3. A descriptive level of legal interpretation

A descriptive level of legal text includes all the elements of the text which deliver the description of a particular world to which this text relates in its literal meaning\(^3\). A legal text on this level describes a possible world: persons, things, occurrences, behaviours etc.\(^4\). In linguistic terms, interpreting legal text on its descriptive level is treating it as a direct speech act, as we assume that its systemic meaning is identical as pragmatic meaning.

4. A directive (normative) level of legal interpretation

The very sense of enacting statutes and other legal acts is to influence people’s behaviour by establishing legal norms. These norms are somehow encrypted in a legal text and we must „decipher” them in the process of legal interpretation. These norms are what a directive (normative) level of a legal text consists of. In order to recognise these norms one must read and understand legal text on its descriptive level. The next step is to interpret it. Interpretation of a legal text is a complex thought process\(^5\) and to do it properly an interpreter must take into consideration characteristics of text he/she interprets. R. Sarkowicz does not see any inconsistency between his conception and so called derivative conception of legal interpretation\(^6\) so it shall be absolutely correct to use tools delivered by Maciej Zielinski to interpret legal text on its directive (normative) level\(^7\). Furthermore M. Zielinski approves R. Sarkowicz’s findings as to levels of interpretation of a legal text\(^8\). These two conception are therefore consistent with each other.

In linguistic terms, while interpreting legal text on its directive (normative) level we treat it as an indirect speech act, because there is a substantial, structural difference between systemic and pragmatic meaning of a legal text. A legal text in its pragmatic sense (on a directive level) express orders to behave in a way determined in the legal text (though in systemic sense, on a descriptive level, it describe people, things, occurrence, behaviours etc.).

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\(^3\) R. Sarkowicz, Posiowna interpretacja..., p. 93 (translated by K.N.).
\(^4\) R. Sarkowicz, Posiowna interpretacja..., p. 67; possible worlds do not really exist, they are fictitious. They are only thought and described. We may describe features of their elements. A possible world described in legal text is a world which is somehow postulated by a lawmaker.
\(^5\) A good description of this process was given by M. Zielinski in: M. Zielinski, Wykładnia prawa. Zasady, reguly, wskazówki [Legal interpretation. Principles, rules, guidelines], Warsaw 2012.
\(^6\) Maciej Zielinski’s so called derivative conception of legal interpretation is described in: M. Zielinski, Wykładnia prawa..., passim.
\(^7\) R. Sarkowicz, Posiowna interpretacja..., pp. 111-112.
\(^8\) M. Zielinski, Wykładnia prawa..., p. 107.
5. A level of presuppositions

The third from levels of interpretation of a legal text is a level of presuppositions. An interpreter can explore it by analysing two abovementioned levels of the legal text, but mostly the descriptive one. This level includes all the information of a world contemporary with a lawyer (that is – inter alia – information of a society, human beings, their beliefs, opinions, recognised values) that can be read from the legal text. This involves a holistic vision of the world, vision built on knowledge possessed by the lawyer in a moment of creation of a legal text. All these pieces of information are not expressed directly in the legal text but legal text presupposes them, so we may say that they constitute presuppositions of the legal text. Due to the fact that legal text presupposes information of various kind, level of presuppositions of a legal text constitutes a collection of conceptions, opinions, beliefs, ideals, values which are a material for reconstructing, better or worse, the worldview of an author of a text and people of his/her time. The result of such a reconstruction are particular conceptions concerning nature, philosophy, religion, society, economy, political system, which constitutes, more or less coherent and general, system.

According to R. Sarkowicz, the lawyer gives in a legal text (on its level of presuppositions) a set of information as to what a lawyer ‘thinks’ about the real world (world actually existing) but the content of a level of presupposition differs from what is communicated on a descriptive level of a legal text, which describes a possible, potential, postulated world. All the pieces of information are of various kind, but they shall stay consistent with each other. Reconstruction of the level of presupposition of the legal text shall provide a coherent system of knowledge and beliefs, a coherent vision of the real world. As M. Smołek noticed, ‘a description of a social reality contained in presuppositions of a legal text is to the highest extent similar to the way of perceiving the reality by the lawyer or by any other person who – as an interpreter believes – is an author of a legal text’.

6. What is a legal text?

A question which must be answered here is a question of what is a legal text. It is so important because we must know what is a legal text in order to interpret ‘the legal text’ (on every of the abovementioned levels). R. Sarkowicz refers to the definition proposed by M. Zieliński who states that ‘a legal text in a moment of its creation is an aggregate of all articles of all legal acts of a particular country which was has been enacted and promulgated until the moment its creation’.

This definition seems to be accurate, but one additional remark must be made here.

7. Introductions to (preambles) of normative acts

The rigid application of the definition cited above would lead to the consequences which are difficult to accept, namely that all the elements of the (so called) non-articulated part of legal acts could not be an object of ‘legal interpretation’. Such a consequence seems to be unacceptable, especially in reference to preambles (introductions) of normative acts as they do possess significant importance (express significant information) and they definitely are not just ornaments. In the light of what was said above, excluding preambles from the scope of legal interpretation (especially on the level of presuppositions) would be arbitrary.

I would like to propose to interpret non-articulated parts of legal text in the process of legal interpretation, staying aware of differences between articulated and non-articulated parts of legal texts. Interpretation of introductions to (preambles) of normative acts must differ somehow from interpretation of articulated parts because roles played by these parts of normative acts are different. The main difference is obvious: no legal norms are expressed in introductions to normative acts.

The main aim of introductions to normative acts is to reveal motives for enacting this particular normative act, including values which a lawyer wants to respect and protect. The lawyer, while revealing his motives, refers to particular occurrences, state of affairs and other elements of reality, not only postulated, potential (so being a part of the future), but also actually existing now or that existed in the past.

Polish lawyer in several introductions to normative acts refers to certain past elements of reality, such as:

1. Countries that conquered and occupied Poland fought with Polish language in order to denationalise the Poles,
2. Forced labour of soldiers performing alternative military service in coal mines, quarries and uranium ore mines was a special kind of political repression.

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8 M. Zieliński, Wydawnictwa prawa..., p. 67.
9 M. Zieliński, Wydawnictwa prawa... (translated by K.N.).
10 M. Smołek refers to a social aspect of reality because he only examined (in this article) ontological presupposition concerning social aspect of reality; M. Smołek, Prawodawcze ontologiczne tekstów prawnego [Ontological presuppositions of legal text]. „Ruch Prawniczy, Ekonomiczny i Socjologiczny” LXXIII, 2011, Vol. 4, p. 44.
11 M. Smołek, Prawodawcze..., p. 45 (translated by K.N.).
12 R. Sarkowicz, P rawo konstytucyjne..., p. 50; M. Zieliński, Interpretacja jako proces dobudowywania tekstu prawnego [Interpretation as a process of decoding legal text], Poznań 1972, p. 24.
13 "This is not devided into articles"; M. Zieliński called this part also a nonfundamental text of a legal act, M. Zieliński, Interpretacja jako proces..., p. 24; this part includes: title of an act, other headings of the act, preamble (introduction), specification of a legal basis and signatures.
14 S. Wronkowska, Podstawowe pojęcia prawa i prawocenisu [Basic concepts of law and jurisprudence], Poznań 2005, p. 36.
16 Ustawa z 2.09.1994 r. o świadczeniach pieniężnych i uprawnieniach przysługujących żołnierzom zastępczej służby wojskowej przyznawanych na podstawie w ustawie, karnośródmów i zakładów wydobywawczych w ramach ussuna [Act on cash benefits and rights of the soldiers of alternative military service who performed forced labour in coal mines, quarries and uranium ore mines of 2nd September 1994] (consolidated text, Journal of Laws [Dziennik Ustaw] of 2014, item 1373).
3. Polish citizens fought for sovereignty and independence of motherland in units of Polish Army, allied armies and underground pro-independence organisations and in civil organisation – in exposure to repressions. The government of the Third Reich and the Soviet Union as well as communist apparatus of repression inflicted sufferings on many Polish citizens on the ethnic, political and religious basis and caused the death of many millions of people as well as permanent loss of health of many other persons.

A lawyer has described also particular elements of reality which are currently existing, such as:
1. Polish language is a fundamental element of Polish national identity and treasure of national culture;
2. in a nowadays world we can observe the process of globalisation;
3. life is a fundamental good of a human being;
4. domestic violence violates fundamental rights of a human being, including right to life and health and to respect of personal dignity;
5. there are Poles living abroad;
6. there are Poles who are living in the East who lost Polish citizenship due to vicissitudes of the Motherland;
7. family is a basic unit of a society and a natural environment of human development.

Introductions to normative acts often point out at other potential, future occurrences, states of affairs, processes and other potential elements of the reality, inter alia: 1. strengthening ties connecting Poles living abroad with the Motherland (making the currently existing ties more strong), 2. situation in which public authorities guarantees to all the citizens equal treatment and respect to their rights and freedoms.

8. Descriptions of a real world in the articulated part of a legal text

Articulated parts of normative acts, especially of the Constitution and other acts of the highest position in the normative hierarchy, on descriptive level describe not only a possible world but they may describe sometimes (very rarely, though) the real world.

A good example of an abovementioned situation is Art. 30 of Polish Constitution, according to which „the inherent and inalienable dignity of a human being constitutes a source of freedoms and rights of a human being and citizen. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities.”

Such a sentence, if treated only as a description of a possible world, would be self-contradictory. This sentence on the descriptive level states that in some possible world „the inherent and inalienable dignity of a human being constitutes a source of freedoms and rights of a human being and citizen.” This description somehow constitutes, creates this world and in consequences all the elements of this world are parts of some kind of convention. Such an understanding of this sentence seems to be incompatible with recognised by the Polish lawyer inherent nature of human dignity. Because dignity of a human being is inherent, in consequence it must be objective, extra-constitutional and over-conventional. It does not derive from any human convention. This
kind of human dignity is necessarily connected with real, actual existence of a particular human being. In consequence the reference to such a dignity cannot be treated only as an element of a description (on a descriptive level) of a postulated, possible world, which was made up in Constitution in order to express (on normative/directive level) conventional legal norms (norms of positive law)\(^4\). This sentence must refer to reality, to actually existing human beings. The only non-contradictory explanation of the abovementioned problem would be to admit that an articulated part of a legal text occasionally describes the real world, that is that the lawmaker provides information about the reality not only on the level of presuppositions, but sometimes also directly on the descriptive level.

This leads to the conclusion that a primary sense of enacting legal provisions of this kind is determining a lawyer’s position on the fundamental issues. A lawyer describes what he/she “thinks” the reality looks like in this certain aspect. What must be seen, these specific declarations include recognition of aspects of reality\(^5\) which have significant normative implications (implies obligations of behaving in a certain way).

The source of these obligations does not lay in any human convention\(^6\).

What must be differentiated is, on the one hand, recognition of objective obligations deriving from inherent, objective, extra- and over-conventional dignity of a human being and, on the second hand, establishing certain positive-legal norms (norm of a positive law system) which impose obligation to behave in a certain way – even if the content of these obligation is identical.

It is, probably\(^7\), very rare for a lawyer to provide descriptions of a real world on a descriptive level of an articulated part of a legal text. Declarations of this kind may be observed probably only when the very literal meaning of used words does not allow to understand them in any other way which does not lead to self-contradictory (as in an example given above). Similar situation may be seen in Art. 6 section 1 sentence 1 of International Covenant on Civil and Political Rights, whereas Art. 38 of Polish Constitution or Art. 6 section 1 sentence 2 of International Covenant on Personal and Political Rights clearly describe a possible, fictitious world.

9. Conclusion

Stating that law is necessarily connected with a set of values is stating the obvious. The lawmaker points out at many values he recognises, but neither this statement is very

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\(^4\) In our legal culture legal text consist of descriptive sentences (describing some possible world) which express legal norms.

\(^5\) The dignity of a human being and relations between this dignity and particular state of affairs concerning particular human being.


\(^7\) This issue demands for the further investigation.