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INTERPRETATION OF THE LAW AS THE BASIS FOR THE UNIFORMITY OF THE SUPREME COURT IN RELATION TO A CASSATION APPEAL

1. Presentation of the issue

The aim of this article is to analyze issues related to the interpretation of the law in the Polish legal system as well as the role which the legislator assigns to the interpretation of the law, bearing in mind Art. 398³ of the Code of Civil Procedure,¹ as well as Art. 1 of the Supreme Court Act² and Art. 2 of the Constitution of the Republic of Poland.³ According to the mentioned provisions of the Code of Civil Procedure and the Supreme Court Act, an erroneous interpretation may constitute a violation of the law and be the basis for bringing a cassation appeal to the Supreme Court, one of the main tasks of which is to ensure compliance with the law and uniformity of jurisprudence by considering remedies and adopting resolutions to resolve legal issues. This article will therefore be focused on the following issues: what is the aim of a cassation appeal in the context of ensuring the uniformity of jurisprudence; what is the interpretation according to the Polish doctrine of civil law and jurisprudence, the erroneous implementation of which constitutes an infringement of the law and the basis for the cassation appeal; what are the views regarding the mentioned issues of interpretation in the German legal system, and whether, taking into consideration the mentioned legal provisions, the erroneous interpretation is an interpretation inconsistent with art

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¹ Act of 17 November 1964, the Code of Civil Procedure, Journal of Laws of 2020, item 1575 as amended [henceforth cited as: CCP].

² Act of 8 December 2017 on the Supreme Court, Journal of Laws of 2020, item 190.

³ Constitution of the Republic of Poland of 2 April 1997, Journal of Laws of 2009, item 114 as amended.

(if so, with which one) or with the uniform jurisprudence line of the Supreme Court. The aim of these considerations is not to provide a comprehensive explanation of the issue, but rather to make the important role of interpretation in the Polish legal system more familiar and more in-depth.

2. The aim of a cassation appeal as ensuring a uniform line of jurisprudence by the Supreme Court, ensuring legal safety

As it has been emphasized in the Polish doctrine, the uniformity of jurisprudence has long been regarded as an important constitutional value. During the period of absolutist rule, it was a source of a strong power and an expression of the Kings's influence in the legislative and judicial sphere. After the spread of the separation of powers, the uniformity of jurisprudence acquired a new meaning as a basis for political uniformity through the efficient, effective and legitimate operation of the State apparatus [Gudowski 2012, 149ff]. The essential condition for this was the uniformity of legislation and the uniformity of judicial decisions [Idem 2013, 884ff], which was intended to ensure legal safety. It should be pointed out that, especially in the early 19th century, the uniformity of the understanding of the law meant the safety of turnover, which was characteristic not only of the process and case-law, but was an expression of the social and economic thought of an era in which uniformity of law was therefore one of the highest values.

This trend was clearly reflected in the 19th century study of law, concerning both procedural and substantive law. According to the jurisprudence of concepts used in Germany at that time, legal concepts with an unchanging content, such as absolute ownership, the *numerus clausus* principle of property rights, the contrast of absolute property rights with relative obligation rights were considered as the highest value. The introduction of these concepts with constant and unchangeable content was intended to ensure their uniform understanding by all citizens, as opposed to the feudal property previously in force, as a right with a variable content, which could consist of different rights each time. However, constant-content concepts introduced into the legal system at the beginning of the 19th century were intended to ensure the security of turnover, consisting in a uniform understanding of them, which would give confidence in the law. From that time on, the purchaser knew the content of the burden of the purchased item [Schwab and Löhning

2010, 137]. In addition, the creditors knew what kind of asset they could recover from the debtor's assets, i.e. they knew the content of their rights and, finally, they knew that the debtor could not, under bilateral agreements, "take things out" of his assets for fear of creditors, which was at the root of the concept of limited rights in rem. These assumptions were an expression of the 19th century certainty of turnover, based on abstract legal concepts with constant, unchanging content of rights. With the end of feudalism and the beginning of capitalism, legal transactions required certainty and security, which consisted precisely in a uniform understanding of abstract legal concepts and thus in the uniform application of the law, consisting in a uniform understanding by the legislator, legal science and case-law.

Similar certainty was to be provided by the institution of cassation appeal, guaranteeing citizens the certainty of turnover through uniformity of case-law. As has been emphasized to this day in the Polish legal doctrine, the public interest prevails in cassation, as a means of controlling the exercise of the law and aimed at unifying the case-law of common courts and settling precedent cases which affect the development of law and court judicature [Jodłowski, Resich, Lapierre, et al. 2009, 491; Ereciński 2016, 194]. The admissibility and examination of cassation systemic and procedural is justified in those cases in which its public law functions (interests) can be performed. Its aim is therefore to check the legality of final decisions of courts of second instance appealed against by it. By this control, the cassation appeal is intended to serve the rule of law and the unity of the judiciary, and at the same time to enable the Supreme Court through direct insight into the jurisprudence of lower courts and the implementation of judicial supervision [ibid., 198]. In its decision of 4 February 2000, the Supreme Court emphasized that "the primary objective of the cassation procedure is to protect the public interest by ensuring uniformity of interpretation and the contribution of the Supreme Court to the development of law and jurisprudence."⁴ It can therefore be assumed that the purpose of a cassation appeal is to ensure uniformity of interpretation, understood as the result of interpretation. This raises the question of understanding of the interpretation, which, in the absence of a statu-

⁴ Order of the Supreme Court of 4 February 2000, II CZ 178/ 99, OSNC 2000, no. 7-8, item 147.

tory explanations, will be presented on the basis of considerations of doctrine and case-law.

3. Interpretation of law according to Polish civil law doctrine

Quite a lot of space has been devoted to Law interpretations in the Polish legal science, so neither the authors nor their publications will be presented here. However, it should be noted at this point that an interpretation of law⁵ is understood, among other things, as a “way of recreating, performing a work,” comparing it to the interpretation of musical, theatrical or literary works [Leszczyński 2004, 109ff].⁶ In the Polish legal system, as a rule, an interpretation consisting of a literal reading of the provisions of the law by means of a linguistic interpretation, the borderline of which is the verbal sound [Morawski 2002, 115ff; Tobor 2013, 109ff].⁷ The aim of this interpretation is to establish the true meaning of a provision of law, i.e. an objectively correct sense and to apply it to the factual situation being resolved (subsumption) [Grzybowski 1985, 158].⁸ In theoretical-legal literature, two naturalistic approaches to the interpretation of the law are competing:⁹ the so-called

⁵ Interesting comments on the interpretation of the law [Morawski 2014, 251ff; Tobor 2013, 40ff], according to which the intention of the legislator plays a central role in legal discourse.

⁶ Cf. also: definitions of Z. Radwanski’s and A. Olejniczak’s interpretation, according to which: “it is a peculiar thought process consisting in determining the proper meaning of legal texts that constitute the basis for reconstructing the legal norm sought,” [Radwański and Olejniczak 2011, 65]. Skowrońska-Bocian indicates similarly that the interpretation is “finding the real normative meaning of regulations” [Skowrońska-Bocian 2005, 63].

⁷ Points to various meanings of the term “literal interpretation,” with the most frequently identified, according to the author, with linguistic interpretation; on law as a linguistic phenomenon [Zirk-Sadowski 2000, 81ff].

⁸ Grammatical (linguistic) interpretation seeks to establish the real meaning of expressions and phrases used in a legal provision (semantic analysis) based on the principles of language syntax (syntactic analysis) [Bielska-Brodziak and Tobor 2019, 255-64].

⁹ However, as Zirk-Sadowski points out, “the greatest influence on the views of the analytical philosophy of law had the works of K. Ajdukiewicz, in particular his directive concept of linguistic meaning” [Zirk-Sadowski 2000, 88], and J. Wróblewski in his works attempted to extend the concept of K. Ajdukiewicz.

semantic/semiotic (clarification)¹⁰ approach, derived from J. Wróblewski, and the derivative approach [Zieliński 2002], derived from M. Zieliński. The semantic approach consists, in general, of assigning a specific meaning to a legal text, while the derivational approach consists of deriving norms from the legal text, understood as statements meeting certain requirements, in particular as statements explicitly expressing an order or prohibition addressed to a directly specified addressee in order to directly implement the described behavior in specific circumstances.¹¹ It is stressed that if the literal interpretation does not produce clear results, a purposeful interpretation is used.¹² Thus, according to the majority of representatives of the Polish legal science, purposeful interpretation is used interchangeably for literal interpretation. Meanwhile, in view of the rich case-law,¹³ one may agree with Z. Radwański

¹⁰ The source of J. Wróblewski's concept is his fundamental work *Issues of the theory of interpretation of folk law* (1959), cf. more widely: Pohl and Zieliński 2011, 7ff. Supporters of this theory include, among others, Morawski 2006, 16.

¹¹ Cf. however, Sarkowicz 1994, 122-23, which indicates that the clarifying theory can be seen as a fragment of a broader derivational concept; cf. also: Wróblewski 1990, 55; Pulka 2004, 22; Patryas 2001, 147.

¹² Cf. e.g. "the interpretation of the law in the process of judicial application of the law is incidental in nature and appears appropriately in two situations: when the meaning of an expression or term in a given ethnic language is uncertain and when it seems appropriate to deviate from the established meaning of the expression or term in favor of its functional socio-political context" [Smolak 2007, 28]; "both in the case law of common courts and in the case law of administrative courts it is generally accepted that linguistic interpretation takes precedence over systemic and purposeful (functional) interpretation" [Kierska and Marek 2015, 88].

¹³ Cf. the Supreme Court judgment, concerning the interpretation of civil law provisions, according to which: "A rule formulated in doctrine and judicature recognizes the following order of different ways of interpretation: linguistic interpretation, systemic interpretation, functional (intentional) interpretation. A departure from it and the preference given to intentional interpretation in the adopted order, including rules which require that their social, economic and axiological context be taken into account when determining the meaning of the rules, can only justify valid reasons, in particular radical changes in the law and the consequent need to adapt it to new socio-political conditions. [...] A separate question is whether and under what circumstances it will be necessary to use all of these interpretations in turn," judgment of the Supreme Court of 3 April 2001, I CKN 1405/98, Lex no. 52703; cf. also resolution of the Supreme Court of 22 November 2002, I KZP 41/02, OSNKW 2003, no. 1-2, item 4; resolution of the Supreme Court of 30 September 1998, I KZP 11/98, OSNKW 1998, no. 9-10, item 44; resolution of the composition of seven judges of 25 April 2003, III CZP 8/03, Lex no. 77172. Such a position was previously taken by the Supreme Court in a resolution of 10 December 2009, III CZP 110/09, Lex no.

that “the Judicature of the Supreme Court of the Civil Chamber, while recognizing the competence of courts to control the results of a linguistic interpretation by systematic or functional interpretation, assumes that they should always carry out this interpretation; otherwise, courts could not assess whether the results of a linguistic interpretation do not conflict with the results of a systematic or functional interpretation. As a result, I consider the phrase used in the Supreme Court’s statements to be inaccurate, namely that non-linguistic interpretation can only be used when it fails to produce results that are incompatible with systematic or functional-axiological interpretation” [Radwański 2009, 16].¹⁴ Nevertheless, a similar position, i.e. treating purposeful interpretation only as one of the auxiliary means of interpretation, is taken by E. Waśkowski and T. Grzybowski in Polish legal science. Ultimately, it should also be pointed out that despite the fact that Polish authors refer to the so-called purposeful interpretation, they do not explain in principle how to apply this interpretation, i.e. by what means they read the purpose of the Act. This makes the question of purposeful interpretation rather vague and confirms the general statement that “the rules of interpretation are often disputed, unspecified and unsystematic” [Wronkowska and Ziemiński 2001, 155].¹⁵

531132, assuming that it is not necessary to use all types of interpretations; Supreme Court in a resolution (7) of 21 December 2007: “This provision is [...] a clear signal from the legislator that, when interpreting the provisions concerning the freedom of the parties to form contractual relations, linguistic interpretation should always be supported by a purposeful interpretation, since not only what results directly from the Act, but also non-legal norms and the function and purpose of the regulation should be taken into account,” III CZP 74/07, OSN IC 2008, no. 9, item 95.

¹⁴ See also Grzybowski 1985, 157ff, who emphasizes that there is no justification for distinguishing between separate and independent methods of interpretation. Rather, we should talk about a set of simultaneously operating directives, related to different contexts or points of view: linguistic, systemic, social and political, which emphasizes that linguistic interpretation cannot be made outside the social, political and systemic context.

¹⁵ As to the need to develop a general Polish integrated theory of interpretation, cf. Zieliński and Zirk-Sadowski 2011, 99ff; Morawski 2002, 26ff; Tobor 2013, 44ff.

4. Incorrect interpretation according to case law and the Polish legal doctrine

Bearing in mind that it is unclear what is an interpretation of the law and what its methods are, it is difficult to understand what the legislator understands by an “incorrect interpretation” as referred to in Art. 398³, para. 1, point 1 CCP. Pursuant to the aforementioned provision, a party may base a cassation appeal on a breach of substantive law by an incorrect interpretation or application thereof. Therefore, the legislator clearly indicates that an erroneous interpretation may lead to an infringement of the law, and moreover, it mentions the erroneous interpretation of the law as the first basis for lodging a complaint in cassation. This means that the issue of interpretation (including misinterpretation) is an extremely important element of the Polish legal system, which requires explanation.

Just like “interpretation,” “misinterpretation” is a doctrinal term. According to the views of the doctrine established in the jurisprudence, “an erroneous interpretation of a provision of substantive law consists of misunderstanding the content or meaning of a provision of law, including the notions contained in the standard referring to valuable extra-legal assessments. It is an incorrect interpretation of a provision deviating from the result of correct application of generally accepted rules for the interpretation of legal provisions and the *acquis communautaire* and case-law” [Ereciński 2016, 355; Piotrowska 2019, 1080; Góra-Błaszczkowska 2020, 1194].¹⁶ As it is pointed out, “this form of infringement also includes determining the content of general legal concepts” [Paszowski 2019, 1365].¹⁷ The question arises, therefore, what is the misinterpretation of the law supposed to consist of? Representatives of doctrine and case-law point to two issues: first of all, an erroneous interpretation consists in an erroneous choice of the method of substantive law interpretation (linguistic, functional, systemic), if the choice of a different method would lead to a different result of interpretation in the case being settled [Piotrowska 2019, 1081; Ereciński 2016, 355; Wróblewski

¹⁶ Cf. judgment of the Supreme Court of 19 January 1998, I CKN 424/97, OSNC 1998, no. 9, item 136; judgment of 20 November 2002, II CKN 1492/00, Legalis; judgment of 2 April 2003, I CKN 160/01, Lex nr 78813.

¹⁷ Cf. also judgment of the Supreme Court of 19 January 1998, I CKN 424/97.

1972, 116-17, 124]. For this reason, part of the doctrine and case-law indicates that, when explaining the content and meaning of a rule of law, the court should use all possible means of interpretation [Ereciński 2016, 355; Góra-Błaszczkowska 2020, 1194]. A certain and correct result of an interpretation is when the same effect is achieved by applying different interpretative means [Piasecki 2006, 1476]. On the other hand, it is accepted that where the application of the rules on linguistic interpretation has led to the clarification of interpretation uncertainties, there is no need to apply the directives to non-linguistic, systemic or functional interpretation.¹⁸ These two positions therefore represent the opposite of the approach to misinterpretation.

Furthermore, as the case-law underlines, there is a need to interpret legal provisions where there is no uniform or established line of jurisprudence in relation to a particular provision or where there is a manifest defect in the interpretation adopted and the dominant one. In turn, such a need will not arise if the interpretation is sufficiently and properly explained by the judiciary, and in particular by the case-law of the Supreme Court.¹⁹ Similarly, as regards to an appeal in cassation, it may be justified on the grounds that there is a need to interpret provisions which give rise to serious doubts or which give rise to divergences in the case-law of the courts, and that it needs to be shown that a specific, seriously questionable provision of law has not been interpreted or that an uneven interpretation gives rise to clearly identified divergences in case-law.²⁰ The mentioned case law shows that there is a need for interpretation where there is no uniform line of judgement. In such a situation, there is an impression of legal uncertainty as to how the court understands and interprets legal provisions. This is confirmed by Art. 1, point 1a of the Supreme Court Act: “The Supreme Court is an organ of judicial power, appointed to exercise the administration of justice by ensuring the legality and uniformity of the jurisprudence of common courts and military courts by considering remedies and adopting resolutions resolving legal issues.” Comparing the aforementioned provision with the previously referred to Art. 398³, para. 1, point 1 CCP, concerning erroneous interpretation as a basis for

¹⁸ Cf. substantiation of the resolution of Supreme Court 7, legal principle, of 25 April 2003, III CZP 8/03, OSNC 2004, no. 1, item 1.

¹⁹ Decision of the Supreme Court of 16 January 2003, I PK230/02, Lex Polonica 362434.

²⁰ Decision of the Supreme Court of 18 June 2004, II CZ 65/04, not published.

a cassation complaint considered by the Supreme Court, it should be pointed out that the Supreme Court, when deciding on a cassation complaint, should be guided by ensuring legality and uniformity of jurisprudence. However, on the basis of an analysis of the jurisprudence already mentioned, it can be concluded that if the main task of the Supreme Court is to ensure the uniformity of jurisprudence, it is important for the Supreme Court to create a uniform line of jurisprudence on the basis of an interpretation of regulations which would correspond to this line. The uniformity of the line of jurisprudence takes precedence over, for example, changes in life relationships, regulated by a given provision of law, where a *contra legem* interpretation should be applied. This is confirmed by the case law, which assumes that “ignoring a resolution of a panel of seven judges of the Supreme Court by the adjudicating court would constitute a qualified violation of the law.”²¹ Consequently, it can be assumed that, in the Polish legal system, the Supreme Court, when dealing with, among other things, cassation complaints, is a body intended to ensure a uniform line of judgement in order to ensure legal security. Legal security based on a uniform line of jurisprudence has therefore been considered to be more important than taking account of life relationships and interpreting them *contra legem*. This would explain why so little attention is paid to the issue of what constitutes a correct and erroneous interpretation of the rules, as issues of principle of secondary importance.

5. The interpretation of the law according to German doctrine

The problem of interpretation is treated in the German legal system in a completely different way from the Polish legal science and case-law. It points, above all, to a strong link between the concept of law (explaining the understanding of the law) and the method of interpretation of the law (explaining how it should be read). It is clearly emphasized that the law has a political function, i.e. depending on the accepted concept of the law and the clearly defined way in which it is read, the result of the interpretation is different and is also considered to be an incorrect interpretation, also in the context of permitted and unlawful lawmaking. Although the court is in principle not bo-

²¹ Judgment of the Court of Appeal in Warsaw of 13 September 2019, V ACa 167/19, Lex no 2726859.

und by the method of interpretation, it does however have a duty of methodological correctness.

As mentioned above, at the beginning of the 19th century, there was a jury of concepts in Germany as a concept and method of interpretation of law, according to which law is primarily scientific law, which is created and read from the knowledge of philosophy by learned lawyers [Rüthers, Fischer, and Birk 2015, 290].²² Therefore, the application and the interpretation of the law took place through three elements: scientific abstract general terms with an established content, which were associated with the so-called “scientific concept.” The pyramid of concepts, allowing to deduce lower-order norms from already known norms, the analytical and deductive method of law consisting in creating a concept from the existing norms of law and then deducing new norms of law from this concept [Larenz 1991, 76], as well as the method of inversion, consisting in the independence of general order concepts, as if they were like bodies of nature – ready-made and pre-shaped objects and concepts thus constructed – were considered to be intrinsic, since their value lay in their infinite applicability, including in cases that were not taken into account when defining a concept.²³ These elements were the starting point and the centre of the jurisprudence of concepts as a method of applying and interpreting the law [Bucher 1966, 274ff]. It was characteristic for the representatives of this method to believe that the use of abstract legal concepts and their interpretation in the way described above was to ensure the safety of trade and legal certainty through the uniformity of legal concepts. It should be noted that due to the numerous flaws in the jury’s work on the use of concepts as a method of legal interpretation, criticism of this method is now undisputed. Criticism is mainly focused on the method of inversion itself and the consequences of its application, but also on the resolution of legal disputes based on abstract notions, causing the law to be distanced from life’s needs.

The social and political situation after the Second World War forced a change in the method of applying and interpreting the law, through a reading of the law by the supreme values of the legal order, which are standar-

²² Citing G.F. Puchta as a representative of the jurisprudence of concepts [Larenz 1991, 21; Puchta 1841, 30].

²³ However, cf. Ihering 1884, and the satire of this method contained in the same work, entitled *The method of the use of the method*. “In the jury’s heaven of notions. The image of fantasy.”

dized in the constitution, maintained in the spirit of liberalism and anti-totalitarianism and the freedom to develop individuals on their own responsibility. The change of method resulted in the inadmissibility of granting (or refusing to grant) legal protection to the entitled person on the basis of abstract legal notions, resulting from constitutional values: equality before the law and the right to personal development. Therefore, for a legal practitioner, abstract legal concepts are irrelevant because the application of the law is based on consideration of the conflict of specific life needs, in relation to constitutional values. In this way, case law has contributed to the spread of new rights, such as the rights of the personality and the right to conduct a business. The constitutional value of the right to self-development has also caused a change in the understanding of legal certainty. It is not guaranteed by abstract notions, because the law is constantly evolving, hence its inclusion in the permanently formed content of the law is nonsense. Legal certainty guarantees a fair resolution of possible conflicts of interest of trading participants by applying constitutional values, and is therefore the result of valuing it on the basis of the highest values of the legal system.

6. Is an interpretation that is not artful or an interpretation that results in the law being unfair?

In view of the above considerations concerning German legal science, two things must be pointed out: firstly, an interpretation that is not in accordance with the principles of the art of interpretation, as laid down in a particular method of law, must be regarded as incorrect. This is obvious. Moreover, the openness of the method of interpretation used means that everyone is able to check whether or not the judge has arrived at an interpretation in accordance with the art, which results in methodological honesty.

Secondly, as German doctrine points out, the mistake of literal interpretation lies primarily in considering it as a separate method of interpretation, whereas it is only one element of interpretation. As F.C. von Savigny points out, “the four elements of interpretation (grammatical, logical, historical and systematic) provide insight into the content of the law. These are therefore not the four types of interpretation that can be chosen according to taste and preference, but the different actions that must work together for an interpretation to succeed. While it may happen that one element once and another

seems more important, all elements must be considered” [Savigny 1840, 216].²⁴ Furthermore, according to German legal science, a mistake of literal interpretation is not limited to the verbal wording, but incorrectly applied. In order to establish the “wording” of a provision, the law-enacting one first isolates the concept from the context of the law, which the legislator gave to the concept. It causes the literal interpretation of the verbal wording to constitute a detachment from the context and failure to achieve the aim of the Act [Heck 1914, 126],²⁵ under the pretext of determining the “pure sense of the concept” or “objective sense.” Consequently, it is impossible to set a statutory objective. On the other hand, such an isolated concept does not contain any content, i.e. the pure verbal sound as it is considered by the law’s applicator. The pure verbal wording of the law, as a normative factual state of affairs, does not exist, and therefore the linguistic support measures alone are not sufficient to give the concepts of the law substance. For the most possible verbal wording is, to the greatest extent possible, undefined, while the closest lying verbal wording is, admittedly, defined, but surprisingly useless. A distinction must also be made between the general (statutory) verbal wording of the law and the legal (legal science) verbal wording, where it is not possible to separate the remaining legal knowledge. Because the idea of learning the law is always the result of legal knowledge and therefore cannot be separated from other knowledge. The concept of, for example, a joint stock company, is a synthesis of a large number of legal sentences and interpretation processes [ibid., 123]. In this way, when applying the law, the user determines the verbal wording of a provision and gives it to it himself. There-

²⁴ As the Author continues: “The success of any interpretation, on the other hand, depends on two conditions to which these four elements can be reduced: firstly, in the expression of the legislator’s thoughts that lies before us, it is necessary to be aware of his spiritual activity, which we want to bring out and make alive, and secondly, it is necessary to provide this historical and dogmatic view of the whole in relation to the text under consideration.” It should be stressed that the grammatical element corresponds to the Polish literal interpretation, because “the grammatical element of interpretation consists in explaining the statutory expressions used by the legislator.”

²⁵ This is also the case in Polish literature: “analysis from the point of view of the linguistic context [...] is connected with the systemic context and cannot be properly performed outside the social and political context” [Grzybowski, 1985, 158]; cf. however Tobor 2013, 107, which indicates the question in which situations a judge should refer to other evidence proving the intention of the legislature [ibid., 107ff].

fore, he does not interpret, but “puts” into it the concept of content he wants to see in it. It does not, therefore, make deductions, but inductions, which in this case is unacceptable law-making.

Thirdly, a misinterpretation will be one which, in relation to the modern method of interpretation – the jurisprudence of values – will cause a ruling based on this interpretation to contradict the sense of justice and other values of the legal order. The aim of any interpretation is to arrive at a solution that is consistent with the sense of justice and the principles of the legal order as enshrined in the constitution, even if this is done *contra legem*, and not to ensure the unity of jurisprudence in itself.

Conclusions

Bearing in mind the above preliminary outline of the problem of the role of interpretation in the jurisprudence of the Supreme Court and, in particular, of interpretation as a basis for Supreme Court rulings, a number of conclusions can be drawn.

First and foremost, the uniformity of jurisprudence is a consequence of the adoption in the Polish legal system that legal security is based on constancy and certainty of decisions. Meanwhile, from a contemporary point of view, it is much more important to arrive at a fair solution, i.e. one which is in accordance with constitutional values. It is not of the utmost importance to decide whether a decision was made in accordance with or against the existing line of jurisprudence. Therefore, the aim of an appeal in cassation should be not so much to unify jurisprudence as to ensure a sense of justice in the context of the decisions issued and constitutional values. The Supreme Court acts on the basis of the Constitution, in which the principle of social justice (Art. 2 of the Polish Constitution) is directly implemented, and not the uniformity of jurisprudence.

It should be assumed that an erroneous interpretation is one which is not in line with art, i.e. an accepted method of interpretation, and which leads to a decision which is not in line with the sense of social justice, or which the court makes in secret, in disguise or in an unauthorized manner. In the opinion of the author, the court is obliged to have methodological honesty, consisting in justifying the adoption of a specific method of interpretation and

possibly rejecting the others. However, this raises a question about the role of interpretation and its method in the Polish legal system.

In conclusion, in the opinion of the author, an interpretation that does not satisfy the uniformity of jurisprudence is not wrong, because a court may also make a *contra legem* interpretation when it considers that it is justified in a particular case. For a court should always interpret and apply the provisions in relation to a specific case and to ensure social justice as a constitutional value. It is its violation that should make it possible to bring an appeal in cassation, as the application of an erroneous interpretation that would result in a breach of the law. Adopting a different (now common) position would mean that it is not the rules that would be for life, but life for the rules, and an interpretation *contra legem* that would contradict the overriding objective of uniformity of jurisprudence, which would lead to absurdities.

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Interpretation of the Law as the Basis for the Uniformity of the Supreme Court in Relation to a Cassation Appeal

Summary

Analyzing the achievements of Polish doctrine, the role of interpretation of the law seems to be underestimated, which is particularly evident in the laconic explanation by its representatives of the so-called “misinterpretation” as a basis for a cassation complaint. Meanwhile, the adoption by the legislator of the “incorrect interpretation” as the basis for lodging a cassation appeal proves the importance of the role of interpretation in the eyes of the legislator. The aim of the appeal in cassation is to ensure a uniform interpretation of the law, in which legal certainty is sought. However, according to a method and interpretation of the law which is commonly used abroad in Germany, for example, legal security is ensured not so much by the

uniformity of jurisprudence, but by the constitutionality of the judiciary's decisions based on constitutional values which ensure the fairness of decisions.

Key words: legal security, interpretation of laws

Wykładnia prawa jako podstawa jednolitości orzecznictwa Sądu Najwyższego w odniesieniu do skargi kasacyjnej

Streszczenie

Analizując dorobek polskiej doktryny, rola wykładni prawa wydaje się niedoceniana, co szczególnie widać przy lakonicznym wyjaśnianiu przez jej przedstawicieli tzw. „błędnej wykładni” jako podstawy skargi kasacyjnej. Tymczasem przyjęcie przez ustawodawcę „błędnej wykładni” za podstawę wniesienia skargi kasacyjnej świadczy o doniosłości roli wykładni w ujęciu ustawodawcy. Celem skargi kasacyjnej jest przy tym zapewnienie jednolitej wykładni prawa, w której upatruje się bezpieczeństwa prawnego. Tymczasem zgodnie z metodą i wykładnią prawa powszechnie stosowaną obecnie m.in. w Niemczech, bezpieczeństwo prawne jest zapewniane nie tyle przez jednolitość orzecznictwa, co przez oparcie rozstrzygnięć sędziowskich na wartościach konstytucyjnych, zapewniających sprawiedliwość orzeczeń.

Słowa kluczowe: bezpieczeństwo prawne, wykładnia przepisów prawa

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