

Paulina Konca, University of Silesia, Poland

Creating an interpretive law - indispensable or impossible?

The process of application of law and its outcomes are based not only on the legal text but also on a number of guidelines concerning its interpretation. This often leads to considerably different understanding of provisions of law, as is clearly evidenced by existence of different lines of case-law with respect to the same provisions. Meanwhile, one of the obvious values of law in the literature are mentioned uniformity and predictability. It seems that the lack of uniformity in judicial decisions reduces the implementation of such values as certainty of law, which means, *inter alia*, the possibility of building social trust to the justice system. The status of interpretive law and its various tools (such as dictionaries, legislative materials, interpretive canons) is either undetermined or different, depending on the legal culture. In Poland and some other countries, for the most part interpretive resources are not part of written law and they follow from the commonly accepted ruling practice or views expressed in literature. However, in many countries various interpretive tools and guidelines are regulated in the written law, for instance, in so called interpretation acts or in civil codes¹.

The title question that I ask in my research is whether creating interpretation law is indispensable or impossible. Thus, provocatively, I oppose two extremely different possible opinions on the subject of interpretive law. However, in order to make an in-depth analysis of the topic, the question should be modified. The question of *whether* the interpretation law is needed should be replaced by the question *what* interpretation law is needed. The question of *whether* the interpretive law is possible is in fact the question of *what* interpretive law is possible. The term “possible” should be understood as follows: it is technically possible and it is acceptable, and not unconstitutional.

Therefore, the key issues that I intend to analyze in my speech are as follows:

- What makes an interpretive rule possible to be formulated in written law?
- What makes an interpretive rule useful?
- What makes an interpretive rule acceptable or unacceptable (constitutional or unconstitutional)?

¹ The volume of regulations regarding legal interpretation varies depending on the country. To give some examples, in the most of the civil codes of South America interpretative rules are quite extensive. The Australian Acts Interpretation Act or The Maldivian Interpretation Act are also comprehensive regulations. The British Interpretation Act mainly contains some “technical” rules and definitions. In some countries, like Spain, single legal provisions apply to the interpretation issues (art. 3 of Spanish civil code).