutional provisions

The equally relevant juridical methods of interpretation of constitutional norm and nonconclusive manner of its application, may indicate, dependent on the posited methodological assertions, a reducing character of interpretation of the constitution and the elimination of philosophical and legal context from it or on the contrary may indicate internalisation of such context. However, from the philosophical and political point of view closer inquiry of methods of interpretation enables us to analyse the controversial thesis about the possibility of plain meaning of constitutional provisions. It also demonstrates how the notion "plain" is not similar to the notion "ordinary" or "literal", and how important in judicial interpretation are legal doctrines of constitutional principles which are rooted in the pre-existing concept of constitutionalism-the crucial context of interpretatively fulfilled plain constitutional notions. The analyse of dichotomies between concept of ordinary and plain meaning, enables us to reconsider the purpose of adopting ideas of constitutional application that alienate the constitutional norm from any form of non-normative or non-analytical analysis, and assert at the same time the autonomous character of the constitutional norm. It calls into question the paradigm that it is possible to reduce the control of constitutionality to purely scientific reasoning based on normative analyses or to reduce it to only semantic aspect of linguistic examination based on literal meaning of words. In other words the interpretation and application of especially constitutional norm demonstrates how concepts of law reduced to legal text or norm are inadequate to judicial activity in the process of interpretation.

Mgr. Martin Madej (University of Oxford, Charles University, Prague): Can emerging analytical jurisprudence help overcome the law and justice divide?

This paper will discuss some of the recent attempts to deal with the problematic tension between law and justice.¹ The topic relates to the law's indeterminacy, i. e. the proposition that the guiding function of law is necessarily

¹ Alf Ross, *On Law and Justice* (Berkeley and Los Angeles: University of California Press 1958) § 65 Justice and Positive Law.

limited in that it always leaves some important matters unsettled or some considerations unaccounted for. Lamentably, we tend to discover the indeterminacy of general legal standards (statutes, precedents and so on) only with their application in individual cases. Judges then find themselves seemingly wedged between disapplying the standard and subscribing under overtly unjust decision.

Leaving the traditional divide between positivists and non-positivists behind, this paper will focus on those who have explicitly or implicitly rejected both the so-called Standard Picture, as well as Dworkin's constructive interpretation in their innovative search for a more sophisticated view on how morality enters judicial decision-making.² The Standard Picture, in short, assumes that the content of the law derives solely from the linguistic contents of the authoritative pronouncements.³ For Dworkin, the content of the law is the set of principles that best morally justifies past legal and political practices.⁴

But what if, those theorists ask each in their own way, the content of the law is not to be found at the end of linguistic interpretation, nor is it to be found through virtually unrestricted moral exercise? What if we can achieve justice in individual cases without bending the general standards and thereby sacrificing the autonomy of law and legal reasoning? To find out whether these theories bring any convincing results or are rather just reaching for the stars will be the central aim of my paper presented at this workshop.

JUDr. Pavel Ondřejek, Ph.D. (Charles University, Prague): Maximalism and minimalism in judicial reasoning: How can courts strengthen or weaken the unity of a legal system?

Concepts of decisional minimalism or decisional maximalism are used for the description of ways of judicial reasoning. As described in various works of Cass Sunstein, judicial reasoning may be on the one hand narrow and shallow, strictly limited to the case in question, and on the other hand wide and deep, e.g. containing general principles affecting others similar cases.

The purpose of the paper will not primarily be to describe the phenomena of minimalism and maximalism, but rather to assess, on a theoretical basis, factors where minimalism or maximalism in judicial decision-making strengthens or, on the contrary, weakens the unity of a legal system.

In civil law legal system, courts were traditionally not endowed with the function of strengthening the coherence and unity of law. Their task was to decide individual cases. However, the roles of in particular supreme courts are changing, and therefore it is necessary, in my view, to address the question of breadth and depth of a judicial decision.

While a well-reasoned and deeply substantiated judicial decision can clearly illustrate the court's view on the contested issue and also views on similar cases which may be decided in the future, the question remains whether the courts are in all cases appropriate authorities to address these issues. The role of the judiciary on the one hand and the democratic legislator on the other should also be taken into account, namely regarding the regulation of so-called polycentric questions in law (i.e. a topic which was discussed by Lon L. Fuller more than four decades ago).

A minimalist judicial decision affecting only a given case in which the court provides less answers to various problematic issues, leaves more room for action to other branches of government and it also eliminates the possibility of unwanted consequences of too broadly formulated rules in case-law. However, due to its narrow focus, the minimalist decision does not provide guidance for resolving similar cases and leaves the addressees of the law to a large extent in uncertainty.

² Mark Greenberg, 'The Standard Picture and Its Discontents' in Leslie Green and Brian Leiter (eds.), *Oxford Studies in Philosophy of Law: Volume 1* (Oxford: OUP 2011); 'The Moral Impact Theory of Law' (2014) 123 *Yale Law Journal* 1288; Scott J. Shapiro, *Legality* (Cambridge: Harvard University Press 2011) chs. 8-10; Lawrence B. Solum, 'The Interpretation-Construction Distinction' (2010) 27 *Const. Commentary* 95. I believe that Nicos Stavropoulos is currently working on a theory with similar explanation of how the content of the law is formed.

³ Mark Greenberg, 'The Moral Impact Theory of Law' (2014) 123 *Yale Law Journal* 1288, 1298. One should be wary not to mistake the extraction of the linguistic contents for the linguistic method of interpretation common to most statute-based legal systems.

⁴ Ronald Dworkin, *Law's Empire* (Cambridge: Harvard University Press 1986).

The contribution concludes that judges must be aware of the advantages and disadvantages of a minimalist and maximalist decision-making when formulating justification for their decisions. Therefore, in my opinion, the exclusively minimalist and exclusively maximalist decision-making is not a universally preferred option.

Number of national and international courts and tribunals developed mechanisms which allow them to reach wider and broader reasoning (for example, in order to consolidate divergent case law, to deliver a pilot judgment, to adopt an abstract opinion on the interpretation of a legal provision, etc.). For this reason, it is appropriate to adopt rather minimalist justification in routine cases, while decisional maximalism should be an exception justified only in certain cases (e.g. in the situation of clear view of the court concerning the future solution of a problem, a consensus upon certain legal issue in the society and thus the absence of political conflict over a solution to a particular problem).

doc. JUDr. Jana Ondřejková, Ph.D. (Charles University, Prague): Constitutional review as a tool for achieving formal, material and axiological coherence of a legal system in time – an example of the Constitutional Court of the Czech Republic

Constitutional review fulfils many roles related to its basic purpose, which is to ensure that the Constitution is the highest law of the land and all other laws, statutes, by-laws etc. are not in conflict with the Constitution, and constitutional complaints procedure further extends this review to the application of law by state officials and judges. Most acclaimed role of the constitutional review is the protection of constitutionally entrenched rights of the individual and minority groups against the tyranny of the majority. Political scientists showed, however, that constitutional review also allows the politicians to shift the settlement of electorally unpopular legal problems on judges shed from direct democratic, in fact electoral, accountability or that it can be used to externalize government coalition conflicts. In my paper I would like to develop another aspect of political studies related to the constitutional review's ability to disrupt the status quo and act as a majoritarian institution. The constitutional review, if it is not limited by a time limit within which the laws must be challenged before the (constitutional) court, also serves as incidental check on continuance of constitutionality of "older" laws and statutes in light of the evolving interpretation of constitution and fundamental rights contained therein. This signalling or even corrective function of constitutional review and dynamic concept of unconstitutionality should not however be conflated with David Landau's improving model of judicial review proposed for the fragile democracies of the "Global South". I will demonstrate it on the analysis of the case law of the Czech Constitutional Court where the justices stressed the requirement of new, specific constitution-conform interpretation of challenged laws or where the law or statute in question was invalidated due to unconstitutionality after the years of application seemingly considered as constitutional. By highlighting the time aspect of these decisions I will show how the Czech Constitutional Court read new democratic values to the legal regulation enacted before the Velvet revolution in 1989 and how it applied its evolving constitutional concepts to the legislation after 1993.

Mag. Lisa Sonnleitner (University of Graz): Evolutive interpretation: illegitimate law creation or vital harmonisation?

The European Court of Human Rights (ECtHR) deems the European Convention on Human Rights (ECHR) a living instrument, which must be interpreted in the light of present-day conditions. Ever since the first reference to this so-called evolutive interpretation in *Tyler v United Kingdom* in 1978, it has been criticized for its lacking democratic legitimacy to amend human rights documents through interpretation. This increasing critical attitude has highly influenced the Council of Europe reform meeting at the Brighton Conference 2012 and the subsequent adoption of additional Protocol No 15 to the Convention. As soon as it will have entered into force⁵, this Protocol

⁵ As of December 18, 2018, 45 states have ratified the Protocol.

will introduce a reference to the principles of margin of appreciation and subsidiarity into the Preamble of the ECHR. The margin of appreciation doctrine will then be the only interpretive approach to be explicitly prescribed by the ECHR. It calls on the ECtHR to show more deference to the human rights conceptions of the member states in interpreting the Convention. This is the first amendment to the preamble since the Convention's entry into force. It signals the political claim for an enhanced role of national human rights interpretations and a diminished relevance of evolutive interpretations by the Strasbourg Court.

This paper questions, whether it is normatively desirable to restrain the ECtHR in its evolutive approach in such a general manner. Rather, this paper defends that a reasonable adaptation of the ECHR to evolving human rights challenges is indispensable in order to harmonise the legal systems within the Council of Europe, to increase effective and equal protection of human rights and to do justice to the individual case. Notwithstanding the normatively demanded acceptance of evolutive interpretation, this paper also acknowledges a legitimate role for static interpretations on the one hand and for deferential approaches to national human rights conceptions on the other hand. This is necessary in order to guarantee consistency and legal certainty in human rights protection. The upshot of these considerations is that both approaches, the evolutive as well as the restrained approach, serve vital elements of the ECHR value system.

The aim of this paper is thus to present a theory for the interpretation of the ECHR, which strikes a fair balance between these two approaches to interpretation. The paper will elaborate on this model of interpretation in three parts. First, it will briefly outline the illegitimacy discussion on evolutive interpretation of the ECHR. In a second step, it will shed light on the values within the ECHR, which affect the choice of the interpretive approach in cases relating to time. In a third step, the new model for the legitimate choice between evolutive and static interpretations will be presented.

The paper thus contributes to the discussion about the legitimate role of the European Court of Human Rights in fostering coherence in the legal systems of the Council of Europe member states.

JUDr. Jan Tryzna, Ph.D. (Charles University, Prague): Legitimacy of Retrospective Effects in Judicial Decision-Making Process

The legitimacy of laws to regulate human behaviour is based, inter alia, on the presumption that people can learn legal rules in advance and are able to accommodate their behaviour to these rules. This is the reason of aversion against retroactive laws because such laws are constructed so as to govern people's behaviour in the past. As such, retroactive laws ruin an elementary confidence in law, they destroy legal certainty. While retroactive laws are usually considered to contravene constitutional principles and are often explicitly prohibited, there is usually no such aversion against retroactive judicial decisions. Retroactive judicial decisions are those that change existing state of law. Nowadays, no one can pretend that judges only apply laws and add nothing new to existing rules. Judges create legal rules at least to some extent. Even if the judge chooses between two possible ways of interpretation of some statute he creates a legal rule by excluding one of both options. Such judicial decision informs the public about correct interpretation of a statute. Simultaneously, if the formerly chosen interpretative option is later declared to be wrong and the second option is preferred, only few would object even though the new interpretation will be used when judging cases that were established when the first interpretative option was in force. The paper analysis reasons why there are only few objections against retroactive judicial decisions, why these decisions are rather called retrospective than retroactive and argues that judicial decisions should rather have a prospective than retrospective effect.

JUDr. Katarzyna Źák KrzyŹankov, Ph.D. (Charles University, Prague): Systemic Legal Interpretation (Model and Analytical Approach)

Human existence is best developed in an environment of stability, order and direction. Law is a crucial institution contributing to the achievement and preservation of this state, which can be described in conformity with P. L. Berger and T. Luckmann as a social order.

The social order (and hence its components) is always a product of past human activity and exists only when actual human activity continues to create it.

Legal interpretation of normative legal texts is one of the most important human activities that are capable of contributing to the preservation and reproduction of the legally-relevant social order. In order to perform its functions properly, it is necessary to ensure that the legal interpretation will be a pro-systemic activity. This character will be acquired only if it is exercised by members of the society according to common methodological interpretative rules of the first and second level. The degree of objectification and internalization of these rules, which is manifested in the beliefs of the members of a given community about immutability and self-evidentness of these rules, is decisive for assessing the degree of systemicity of the methodology.

However, the own content of these methodological rules is also crucial. At present, we can speak stability of individual interpretative rules of the first-degree. In other words, different theories of legal interpretation distinguish similar methods of interpretation (e.g. linguistic, systematic, historical), and even a common *ius interpretandi* can be considered in this regard. However, the same cannot be said about the second-level interpretative rules, which, among other things, regulate clashes between individual interpretative conclusions obtained on the basis of individual interpretative methods. This potentially opens up the door for unsystematic interpretation.

Therefore, the presented model of systemic legal interpretation focuses primarily on second-level interpretation rules. The model distinguishes between the activities that occur on the one hand when refining the meaning of a particular text, i.e. where the nexus of meaning associated with a certain normative text and its context is reconstructed, and on the other hand, activities aimed at creating a number of parallel and supposedly equally relevant interpretation conclusions of a particular text, among which a particular solution is chosen. The possibility and conditions of the transition between these two activities are then one of the key topics to consider.
