ACTA IURIDICA RESOVIENSIA Nr 3(42)/2023
ISSN 2720-0574 DOI: 10.15584/actaires.2023.3.5

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THE ROLE OF LAW TEXTBOOKS IN THE TEACHING AND APPLICATION OF METHODS OF LEGAL INTERPRETATION IN POLAND (IN HISTORICAL AND CONTEMPORARY PERSPECTIVE)[1]

Presentation of the issue

Law textbooks, as the basis for the teaching of law[2], are – especially for students, but also for all those interested – the first point of reference for understanding the law[3]. Understanding and knowing the law means, first and foremost, finding answers to the basic questions of the study of law, i.e. What is the law? Why is the law binding? How to apply the law correctly? It is not without reason that these questions are identified as being central to the practical application of the law[4]. This is because the answers to these questions depend, in each case, on the political and legal system in force and the underlying idea of the law, which expresses the overarching aim of the law. For this reason, the concepts (theories) of law developed by legal science, which explain what the law is, and the methods of interpreting the law, which present the correct ways of reading the law in force,

[1] The article is a significantly expanded, revised version of the paper "The role of Law Books in the Teaching and Application of Civil Law Interpretation Methods", presented on 28 May 2021 on the framework of the Polish-German Seminar entitled "Legal handbooks – a European perspective", organized by the University of SWPS in Warsaw, Augsburg Universität, UAM in Poznań, Universitá di Pisa and Aristotle University of Thessaloniki.

[2] "You can't learn from magazines, but only use them in addition, basically learning from textbooks". J. Pieter, *Ogólna metodologia pracy naukowej*, Wrocław 1967, p. 262.

[3] "The textbook is intended to be useful not only to students, but also to other researchers or more broadly to those interested in the subject matter in question". J. Orczyk, *Zarys metodyki pracy umysłowej*, Warszawa 1984, pp. 47–48.

[4] Particularly in German legal science, cf. B. Rüthers, Ch. Fischer, A. Birk, *Rechtstheorie mit juristischer Methodenlehre*, München 2015, p. VII.

are not neutral[5]. This is because they presuppose certain political, ideological, or philosophical content, serving the realization of a particular idea of law, in particular – a particular vision of economic, social, and political relations. For this reason, it is extremely important for a lawyer to understand why a judge (but also any person applying the law!), by choosing a particular method of interpreting the law in a particular case and rejecting another, realizes the idea of the law related to that method of interpreting the law (or even – serving its realization). Knowledge of the methods of interpreting the law should therefore be a basic skill of every lawyer. In fact, it is rightly pointed out by the doctrine that "as a lawyer, responsibly acts only those who know and consider the basis and ways of functioning of the law, the basis of its validity and the consequences of the methods of interpretation and application of the law"[6]. The indicated elements should be, in the author's opinion, the purpose and content of law textbooks, thus teaching "the wisdom of the law" rather than "knowledge of the regulations".

The subject of this article is to clarify the role of legal interpretation in Poland based on the way it is presented in law textbooks and legal science[7], along with the impact it has on legal awareness and the application of law in practice. Therefore, attempts will be made to prove the following theses:

Firstly, the contemporary way of teaching law in Poland, especially the interpretation of law and its influence on the application of law, is determined by historical and political conditions.

Secondly, Polish law teaching textbooks do not show the political and worldview context of law, which causes unawareness of the legal-political role of legal interpretation.

Third, and finally, the current state of Polish legal science, in particular – textbooks, contributes to the growing importance of the so-called judicial interpretation and its associated threats to the teaching and application of law.

Clarification of the indicated theses will make it possible to understand the (contemporary and historical) role of law textbooks[8] in teaching the method of

[5] Comp. B. Rüthers, *Methodenerfahrungen der Rechtswissenschaft im Nationalsozialismus*, "Wissenschaftskolleg" 1986, No. 87, 1986, p. 275: "there is no apolitical, value-free and worldview-neutral science of law".

[6] B. Rüthers, Ch. Fischer, A. Birk, *Rechtstheorie mit juristischer*…, Einführung.

[7] For the purposes of this text, the phrase "science of law" or "legal science" is used in the context of "the general legal science", identified with legal theory as a scientific and teaching discipline.

[8] Cf. M. Grochowski's comments on the question: "to what extent should textbooks for the general part of civil law present a lecture on general institutions of civil law, and to what extent do they have a more fundamental role to play – a «guide» to the concepts and methodology of the entire private law". M. Grochowski, *Między dogmatyką i metodą. Polskie podręczniki do części ogólnej prawa cywilnego i ich ewolucja*, "Kwartalnik Prawa Prywatnego" 2019, Vol. XXVIII, No. 4, p. 845 et seq. citing K. Schmidt, *Die Personengesellschaft als Rechtsfigur des «Allgemeinen Teils»: Dogmatisches Konzept und Wirkungsgeschichte von Werner Flumes «Personengesellschaft»*, "Archiv für die civilistische Praxis" 2009, No. 2, pp. 182–184.

interpreting the law and the reasons for this situation, together with an indication of the potential direction of development of the Polish science of law (general science of law, theory of law). At the same time, it is important to pay attention to the broader context of the way law science is practiced in Poland and its impact on the application and development of law, as well as on legal awareness and the level of legal culture.

Methodologically, the article contributes to the historical-descriptive research of the theory of law, making the theory of the method of interpretation of law the object of study, within the limits set by the problems under development and the historical context.

The role of legal science and law textbooks in the formation of the postwar and modern idea of law

The postwar establishment in the countries of the so-called "Eastern Bloc" – a system based on people's democracy and a socialist economy and society[9], was based on total opposition to and dissociation from the capitalist West. Western European legal, economic and social culture was henceforth referred to as "bourgeois", giving the term a pejorative and hostile meaning toward socialism. This was because the idea of law, explaining the law in relation to its purpose – the realization of a certain vision of social and economic order, was poles apart in the countries of the capitalist West and the socialist East of Europe, separated by the "Iron Curtain"[10]. For this reason, in the socialist countries, the idea of the law of capitalist countries was combated not only at the level of the system, but also – in the science of law, the way it is created and read (interpretation of law). Consequently, the existing science of law, described as "bourgeois" – was removed from the educational programs[11]: in 1950, the philosophy of law was abolished

[9] By the Act of 10 February 1976 amending the Constitution of the People's Republic of Poland (Dz.U. 1976, No. 5, Item 29), a provision was introduced stating that Poland is a socialist state (instead of the previous term: "people's democracy state"), the PZPR (Polish United Workers' Party) is the leading force of society in building socialism, and the People's Republic of Poland in its policies strengthens friendship and cooperation with the USSR and other socialist countries, which caused massive public protests.

[10] Comp. „What is legal interpretation according to German civil law doctrine". A. Siemińska, *Interpretation of the Law as the Basis for the Uniformity of the Supreme Court in relation to a Cassation Appeal*, "Biuletyn Stowarzyszenia Absolwentów i Przyjaciół Wydziału Prawa Katolickiego Uniwersytetu Lubelskiego" 2020, Vol. XV, No. 17(2), s. 193 and next.

[11] First, because of the underlying assumption of the existence of a law superior to and independent of state law, creating a legal basis for possible rebellion of the governed against the rulers, philosophy of law was considered in Poland as an enemy to the system. Secondly, the philosophy of law could provide a scientific basis for the science of law, treating law as a legal system on the model of the philosophical system, and considering law in a broad socio-economic-political context.

in all state universities in Poland, while the achievements of Western European science of law (in particular – German jurisprudence, as a science of bourgeois law, serving the development of capitalism), were reduced to an absolute minimum, serving the ideological and political demand. In this respect, already treated the nineteenth-century "Jurisprudence of concepts" (*Begriffsjurisprudenz*), as a science of law, including the method of law interpretation, referring to legal concepts, explaining the economic mechanisms of capitalism in the norms of civil law[12] – in the socialist science of law was limited to "one form of continental positivism", "postulating the study of law exclusively from the logical-linguistic point of view and, therefore, concentrating its research on the issues of legal concepts, norms and the system of norms of binding law"[13]. Particularly in law textbooks, the influence of the jurisprudence of concepts (but also of the Historical School of Law) on the systemic changes made by changing the concept (understanding) of law and the method of its interpretation was overlooked[14]. For similar (political) reasons, the post-war Polish curriculum did not include Philip Heck's 1924 "Jurisprudence of Interest" (*Interessenjurisprudenz*)[15], well known to pre-war Polish legal scholars[16]. This is because this science of law, which includes a peculiar conception of law and a method of its interpretation, was also created for the further development of Western European capitalism, which explains

[12] Comp. B. Rüthers, Ch. Fischer, A. Birk, *Rechtstheorie mit juristischer*…, pp. 291 ff. R. Jhering, *Scherz und Ernst in der Jurisprudenz. Eine Weihnachtsgabe für das juristische Publikum*, Leipzig 1924; Ph. Heck, *Was ist diejenige Begriffsjurisprudenz, die wir. bekämpfen?*, "Deutsche Juristen-Zeitung" 1909, pp. 1457 ff.; E. Seidl, *War Begriffsjurisprudenz die Methode der Romer?*, "Archiv für Rechts- und Sozialphilosophie" 1957, No. 43(3), pp. 343 ff.; F. Wieacker, *History of Private Law in Europe with Particular Reference to Gemany*, Oxford 1996; W. Wilhelm, *Zur juristischen Methodenlehre im 19. Jahrhundert. Die Herkunft der Methode Paul Labands aus der Privatrechtswissenschaft*, Frankfurt am Main 1958.

[13] K. Opałek, J. Wróblewski, *Zagadnienia teorii prawa*, Warszawa 1969, p. 337.

[14] These changes, were possible thanks to the development by representatives of legal science of the concept of law, assuming that the law is not the regulations issued by the ruler, but the "spirit of the people", i.e. the product of history and the result of national-historical and cultural development, produced by customs, faith of the people and customs. Cf. F. C. von Savigny, *Vom Beruf unserer Zeit für Gesetzgebung und Rechtswissenschaft*, Heidelberg 1814, p. 13. Cf. also in contemporary Polish legal literature: A. Sylwestrzak, *Historia doktryn politycznych i prawnych*, Warszawa 2015, p. 21; A. Kość, *Historyczne modele relacji prawa, państwa i religii w niemieckiej filozofii prawa*, Lublin 1995, p. 178; G. Jędrejek, *Teoria prawa niemieckiej szkoły historyczno-prawnej w świetle piśmiennictwa polskiego z XIX wieku*, "Czasy Nowożytne" 2000, No. 8(9), p. 175; L. Dubel, *Historia doktryn politycznych i prawnych do schyłku XX wieku*, Warszawa 2012, p. 324.

[15] Ph. Heck, *Rechtsphilosophie und Interessenjurisprudenz*, "Archiv für die civilistische Praxis" 1937, No. 143(2), pp. 129 ff.; H. Coing, *Benthams Bedeutung für die Entwicklung der Interessenjurisprudenz und der allgemeinen Rechtslehre*, "Archiv für Rechts- und Sozialphilosophie" 1968, No. 54(1), pp. 69 ff.

[16] Comp. E. Waśkowski, *Tradycyjna metoda wykładni prawa* [in:] *O metodzie wykładni prawa*, ed. A. Miller, Warszawa 1932 or 1935; J. Zajkowski, *Wstęp do badań nad pojęciem interesu w prawie i procesie cywilnym*, Wilno 1935.

its rejection by the Communist authorities. This science, referring to philosophy, economics, and politics, was based on the study of economic interests, which, according to its assumptions, are contained in legal norms (legal norms contain the resolution of conflicts of economic interests of citizens, acting in the free market, which is the foundation of capitalism)[17]. Such an understanding of law, corresponded to the capitalist needs of the free market economy, ensuring social order through the balance of economic interests of citizens[18]. Consistently, the study of interests was supplemented over time by a way of reading the law through the supreme values of the legal order, enshrined in the constitution, forming the core of the science of law known as "Jurisprudence of Values" (*Wertungsjurisprudenz*), represented mainly by K. Larenz[19]. In this way, the so-called "bourgeois" science of law, which has been developing since the 19th century, realizes the idea of capitalist law, in which social order is realized through economic order. Therefore, the science of law makes it possible to read the law through the economic interests and supreme values of the legal order contained in the legal norms, ensuring the continuous development of law, adequate to the economic and social development of capitalism.

On the contrary to the Western European (bourgeois and capitalist) idea of law, which, for political reasons in the post-war period, remained behind the "Iron Curtain" for Poland, in socialism the social order was to be achieved by obedience and subordination of citizens to the law. For this reason, the idea of law at the time was predominantly based on legal positivism, whose scientific assumptions could achieve the desired social order, fully corresponding to the political interests and ideology of the time. As the doctrine points out, positivism expressed[20] "the ideology of a stabilized state in which there were no battles over

[17] B. Rüthers, Ch. Fischer, A. Birk, *Rechtstheorie mit juristischer*…, pp. 338 ff.; K. Larenz, *Methodenlehre der Rechtswissenschaft*, Berlin 1991, pp. 49 ff.

[18] Por. B. Rüthers, Ch. Fischer, A. Birk, *Rechtstheorie mit juristischer*…, p. 330; D.C. Colander, H. Landreth, *Historia myśli ekonomicznej*, Warszawa 2012, p. 179. On the economic foundations of the concept of German civil society, cf. A. Siemińska, *Concepts of civil and citizens' society law in relation to methods of interpreting the law in the Polish and German legal systems*, "Prawo i Więź" 2023, No. 3(46) (planned release: 15.11.2024).

[19] K. Larenz, *Methodenlehre*…, pp. 189 ff. Also: J. Petersen, *Von der Interessenjurisprudenz zur Wertungsjurisprudenz. Dargestellt an Beispielen aus dem deutschen Privatrech*, Tübingen 2001. Comp. also: F. Schäfer, *Methodenevolution oder Abwendung vom Gesetzgeber? Von der Interessenjurisprudenz zur Wertungsjurisprudenz*, "Rechtswissenschaft. Zeitschrift für rechtswissenschaftliche Forschung" 2021, No. 12, pp. 1 ff.

[20] Z. Ziembiński, the author of a monograph devoted to understanding the concept of legal positivism, emphasizes that in discussing this concept it is useful to refer to positivism in its various philosophical senses, i.e.: minimalist ontological assumptions, anti-speculative attitude, empiricism, scientism, non-cognitivism in metaethics. Cf. Z. Ziembiński, *O pojmowaniu pozytywizmu oraz prawa natury*, Poznań 1993, p. 9; M. Piechowiak, *Pozytywizm prawniczy* [in:] *Powszechna encyklopedia filozofii*, Vol. VIII, Lublin, pp. 417 ff.

fundamental values and in which legalism, based on recognition of the authority of state institutions and respect for the law, was regarded as a virtue"[21]. Particular value was therefore attributed to the so-called formal rule of law, maintaining that adherence to legal norms, regardless of the content of those norms, brings a valuable state of certainty and predictability to the state group[22]. Therefore, it is not surprising that the representatives of the Polish doctrine fundamentally adopt the fundamental theses of positivism[23], for they reduce the law to a set of norms, coming from the state, secured by a form of coercion, and consequently, they capture the law through the command of the sovereign power, the obligation of obedience of citizens and sanction, without reference to the necessary (or conceptual) relationship between law and morality[24]. Consequently, both the concept of law and the theory of legal norms were formed on a sociological basis, as a pattern of behavior that in the legal norm is supported by a sanction, imposed by and on the collective. The social norm became in such a view a form of social life[25], the study of which was devoted to the textbooks of legal theory[26]. In them, the law was viewed to cause social effects in the interests of certain social groups[27]. This meant the recognition of law, as a kind of tool for the implementation of the socialist idea of law and social and economic order, consistent with the interests of the ruling class. Thus, it was about the protection and development of social and economic relations that are in the interests of that class, represented by the legislator, who formulates its will in the form of legal norms. Thus, the law had the task of ideologically subordinating society and the economy to the state, as a "centrally controlled" category.

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[21] Such about positivism, among others: H. Olszewski, M. Zmierczak, *Historia doktryn politycznych i prawnych*, Poznań, p. 397.

[22] S. Wronkowska, Z. Ziembiński, *Zarys teorii prawa*, Poznań 1991, p. 49. "An anti-metaphysical attitude, ensuring freedom from any philosophical assumptions that could threaten legal legalism and equality before the law". M. Zirk-Sadowski, *Pozytywizm prawniczy a filozoficzna opozycja podmiotu i przedmiotu poznania* [in:] *Studia z filozofii prawa*, ed. J. Stelmach, Kraków 2001, p. 84.

[23] "Theses have different weights, and depending on which one (or which ones) a given theory proclaims, one can speak of a particular version of positivism" so: K. Doliwa, *Pozytywizm prawniczy a zasada słuszności*, "Bialystok Legal Studies" 2014, No. 17, pp. 89–98. However, cf. T. Gizbert-Studnicki, *Pozytywistyczny park jurajski*, "Legal Forum" 2013, No. 2, p. 51.

[24] The separation thesis in modern positivism has many interpretations, differentiating the so-called hard positivism and various varieties of soft positivism In Polish literature cf. among others: L. Morawski, *Pozytywizm 'twardy', pozytywizm 'miękki' i pozytywizm martwy*, "Ius et Lex" 2003, No. 1, pp. 319–346; A. Dyrda, *Pozytywizm pochowany żywcem? W obronie miękkiego pozytywizmu*, "Studia Prawnicze" 2010, No. 2, pp. 5–36; A. Grabowski, *Inkluzyjny pozytywizm prawniczy*, „Państwo i Prawo" 2011, Issue 11, pp. 18 ff.

[25] J. Kowalski, W. Lamentowicz, P. Winczorek, *Teoria państwa i prawa*, Warszawa 1981, p. 76.

[26] K. Opałek, J. Wróblewski, *Zagadnienia teorii*…, p. 5.

[27] J. Wróblewski, *Zagadnienia teorii wykładni prawa ludowego*, Warszawa 1959, p. 365.

The socialist idea of law found special expression in the legal science and in legal textbooks, in particular – within the "theory of state and law" introduced in the postwar period. As a general legal science and scientific discipline[28], it had to legitimize the socialist idea of law on the basis of selected assumptions of legal positivism[29] and analytical philosophy[30], the tasks and object or research methodology of which perfectly matched the political demand of the time. First, the subject of the science of law in the positivist view was made the law that is given, not what it should be because of the assumed value system[31], and the politics of law (as axiologically involved) was eliminated from the program of legal science. The social genesis of law, i.e., the problems of formation of a particular norm in a given state community, remained outside the focus of interest. This is because it was assumed that the content of the law is determined by the arbitrary decisions of the legislator, and for the qualification of a norm as legal, the form of its formation is authoritative[32]. Consequently, in the positivist program there is also no place for the questions of what goals are to be achieved by the appropriate creation, interpretation and application of the law, as the answers to these questions cannot, according to the positivist understanding of science – rationally justify[33]. The basic questions of the science of law, which make it possible to explain both the nature and the idea of law, by which it is created and read, thus remained outside the scientific study, making the science of law a scientific and didactic discipline, serving the political will of power. Polish legal theory, as a scientific discipline, thus became a "general reflection on law"[34], leading to the generality of theoretical considerations[35]. Even nowadays, it is still concerned, as a rule, with "the ordering of concepts and the systematization of views on the

[28] W. Lang, J. Wróblewski, S. Zawadzki, *Teoria państwa i prawa*, Warszawa 1980, Przedmowa: "Within the scientific discipline of the same name, taught in the final year of study".

[29] Which, as a direction in jurisprudence, has never formed into a unified doctrine, and its continental version is strongly differentiated.

[30] Cf. e.g. on the Poznan–Szczecin school, whose analytical roots appear in two layers: first, in "the emphasis on building a coherent and complete conceptual grid for reflection on law", and second, by the fact that a peculiar style of characterizing complex legal situations has been developed, consisting in breaking down a given situation into elementary factors or aspects, in order to then take into account their functional connections and interactions. Cf. S. Czepita, S. Wronkowska, M. Zieliński, *Założenia szkoły poznańsko-szczecińskiej*, "Państwo i Prawo" 2013, Issue 2/3, pp. 3–16

[31] Zob. J. Stelmach, R. Sarkowicz, *Filozofia prawa XIX i XX wieku*, Kraków 1999, pp. 23–24.

[32] S. Wronkowska, Z. Ziembiński, *Zarys teorii*…, p. 51.

[33] M. Atienza, *Ani pozytywizm prawniczy, ani neokonstytucjonalizm: w obronie postpozytywistycznego konstytucjonalizmu* [in:] *Studia z teorii konstytucyjnego państwa prawa*, Kraków 2017, p. 51.

[34] S. Czepita, S. Wronkowska, Z. Zieliński, *Założenia szkoły*…, pp. 4 ff.

[35] "The theoretical-legal rationale will be characterized by generality, directed at legal and political phenomena, universal in time and space". Z. Pulka, *Charakterystyka teorii i filozofii prawa jako dyscyplin prawoznawstwa* [in:] *Teoria i filozofia prawa. Wybór tekstów*, ed. W. Gromski, Wrocław 1998, pp. 18 ff.

topics covered by its scope, i.e. issues concerning the understanding and ordering of concepts, the construction of the legal system, the processes of creating and applying the law, research methods, etc."[36]. At the same time, there is no autonomous Polish theory of law – rather, it approximates the consideration of concepts of law, occurring in different legal systems, not functionally related to each other[37]. This is confirmed by a leading academic textbook, according to which: "the name of the general theory of law as the name of the discipline taught at Polish universities is somewhat misleading, as it seems to indicate that within this scientific discipline some general theory has been built, concerning law in the methodological sense of the word theory. In fact, on the other hand, the discipline deals with general problems, different in nature, concerning the law"[38]. Consequently, the positivist research[39] based mostly on analytical philosophy[40] direction has been maintained, and the modern legal theory based on it[41], in particular – law textbooks, do not provide answers to the fundamental questions: why and how the theory of law legalizes the modern idea of law[42], as well as –

[36] On the positivist study of law based on scientism, cf. K. Doliwa, *Pozytywizm prawniczy*…, p. 90. Also: K. Opałek, *Zagadnienia teorii prawa i teorii polityki*, Warszawa 1986, p. 75.

[37] Cf. E. Łętowska, *Kilka uwag o praktyce wykładni*, "Kwartalnik Prawa Prywatnego" 2002, No. 1, p. 43: "Polish legal theory presents the achievements of various types of legal doctrines in a descriptive way, as a history of legal thought".

[38] S. Wronkowska, Z. Ziembiński, *Zarys teorii*…, p. 9.

[39] K. Opałek, J. Wróblewski, *Zagadnienia teorii*…, pp. 358 ff.: "The discipline that deals with the general problems of class origins, the development of the state and law, their basic features, functioning, as well as the problems of legal consciousness and the analysis of legal norms as linguistic expressions". Comp. about the theory of law on the basis of subject and methodological criteria, f.i. Z. Ziembiński, *Teoria prawa a filozofia prawa i jurysprudencja ogólna* [in:] *Filozofia prawa a tworzenie i stosowanie prawa*, ed. B. Czech, Katowice 1992, pp. 83–92; H. Niemiec, *Filozofia prawa a teoria prawa i jurysprudencja*, "Roczniki Nauk Prawnych" 1999, No. 1, pp. 67–77; T. Stawecki, *Filozofia prawa a teoria prawa: spór nierozstrzygalny czy pozorny*, "Studia Iuridica" 2006, No. 45, pp. 211–231; P. Kamela, *Teoria prawa a filozofia prawa*, „Kwartalnik Prawa Publiczego" 2006, No. 4, pp. 207–218; P. Skuczyński, *Pojęcie standardu metodologicznego a zadania teorii prawa*, "Acta Universitatis Wratislaviensis" 2011, No. 3337, pp. 278 ff.

[40] "To say that modern legal theory and philosophy draw largely on the achievements of analytic philosophy is to make a cliché". P. Banaś, W. Ciszewski, A. Dyrda, B. Janik, *Zastosowania filozofii analitycznej w prawoznawstwie: Wprowadzenie*, "Avant" 2018, Vol. IX, No. 1, p. 11.

[41] "Understood here as an analytical theory of law, and therefore a general reflection on law understood as a linguistic phenomenon, consisting in generalizing the findings of the general parts of the various dogmatics and providing them with general, formal tools that allow the study of law as a linguistic phenomenon". P. Jabłoński, *Polskie spory o rolę filozofii w teorii prawa*, Wrocław 2014, p. 33.

[42] Cf. remarks on the future of the theory of law, among others: J. Stelmach, *Ponowoczesna filozofia pra*wa [in:] *Studia z filozofii prawa*, ed. J. Stelmach, Warszawa 2008, pp. 51–52, and 21. Cf. also remarks on the need for a postmodern science of law, going beyond the existing disciplinary network and creating a holistic view combining disparate perspectives and dialogue between them, J. Lakomy, *Interdyscyplinarność i integracja zewnętrzna nauk prawnych w świetle posmodernistycznej krytyki*, "Archiwum Filozofii Prawa i Filozofii Społecznej" 2011, no. 1, pp. 29 ff.

what consequences this has for the practice of (judicial) application of law. This is evident in the way in which legal interpretation is presented in science and law textbooks – i.e., to the exclusion of its legal-political function[43], and consequently in the practice of law application and its problems.

Methods of legal interpretation in textbooks of law and legal theory

Representatives of the Polish doctrine of the early postwar period were convinced of the political role of legal interpretation in the implementation of the idea of law. In the law textbooks of that time, they explicitly pointed out "the political character of the activity of judicial bodies, and within it also the political character of the process of interpretation"[44]. Thus, for them, the interpretation of the law was not a purely technical activity, which was clearly emphasized by reference to the purpose of the interpretation of the law: "the process of applying the law, of which the interpretation of the law is a component, does not proceed aimlessly. The goals of the application of the law may coincide with or differ from the sociological goals of legislators. Then these goals, are determined by the social-political fundaments of the state"[45]. These assumptions, therefore, are nothing more than the idea of law, implemented by the authority, the implementation of which is to be served by the interpretation of the law, that is, the way of correct (permissible) reading of the law in a respective system of law, in which the politico-legal role of law interpretation is expressed. It is in this sense that the goals of legal interpretation were expressed in early postwar theoretical-legal doctrine-as a "socio-political context", constituting a tool, serving to give the law's provisions a politically desirable meaning. As representatives of the doctrine indicate: "the social and political context influences the meaning of legal norms, the patterns of behavior that are the meaning of legal norms"[46]. Consequently, political goals determined the meaning of laws, by giving them, in the process of interpreting the law, a meaning in line with the current political demand. Such an understanding of the interpretation

[43] Cf. A. Barut, *Problem polityczności orzecznictwa z perspektywy rozumienia polityczności jako sfery wspólnych wartości. Wstęp do neoklasycznej koncepcji prawa*, "Krytyka Prawa" 2020, No. 12, p. 34: "In the theoretical and philosophical-legal discourse, and especially in doctrinal discourse, the connection between the interpretation and application of law and political philosophy and doctrines is often overlooked. In particular, it is overlooked that a certain understanding of the values taken for granted in legal discourse is linked to a certain political vision".

[44] J. Wróblewski, *Zagadnienia teorii*…, p. 136.

[45] *Ibidem*: "both on a general scale characteristic of a particular type of state and law, as well as on a fragmentary scale related to the implementation of political intentions in different periods and scopes of cases. The complexity of factors manifests itself in (…) the socio-political context of legal norms and its impact on the patterns of behavior that are the meaning of these norms".

[46] *Ibidem*, p. 353.

of the law made it possible to take over the pre-war laws, which, in principle, regulated the social and economic relations of the bourgeois period, and to give them, through the interpretation of the law, a new meaning, i.e. a meaning different from that established by the pre-war legislature and desired by the new regime: "in the practice of jurisprudence, it plays a very great role to determine the changes in meaning to which the taken-over provisions are to be subjected"[47]. Giving these changes in meaning was henceforth the goal of legal interpretation, but also determined its legal-political role within the framework of the so-called "interpretation of the people's law".

The goal of such legal interpretation, which was to read the law in accordance with the current idea of the law and its implementation, determined the consequent selection of the means of interpretation that made it possible to achieve this goal. As indicated by early-war monographs and law textbooks, the realization of the idea of law was carried out, as a rule, in several stages, which boiled down to the application of three groups of interpretive rules: linguistic, systemic, functional, and then – to the selection of one of the meanings obtained. Although it is not explicitly stated on what basis the law practitioner chooses the result of interpretation, i.e. the meaning of the legal provision to be the basis of the judicial decision, given the achievement of the mentioned social and political context as the goal of the interpretation of the law, the choice of the interpretive rule determining the result of the interpretation of the law had to take into account and reflect the current political goals and the idea of the law as much as possible[48]. For these (political) reasons, the so-called "historical interpretation" was rejected, the purpose of which is to determine the will of the historical legislator (issuing the law in question) based on an examination of the so-called legislative materials[49]. Although this method of interpreting the law was known to pre-war Polish legal science[50], it was incompatible with the implementation of the assumptions of the socialist state. The adoption of largely pre-war laws (created in the capitalist spirit), in fact, made it necessary to abandon the study of the objectives of the bourgeois legislator, in favor of giving the provisions of the law through the interpretation of the law – a new meaning[51], consistent with the socialist idea

[47] *Ibidem*, p. 337.

[48] *Ibidem*, p. 366: "The socio-political context of a norm has an impact on its meaning, and therefore taking into account elements of this context in the process of interpreting the law can facilitate or enable the establishment of a pattern of behavior that is the meaning of the norm being interpreted".

[49] Cf. f.i. A. Bielska-Brodziak, *Po co prawnikom materiały legislacyjne?*, "radca.pl" 2017, No. 3(15), p. 21; *eadem*, *Śladami prawodawcy faktycznego: materiały legislacyjne jako narzędzie wykładni prawa*, Warszawa 2017.

[50] F.i. Waśkowski, *Teoria*…, pp. 52 ff.

[51] J. Wróblewski, *Zagadnienia teorii*…, p. 358: "By considering the goal of a single norm in connection with the goals of the system of law or the goals of a part of the system, it is possible to give the goals of a norm a certain political character, which it would not have if it were considered

of law[52]. Thus, the choice of interpretive directive was determined politically – the realization of the socialist idea of law.

A slightly different approach to the interpretation of the law was taken by the Poznan–Szczecin law school, whose representatives tried to give the interpretation of the law a scientific character – in the sense of legal positivism and analytical reflection on the law[53], with the aim of an objective view of scientific problems and objective solution of scientific problems[54]. Created within the framework of this school, the so-called "derivational concept of interpretation of law"[55] is "limited to one aspect – linguistic analysis"[56], referring to semantics and principles of linguistics[57]. This conception of legal interpretation thus focuses on determining the correct (proper) meaning of legal provisions based on linguistic rules[58]. The explanation and evaluation of this "correctness" of the established meaning of the law, as a result of interpretation, is therefore limited to an examination of the compliance of the interpretation process with the principles of semantics. Such an approach to the interpretation of the law, on the other hand, can lead to the belief that the law applier, in interpreting the law, establishes the "objective sense of the law" (!!!)[59]. In applying the law, this creates the (mistaken) impression that the interpretation of the law based on linguistic rules

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without a relation to the goals of the system of law or a part of it. The best proof of the relative independence of the goals of individual norms or certain groups of norms (institutions) from the goals of the whole system is the possibility of the norms formed in the previous formation being taken over by the law system of the new formation, and thus for the achievement of ex hypothesi goals opposed to the previous ones".

[52] By the same way, the method of legal interpretation based on the examination of legal norms as settlements of conflicts of economic interests of citizens was rejected, cf. on *Jurisprudence of interests* by Ph. Heck, 1924, fn. 11, 13, 14.

[53] S. Czepita, S. Wronkowska, Z. Zieliński, *Założenia szkoły*…, p. 8; W. Rzepiński, *Znaczenie językowe normy prawnej w poznańsko-szczecińskiej szkole teorii prawa w świetle pragmatyzmu analitycznego*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 2019, Vol. LXXXI, Issue 1, p. 27.

[54] S. Czepita, S. Wronkowska, Z. Zieliński, *Założenia szkoły*…, p. 6.

[55] Presented by M. Zieliński in 2002 in the monograph *Wykładnia prawa. Zasady – reguły – wskazówki*, Warszawa 2002.

[56] *Ibidem*, p. 65: "The approach can have a hard version – logical-mathematical analyses and a soft version – analyses of colloquial (natural) language".

[57] Cf. the very meaning of the term "derivation" – in linguistics, a word-forming process involving the formation of a new word (derived word, derivative) on the basis of another (word-forming base) by changing its morphological structure. R. Grzegorczykowa, *Zarys słowotwórstwa polskiego: słowotwórstwo opisowe*, Warszawa 1984, p. 21.

[58] In this meaning: L. Morawski, *Wstęp do prawoznawstwa*, Toruń 2002, p. 157; M. Borucka Arctowa, J. Woleński, *Wstęp do prawoznawstwa*, Kraków 1998, p. 90; A. Korybski, L. Leszczyński, A. Pieniążek, *Wstęp do prawoznawstwa*, Lublin 2007, p. 166.

[59] Cf. the assumptions of the Poznan school of law, i.e., an objective view of scientific problems and objective problem solving: S. Czepita, S. Wronkowska, Z. Zieliński, *Założenia szkoły*…, p. 6.

is apolitical and universal, i.e., independent of time and place (!)[60]. For, as A. Kozak rightly points out, emphasizing a methodological, worldview-neutral program puts analytical theory (on which the school is based) in the role of legal engineering, which in the social sciences is never axiologically neutral[61]. However, both modern textbooks and legal theory are silent on the matter[62], causing the concealment of the political-legal function of legal interpretation, which was openly mentioned even during the communist period (!). This causes a fundamental unawareness of the political-legal role of legal interpretation and its low practical significance[63].

The role of interpretation of the law in the practice of its application

The failure to explain in modern legal theory, as well as in modern textbooks on the science of law – the importance of the role of the method of interpretation of the law, is related to the fundamental problems of the science of law, concerning the vagueness of the modern understanding of the law (the idea of law) and its application in practice. One of the main issues here remains the desirability and expectation of the representatives of the science of law (in particular – the theory of law) to clarify the importance of the role of the method of interpretation of law in the implementation of the idea of law by the judge applying the law. The point is to clarify: what is the idea of law to be realized by the commonly

[60] M. Zirk-Sadowski, *Metodologie teorii prawa a problem polityczności prawoznawstwa. Aspekt behawioralny i intensjonalny*, "Przegląd Prawa i Administracji" 2017, No. 100, p. 51: "legal theory was established at the end of the 19th century as a scientific discipline (…) with an anti-philosophical and scientistic tinge, and certainly apolitical".

[61] A. Kozak, *Myślenie analityczne w nauce prawa i praktyce prawniczej*, Wrocław 2010, p. 72.

[62] However: M. Paździora, M. Stambulski, *Co może dać nauce prawa polityczność? Przyczynek do dalszych badań*, "Archiwum Filozofii Prawa i Filozofii Społecznej" 2014, No. 1, pp. 55–66; A. Bator, P. Kaczmarek, *Polityczność nauki prawa i praktyki prawniczej – wprowadzenie*, "Przegląd Prawa i Administracji" 2017, No. 110, pp. 9–11; T. Gizbert-Studnicki, *Filozofia polityczna a pozytywistyczna teoria prawa*, "Przegląd Prawa i Administracji" 2017, No. 110, pp. 15–39; J. Zajadło, *Prawoznawstwo – polityczność nauki czy nauka polityczności?*, "Przegląd Prawa i Administracji" 2017, No. 110, pp. 41–49; R. Mańko, *Nauki prawne wobec problemu polityczności: zagadnienia wybrane z perspektywy jurysprudencji krytycznej*, "Archiwum Filozofii Prawa i Filozofii Społecznej" 2018, No. 3(18), pp. 38–50; M. Stambulski, *Polityczność w polskiej analitycznej teorii prawa. Zarys problematyki*, "Archiwum Filozofii Prawa i Filozofii Społecznej" 2018, No. 3, pp. 64–73; A. Sulikowski, *Apolityczność w prawoznawstwie. Kryzys idei a zjawisko populizmu*, "Archiwum Filozofii Prawa i Filozofii Społecznej" 2018, No. 3, pp. 74–85.

[63] E.g., in comparison with the German Methodenlehre. Cf. also A. Kotowski, *Wykładnia orientacyjna. Teorie wykładni prawa i teoria orientacyjnego badania wykładni operatywnej*, Warszawa 2018, p. 45: "only for a few years (…) there have been works that take up the issue of the theory of interpretation analyzed from the side of practical problems (…) in this sense preceding the theory of law".

used modern method of interpreting the law, and – how does the judge realize this idea? Both in modern law textbooks and in legal theory, one searches in vain for answers to these questions. This situation is largely due to the maintenance of a positivist (based on the analytical theory of law) scheme of knowledge, marginalizing political and legal issues in the study of the science of law. In particular – the political role of the interpretation of law, which would indicate the purpose of the interpretation of law, consistent with the political-economic-social system. This goal of interpretation should guide the judge applying the law, determining his choice of the directive of interpretation and its result. This means that the purpose of interpretation realizing the given political system should be open and justified by the law-applicant in every case. This is because it is about revealing the political basis of the law for practical purposes[64]. Its current veiling or even secrecy, meanwhile, allows the realization of "jurisprudence, as a struggle for the implementation of an ideological project"[65], in which "the political values legitimizing the law, supposedly universal, are reduced to values constitutive of the practice of a particular social group, and ultimately to the views of those interpreting it"[66].

The veiled political role of legal interpretation and the purpose it serves takes on particular significance with the so-called "judicial interpretation", meaning in legal theory the interpretation of the law "made by those who are part of the organs of the state, authorized to make binding interpretations of legal texts (…). This interpretation 'has the character of a binding establishment of a norm, (…) everyone who is affected should abide by the norm so interpreted from the laws in force"[67]. This binding establishment of a norm, however, raises several dangers for the application of the law. For it should be noted that the term "interpretation of the law" in Polish legal theory can mean not only the process of interpretation, but also the result of interpretation itself[68]. This twofold understanding of the term, on the other hand, can (and often does) cause the law practitioner to invoke the result of interpretation alone, instead of carrying out the process of interpretation. Such conduct is associated with the danger of law practitioners making "their own" interpretation of the law (meaning of legal provisions), as the legal doctrine points out: "an authority making this kind of official interpretation will usually try to maintain at least the appearance that it is resolving an interpretative problem on the basis of the rules

[64] A. Barut, *Problem polityczności*…, p. 37.

[65] *Ibidem*, p. 38.

[66] *Ibidem*, p. 40.

[67] A. Redelbach, S. Wronkowska, Z. Ziembiński, *Zarys teorii państwa i prawa*, Warszawa 1992, p. 200. Cf. M. Zieliński, *Współczesne problemy wykładni prawa*, "Państwo i Prawo" 1996, Issue 8–9, p. 12.

[68] This is how, a.o., M. Zielinski divides interpretation in terms of pragmatic meaning (a set of certain actions relating to some expressions) and apragmatic meaning (the result of these actions). Cf. M. Zielinski, *Wykładnia*, p. 43.

of exegesis of the law generally accepted in a given legal system"[69]. Since "trying" does not imply an obligation, it makes "in the system of functioning of the bodies applying the law, an interpretation made without any substantive rules, or even against the generally accepted rules (!) may stand firm, but in general, the entities authorized to make formal interpretation should reckon with the principles of substantive interpretation both in the phase of its implementation and in the phase of justifying the decision. (…) The justification of the interpretive decision should clearly demonstrate the fulfillment of the principles controlling interpretation, accepted in our legal culture. In this aspect, unfortunately, one can see considerable practical carelessness and sometimes even arrogance, the source of which can be seen, among other things, in the peculiar interpretation of the principle of *iura novit curia*"[70]. The concern is exacerbated by the position of representatives of the legal sciences, attempting to explain that "such action is aimed at 'ensuring the uniformity of jurisprudence, avoiding each time the process of interpretation is repeated (…), the need to ensure the assistance of outstanding experts"[71]. Consequently, the so-called "judicial interpretation" may constitute a "tool" for the implementation of their own idea of the law by judges applying the law[72]. Devoid of justification for the choice of a specific directive, on the basis of which a certain result of interpretation is adopted, judicial interpretation may amount to a binding imposition by the law practitioner of the results of his own interpretation[73], under the guise of correctness of formal compliance with the letter of the law.

The practical consequence of the lack of clarification of the role of legal interpretation in the science of law and the use of so-called "judicial interpretation" is the creation of a kind of "judicial" dogmatics of law, as explanations of the result of the interpretation of the law of the law in force made by the judges applying the law[74]. Explanations of the result of this interpretation, due to the

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[69] Z. Ziembiński, *Problemy podstawowe prawoznawstwa*, Warszawa 1980, p. 278.

[70] M. Zieliński, *Współczesne problemy*…, pp. 12–13. See also: *idem*, *Iura novit curia a wykładnia prawa* [in:] *Prawo, język, logika. Księga jubileuszowa Profesora Andrzeja Malinowskiego*, eds. S. Lewandowski, H. Machińska, J. Petzel, Warszawa 2012, pp. 287–303.

[71] M. Zieliński, *Współczesne problemy*…, pp. 13–14.

[72] Cf. on the so-called "state of judges" B. Rüthers, *Die heimliche Revolution vom Rechtsstaat zum Richterstaat: Verfassung und Methoden. Ein Essey*, Tübingen 2014; G. Hirsch, *Auf dem Weg zum Richterstaat? Vom Verhältnis des Richters zum Gesetzgeber in unserer Zeit*, "Juristen Zeitung" 2007, No. 18, pp. 853 ff.

[73] M. Smolak, *Niezawisłość sędziowska a wykładnia funkcjonalna*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 2007, Issue 4, p. 27, fn. per: L. Morawski, *Czy sądy mogą się angażować politycznie?*, "Państwo i Prawo" 2006, No. 3, p. 6.

[74] "Dogmatics are, of course, programmatically immersed in the positivist stream, in which regard, as a rule, they treat law as a linguistic phenomenon, and traditionally see their role as interpreting the existing laws, working out concepts, explaining their interrelationships, etc." R. Mańko, *Nauki prawne wobec problemu polityczności: zagadnienia wybrane z perspektywy jurysprudencji krytycznej*, "Archiwum Filozofii Prawa i Filozofii Społecznej" 2018, No. 3, p. 46.

above method of interpretation used, may at the same time take the form of the result of interpretation itself, thus realizing the assumed idea of law or ideology[75], that is – how a given provision should be understood according to a certain group of people (judges). For this reason, judges' commentaries on existing laws[76], as well as lectures within the framework of legal applications, are of widespread interest, as they bring law students closer to that way of understanding the law desired in the practice of its application, i.e., the result of the interpretation of the law recognized by the courts. This constitutes a kind of "imposition" of a certain way of understanding the law-instead of explaining methodological issues, knowledge of the law and its desired (politically) meaning is assimilated[77]. Such a way of "teaching" is referred to in educational theories as the "Nuremberg funnel"[78], meaning "the misconception that the process of teaching consists of putting the right tool ("funnel") to the student's head and «pouring» into it all the required knowledge. Such theories are based on the total passivity of the learned subject and thus negate any possibility of entering dialogue with him. The function of the funnel (…) is fulfilled by the belief in the objective results of scientific cognition"[79]. Consequently, the way of teaching about the law, and in particular – about methods of interpreting the law, does not allow to understand the law, being reduced to the assimilation of statements of those applying the law[80], and not answering its fundamental questions posed in the introduction: i.e. What is the law? Why does the law apply? How to apply the law correctly? By failing to create an answer to the indicated questions – conceptions of the law and methods

[75] "Dogmatics can be political in an unconscious way, or they can fully realize and accept their relationship to politicity. The situation here is analogous to the politicity of adjudication". *Ibidem*.

[76] Cf. e.g., the two-volume commentary authored by 23 judges and edited by Supreme Court judge T. Szanciło: *Kodeks postępowania cywilnego*, Vol. I–II: *Komentarz do art. 1–1217*, ed. T. Szanciło, Warszawa 2023; E. Skowrońska-Bocian, *Komentarz do kodeksu cywilnego: Księga czwarta – Spadki*, Warszawa 2001; E. Skowrońska-Bocian, J. Wierciński [in:] *Kodeks cywilny: komentarz*, Vol. IV: *Spadki*, ed. J. Gudowski, Warszawa 2013; G. Bieniek, *Komentarz do kodeksu cywilnego. Ks. 3, Zobowiązania*, Vol. I, Warszawa 1999; *Kodeks cywilny: komentarz*, Vol. I, ed. Z. Resich, Warszawa 1972; H. Ciepła, *Kodeks cywilny: praktyczny komentarz z orzecznictwem*, Vol. I: *Art. 1–352*, Warszawa 2005.

[77] Cf. R. Mańko, *Nauki prawne*…, p. 48: "despite its declared apolitical nature, in reality, by making doctrinal interpretations of the law, it makes successive decisions, which are not only interpretative decisions, but also political, because they mark the next stages in antagonistic struggles in society. In the field of private law, these will primarily be conflicts of an economic, and therefore class, nature, clothed in the abstract robes of conflicts along the lines of consumer-entrepreneur, employee-employer, debtor-creditor, plaintiff-defendant".

[78] Named after the place of publication and the title of G.H. Harsdörffer's 17th-century poetry textbook, The Poetic Funnel. How to master in six hours the art of creating German poetry without recourse to Latin. Cf. M. Spitzer, *Jak uczy się mózg*, Warszawa 2008, p. 15, fn. per: M. Paździora, M. Stambulski, *Co może dać*…, fn. pp. 39, 64.

[79] M. Paździora, M. Stambulski, *Co może dać*…, p. 64.

[80] *Ibidem*, p. 56.

of interpretation of the law derived from them and necessarily related to them, realizing a certain idea of the law and vision of the social order, the theory of law (not to mention textbooks) does not allow one to understand why the judge (but also any person applying the law), choosing a particular method of interpretation of the law in a particular case and rejecting another, realizes the idea of the law related to this method of interpretation of the law (or even – serving its implementation). Hence, it does not teach "the wisdom of the law", but "knowledge of the law".

Conclusion

The modern state of knowledge of legal interpretation, methods of interpreting the law, and the reasons for the widespread adoption of a particular method of interpreting the law, has its origins in the achievements of legal theory and law textbooks. These, in turn, despite the change of regime (!) are still determined by the historical and political conditions of the communist period, creating the science of law on the positivist model, which was politically determined at the time. After all, the systematization of views on law, or the linguistic analysis of legal concepts and regulations made without reference to the economy or politics, constituted a necessary, because safe, field of research for legal theorists. The removal of elements from the theory of law, described as "not scientifically and rationally justifiable" weakened the awareness of the law, its functioning, validity, and above all – the possibility of change by representatives of legal science dissatisfied with the system[81]. The scope and tasks of legal theory as a scientific and didactic discipline therefore depended on the political goal of the regime of the time, which legal theory was supposed to scientifically legitimize. It is surprising, however, that this scientific pattern was essentially maintained despite the political system transformations that began in 1989 and introduced a completely new economic, political and social order, enabling Poland's "return" to Western European legal culture. This is because the changes in the political system have given rise to the need for a new understanding of the law (the idea of law) in the new capitalist-democratic reality, and this in turn forces a new look at the tasks of the science of law (the theory of law), particularly in the field of the method of interpretation of the law.

"Return" of Poland to the Western European culture of law through a change of regime, should determine not only the corresponding idea of law and the method of its interpretation, but first of all – the method of teaching law. The science

[81] Cf. the Historical School of Law in Germany, which, by changing the concept of law--including the concept of law and the method of its interpretation-contributed to the change of the system in the then German state.

of law (theory of law) legitimizing a given regime must indicate and teach the methodology of reading the law, explaining why a particular method of interpreting the law is appropriate for a particular regime. It should therefore indicate the ways and methods of interpretation giving the ability to evaluate the process of interpretation by those applying the law, instead of assimilating only the results of interpretation. The neglect of legal theory in the indicated area is particularly evident given that, for example, in the German legal sciences, the indicated issues are discussed in the first year of law studies, and the issues of the legal-political role of law interpretation are extensively explained in law textbooks[82], as the primary source of reference for lawyers who are aware of what the law is and want to understand it.

The current awareness and application of the methods of legal interpretation (the practical role of interpretation) is a consequence of the role given to it in law textbooks and teaching since practice is a consequence of teaching (the state of knowledge). At the same time, the tasks of modern (analytical) legal theory, as a general science of law and law textbooks, resulting from the historical formation of the science of law, cause a fundamental lack of awareness of the legal significance of legal theory for the system. This causes questions about the role of legal interpretation, legal theory, as well as the role of textbooks themselves, as the basis for teaching and the first point of reference for understanding the law-are still, or increasingly, relevant.

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[82] Cf. a. o. B. Rüthers, Ch. Fischer, A. Birk, *Rechtstheorie mit juristischer*…; K. Larenz, *Methodenlehre*…, e.a.

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Summary

The purpose of this article is to explain the role of legal interpretation in Poland in the context of its teaching and application, resulting from the way legal interpretation is presented in law textbooks. This explanation is based on the following theses: 1. The contemporary way in which law is taught in Poland, in particular law interpretation and its impact on the application of law, is due to historical and political conditions. 2 Polish law textbooks do not show the political and worldview context of the law, which results in an unawareness of the legal-political role of legal interpretation. 3. The current state of Polish law teaching, in particular textbooks, contributes to an increase in the importance of the so-called judicial interpretation and the related threats to the teaching and application of law. Clarification of the indicated theses will not only allow us to understand the current role of law textbooks in teaching the method of civil law interpretation, but also to show the potential direction of development of legal theory. It is therefore important to pay attention to the broader context, which is the way law teaching is practiced in Poland and its impact on the application and development of law, as well as on legal awareness and the level of legal culture.

keywords: legal interpretation, theory of law, legal textbooks, teaching of legal methods, legal methodology

OLA PODRĘCZNIKÓW PRAWA W NAUCZENIU I STOSOWANIU METOD INTERPRETACJI PRAWNEJ W POLSCE (W PERSPEKTYWIE HISTORYCZNEJ I WSPÓŁCZESNEJ)

Streszczenie

Celem artykułu jest wyjaśnienie roli wykładni prawa w Polsce w kontekście jej nauczania i stosowania, wynikające ze sposobu prezentacji wykładni prawa w podręcznikach prawa. Wyjaśnienie

to oparte jest na następujących tezach: 1. Współczesny sposób nauczania prawa w Polsce, w szczególności wykładni prawa oraz jej wpływu na stosowanie prawa, wynika z uwarunkowań historyczno-politycznych. 2. Polskie podręczniki nauki prawa nie pokazują kontekstu politycznego i światopoglądowego prawa, co powoduje nieświadomość prawnopolitycznej roli wykładni prawa. 3. Obecny stan polskiej nauki prawa, w szczególności podręczników, przyczynia się do wzrostu znaczenia tzw. wykładni sędziowskiej i związanych z nią zagrożeń dla nauczania i stosowania prawa. Wyjaśnienie wskazanych tez pozwoli nie tylko na zrozumienie obecnej roli podręczników prawa w nauczaniu metody wykładni prawa cywilnego, ale także na pokazanie potencjalnego kierunku rozwoju teorii prawa. Istotne jest zatem zwrócenie uwagi na szerszy kontekst, jakim jest sposób uprawiania nauki prawa w Polsce oraz jego wpływ na stosowanie i rozwój prawa, a także na świadomość prawną i poziom kultury prawnej.

Słowa kluczowe: wykładnia prawa, teoria prawa, podręczniki prawa, nauczanie wykładni prawa, metodologia prawa