

Maciej Zieliński's (derivative) concept of legal interpretation

Introduction

The only original normative concept of legal interpretation in Poland is the concept of legal interpretation, formulated by Maciej Zieliński in 1969 (in his doctoral dissertation on *Ways of wording norms in the legislation of the Polish People's Republic*, published subsequently in 1972 in a slightly amended version as *Interpretation as the process of decoding of a legal text*¹) and since then referred to as the derivative concept. This concept has been further developed throughout Zieliński's career, resulting in subsequent publications.

The concept was presented in a holistic approach in 2002, in a monograph by M. Zieliński entitled *Legal interpretation. Principles, rules and hints*. This publication has been recognised as "Polish professional literature's first textbook definition of legal interpretation, combining a theoretical foundation with the directives for practical legal text interpretation" (trans. – A.Ch.)², and has been published in the 'coursebook' series since its fifth edition³, which undoubtedly proves it has entered the canons of academic legal education. Although subsequent publications (either in the form of new editions of the aforementioned monograph or other forms of study) by M. Zieliński that consider the interpretation of the legal text include some elements of novelty as regards supplementation,

¹ M. Zieliński, *Interpretacja jako proces dekodowania tekstu prawnego*, Poznań 1972.

² A quotation from the back cover of the book by M. Zieliński, *Wykładnia prawa. Zasady, reguły, wskazówki*, Warszawa 2010.

³ Since 2010.

revision of the former standpoint or paying attention to hitherto neglected aspects, the underlying assumptions that Zieliński made at the beginning, when formulating his concept of interpretation of a legal text, have remained unchanged.

1. Recognition of actual features of legal texts

Recognition of the actual features of the legal texts constitutes the core of the derivative concept. Zieliński's first publication on legal interpretation included both the assumption of the **normativity and two-level** (expressed then as quasi-idiomatic⁴) **character** of the legal text. The assumption of the two-level character of each text of a legal act relates to the differentiation introduced by Z. Ziemiński in 1960 – a differentiation between a legal provision and a legal norm⁵. M. Zieliński assumes that a legal provision is a sentence in a grammatical sense (an expression from a full stop to a full stop or from a full stop to a semicolon, or from a semicolon to a full stop) that usually stands-out graphically in a body of a legal act, and that is marked in it as a section, article or paragraph⁶.

A norm of conduct is defined by Zieliński as a directival expression that formulates an order or a prohibition (for the addressee) in given circumstances. A legal norm is a norm of conduct that has been set or acknowledged by a public authority that has competence in the creation of law⁷. As a result of this differentiation, each and every text of a legal act may be interpreted on two different levels: (1) at the level of sentences from the grammatical point of view (legal provisions) – referred to as the descriptive level, and (2) at the level of norms – referred to as the directival level (normative).

At the same time, M. Zieliński paid attention to the fact that both these levels differ not only in the semiotic status of the expression, but most of all in that the descriptive expression decoded at the descriptive level has a different meaning to a descriptive expression decoded at the normative level. In one legal provision, there may be all elements of

⁴ M. Zieliński, *Interpretacja jako proces...*, p. 10 et seq.

⁵ Z. Ziemiński, *Przepis prawny i norma prawna*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1960, rok XXII, z. 1, p. 5 et seq.

⁶ M. Zieliński, *Wykładnia prawa...*, p. 14.

⁷ *Ibidem*.

a legal norm, only some elements of a legal norm, or elements of more than one norm.

Zieliński named these norm-coding techniques in legal provisions as follows: syntactic splitting (when one provision lacks some components of a norm) and norm condensation in legal provisions (when one provision includes elements of more than one legal norm) and they drew the attention to something that has so far been neglected in the legal literature. M. Zieliński noticed that the interpretation does not merely refer to establishing the meaning of words included in the text of a legal act. This, in fact, wouldn't make it fundamentally different from the interpretation of any text.

The normativity of legal texts requires, in the first place, the decoding of the various norm elements, which are rarely contained in one legal provision (most often elements of a norm are to be found in more than one legal provision), and then leading to the reconstruction of norm-like expressions (that is, an expression that is complete from the structural point of view and formulates an addressee, circumstances, command or prohibition and conduct). This type of interpretation procedure does not refer to any other text apart from the normative text that a text of a legal act is.

Decoding norms in legal acts, that is, following the steps defined by M. Zieliński in interpretation directives within the so-called 'reconstructive phase' is both an integral and necessary stage of the interpretation of legal provisions. So far, neither J. Wróblewski (the author of the clarification concept) nor anyone else who has dealt with interpretation in a narrower or broader scope has deemed it necessary to follow such steps within the interpretation process⁸.

However, according to M. Zieliński, reconstructing a complete expression syntax-wise does not allow steps to be taken towards making

⁸ M. Matczak, in his paper *Dwupoziomowość języka prawnego w derywacyjnej koncepcji wykładni i jej znaczenie dla współczesnych sporów w anglosaskiej teorii interpretacji prawniczej* (The two-level character of legal language in the derivative concept of legal interpretation and its meaning for contemporary debates in the Anglo-Saxon theory of legal interpretation), draws our attention to the attractiveness of this distinction for Anglo-Saxon theory and the philosophy of law in the context of the debates being held there, whereas the same debates were concluded years ago in Poland. See M. Matczak, *Dwupoziomowość języka prawnego w derywacyjnej koncepcji wykładni i jej znaczenie dla współczesnych sporów w anglosaskiej teorii interpretacji prawniczej*, in: *W poszukiwaniu dobra wspólnego. Księga jubileuszowa Profesora Macieja Zielińskiego*, red. A. Choduń, S. Czepita, Szczecin 2010, p. 129–140.

it unambiguous. A norm-like expression which is syntactically complete requires one to take into consideration those provisions existing in the legal text, which include fragments modifying particular fragments of the norm-like expression with reference to its content. Legal provisions modifying the content of a reconstructed norm-like expression may be included in the same legal act, but they may well be included in various legal acts.

M. Zieliński does not allow this issue to be dealt with in an arbitrary manner by the interpreter; he formulates directives outlining interpreting conduct, stating which provisions may play the role of modifiers and where these can be sought. Actions undertaken to reconstruct an expression with an expression which is complete both structure-wise and as far as words are concerned (although not yet meaning) result in a norm-like expression, namely an expression structured like a norm, but not a norm as such. The reason for this is that the author of the derivative concept has included in the norm a definition of an element which does not allow a norm-like expression to be equated with a legal norm. This element is 'sufficiently unambiguous' in the expression that is norm-structured. A legal provision may contain only some elements of a norm (e.g. only command and conduct and lack other elements, namely an addressee and circumstances), whereas a norm-like expression is an expression complete in structure as well as content, therefore it becomes obvious that omitting the reconstruction stage of the interpretation leads to potentially divergent results of interpretation. This stage of interpretation is thus essential for the entire process of interpreting the texts of legal acts.

When interpreting any other text (e.g. a literary one), there is no need to interpret a descriptive expression found there into a normative expression, because the latter are not present there. Interpretation of such texts concerns decoding the meaning of the expression included in them through text structure analysis, semantic or cultural analysis. All these elements are also taken into consideration when interpreting legal texts, although only once the norm-like expression has been reconstructed. This is a genuine novelty in the field of legal act texts. At the same time, it's worth emphasising that this is a novelty which M. Zieliński introduced into the theory of law interpretation in the 1970s.

2. The moment of interpretation and interpreted moment

Yet another fundamental distinction introduced in the interpretation of the legal texts by M. Zieliński is the distinction between the '**moment of interpretation**' and the '**interpreted moment**'. The distinction refers to deciding on the moment in time **in which** the interpreter undertakes the interpreting activities versus the moment in time **for which** the interpretation is completed by the interpreter. In particular cases both these moments may coincide in the way that the interpreter may carry out interpretation at the moment in which he completes it.

However, it is often the case that these two moments are two different moments, remote in time. As long as establishing the moment of interpretation does not present any doubts as to which moment of time is referred to, it is not that easy to establish the interpreted moment. First of all, and most importantly, establishing the interpreted moment is binding for the interpreter in the whole process of interpreting law. This concerns decisions referring to the legal provisions subject to interpretation, legal provisions complementary to this legal provision – in which there are the missing norm elements (legal provisions complementing syntactically the reconstructed norm-like expression) – and the legal provisions that modify the wording of the norm-like expression.

All of these have to be binding in the interpreted moment defined by the interpreter, these legal provisions must be applicable. Legal provisions that are not yet binding or that were already not binding at the interpreted moment may not be taken into consideration in the reconstruction phase of legal interpretation. The interpreted moment also constitutes a reference point for the activities undertaken by the interpreter – activities aiming to establish the meaning of the words (or expressions) comprising the norm-like expression.

This way of carrying out interpretation (requiring one to establish the completeness and binding force of the legal provisions, as well as defining its meaning at a given interpreted moment, which is the same for all activities) makes interpretation of law a dynamic concept. The answer to the question of how to deal with the interpretation of the legal provisions that were established several dozen years ago is not problematic from the point of view of the derivative concept. The answer is the assumed differentiation into the moment of interpretation and the moment for which this interpretation is completed – the interpreted moment.

3. A derivative concept of interpretation as a normative concept

As mentioned above, the characteristic feature of M. Zieliński's derivative concept of legal interpretation is that **recognition of the features of the texts of legal acts** was the starting point for this concept. Before then, in compliance with J. Wróblewski's clarifying concept, based mainly on the observed behaviour of judges (hence in a descriptive way), features of the texts of legal acts were not considered in any substantial way. The interpretation according to J. Wróblewski was considered an action aimed at establishing the meaning of a norm as a pattern of behaviour.

In M. Zieliński's concept, on the other hand, it is the norm that is the result of the interpretation. First and foremost, however, a legal provision and a legal norm differ in the semiotic aspect of an expression, and, secondly, a legal norm is not only an expression of a particular structure – it's also an expression which is sufficiently explicit at a chosen interpreted moment: (1) the same interpreted moment for which the legal provision to which the interpretation refers is binding, the same refers to all the legal provisions that are considered with relation to this legal provision (as complementary or modifying legal provisions); (2) the same interpreted moment in which, apart from the legal provision binding force, the relevance of wording has been established, as well as of the legal provisions taken into consideration with reference to this legal provision.

M. Zieliński's derivative concept is the first comprehensive concept of legal interpretation in Poland – a normative concept of interpretation. This means it includes a set of interpreting directives, requiring from an interpreter particular actions determined by the results of the application of the previous directives. This concept is complete both as regards defining a set of interpreting directives and the chronology of their application in the process of legal interpretation. This has huge significance for the way the interpretation is perceived, as it is the content of interpreting directives that influences the behaviour of the interpreter, and not, as in J. Wróblewski's concept, that interpreting results from the rules formulated on basis of the observed behaviour of judges. It is worth mentioning that J. Wróblewski's⁹ clarifying concept formulated on the basis of the results of research into court judgements

⁹ J. Wróblewski, *Zagadnienia teorii wykładni prawa ludowego*, Warszawa 1959.

in the 1940s and 1950s, when both the level of jurisprudence and the awareness of judges concerning the interpretation proceedings differed considerably from today's level of knowledge in the science of law and judicial practice.

4. The directives of interpretation

In the derivative concept it is assumed that establishing the meaning of a norm-like expression (the meaning set by defining the meaning of words or expressions that make up a norm-like expression) is carried out by means of language directives, system directives and functional directives. At the same time, the order of applying these directives shows only the chronology of the interpretation procedure, not the advantage of using the results of any of them. The choice of language directives as the ones which initiate actions related to establishing the meaning of words comprising the norm-like expression is linked to the obvious fact that it is the text written in a particular language that undergoes interpretation. It would be difficult to give a convincing justification for the fact of establishing the meaning of what's written in the language (in addition to being the mother tongue of an interpreter) passing over the meaning of what is written in the language it is written in. Moreover, the language of the legal act texts is basically the Polish language. It has to be mentioned, however, that this language does not include the whole vocabulary range of Polish. Research has irrefutably shown that the language of legal acts belongs to the general Polish language in the official version. This observation has unequivocal consequences for the interpretation of the texts of legal acts. The derivative concept rejects unjustified and mechanical quoting of the 'presumption of the ordinary language'¹⁰ when interpreting the texts of legal acts.

The derivative concept, based on actual features of the texts of legal acts and thus on the language of these texts, assumes that the process of establishing the meaning of a given word (or expression) starts with identifying the meaning that was appointed to it in the text of a legal act by a legislator in the form of a **legal definition**. The assumption that the meaning of a given word (or expression) as assigned by the legislator

¹⁰ A. Choduń, *Słownictwo tekstów aktów prawnych w zasobie leksykalnym współczesnej polszczyzny*, Warszawa 2007.

shall be the meaning taken into consideration in the first place seems obvious. Currently, it is assumed, and the derivative concept clearly manifests this, that the definitions included in the text of a legal act are normative in character. These are norms ordering the interpreter to assume the same meaning of a given word, as in the legal definition, as assigned to a legal text by the legislator. If the definition is sufficiently unambiguous, it cannot be ignored. Its meaning cannot be ignored nor changed nor modified by another meaning.

Only where there is no legal definition may one apply further language directives of interpretation. A directive ordering one to accept the meaning that has been established in a binding interpreting decision may serve as an example of such a directive. At the same time, the interpreting directive is to be applied if there is a legal provision addressed to the interpreter and ordering him to undertake such proceedings. If the application of such a directive results in no positive outcome, one has to look for the meaning of the interpreted word (or expression) in legal language (that is, refer to the science of law or jurisdiction). The meaning that has been confirmed as the only and binding one by the science of law or jurisdiction is the one that shall be sought. Only the lack of explicitness regarding the aforementioned directives results in the interpreter's duty to apply the directives that make him look for the meaning of the interpreted words and expressions in the Polish language. As mentioned before, the interpreter's actions are not unrestricted. First of all, as far as application of this directive is concerned, the place to look for the codified meaning of words is in monolingual dictionaries (Polish language dictionaries). That is why in the derivative concept, when application of the former directives has proved insufficient, it is necessary to use the dictionary meaning(s). In the derivative concept, dictionary meanings of the words are treated as the meaning of words in a given language. These are the meanings that the interpreter is obliged to take into consideration as the next in order, and this means that they shall not be the first ones or the last ones in this phase of interpreting activities. Moreover, the interpreter shall establish the dictionary meaning of a word not based on one, but many dictionaries fulfilling particular criteria. This point is heavily emphasized by M. Zieliński, The aim is to establish a set of meanings for a given word or expression, but also make a selection of these.

While ambiguity is nothing extraordinary in natural language, it is an unwelcome phenomenon in the language of legal acts. Therefore out

of all the established sets of meaning, according to the criteria of the features of the language of the legal acts texts as well as the language context of the word used in the interpreted text of a legal act¹¹, by the way of elimination, the interpreter chooses the meaning that fulfils the aforementioned criteria in this situation.

Meanings established on the basis of language directives of interpretation comprise the set of possible meanings out of which, with the help of system directives and functional directives, the interpreter chooses this meaning that will be the result of the whole process of interpretation¹².

Application of language directives may result in: (1) explicitness of the norm-like expression; (2) ambiguity of the norm-like expression.

When application of language directives results in an unambiguous norm-like expression language-wise, according to the derivative concept, the interpretation process does not come to an end, and one only knows the result of the application of language directives. In each case, irrespective of the result of the application of the language directives, the derivative concept also assumes application of the system directives and functional directives. In this situation, application of further directives aims to check the outcome given. Application of system directives confronts the content of the norm, taking into consideration a particular meaning of the expression contained in it, with the content of norms higher hierarchy. It also confronts it with the content of the EU law norms and with the norm-principles of law (principles of law in the directive sense¹³), and in doing so rejects any meanings that would lead to inconsistency with any of the hierarchically higher norms or norm-principles.

Application of system directives aims to check whether the result of using language directives does not lead to any inconsistency in the legal system, and therefore whether there will be any incoherence of norms. In contrast, application of functional directives enables one to check whether the result of applying language directives is compliant with the intellectual and axiological assumptions made in the legal culture.

¹¹ In this concept, contextual directives are the only language directives, which remains in compliance with the common assumption as to the contextual meaning of words.

¹² A. Choduń, M. Zieliński, *Aspekty granic wykładni prawa*, in: *Księga jubileuszowa Profesora Ryszarda Mastalskiego. Stanowienie i stosowanie prawa*, red. W. Miemieć, Wrocław 2009, p. 91.

¹³ M. Zieliński, A. Munczewski, *Interpretacyjna rola zasad prawa*, in: *Zasady procesu karnego wobec wyzwań współczesności. Księga ku czci profesora Stanisława Waltosia*, red. J. Czapska i in., Warszawa 2000, p. 774–783.

Conformity of the results of all three types of directives used gives certainty as to the correctness of the final decision. This is justified from the point of view of all three most important aspects of law – the language aspect, the aspect of the legal system, and the axiological and intellectual aspect. Conformity of the three aspects completes the process of interpretation. Lack of such conformity, however, requires the interpreter to choose one of them. In the derivative concept, it is assumed that interpretation is a conclusive process.

If the results are incoherent (and, as a reminder, after application of a language directive, one arrived at unambiguity), then it is necessary to ascertain which values accepted in the legal culture are violated by the results of language directives. If accepting the results of the language directives would break the assumption of axiology (the system of values that the legislator follows while creating law), then the result of applying language directives will be rejected and the result that allows axiological coherence accepted. This can be done by applying an extending or narrowing interpretation. The norm (addressee, circumstances, order/prohibition, conduct) shall be extended or narrowed in such a way so that it is coherent with the system of values incorporated in the legal culture.

In this case, priority is granted to the result of applying functional directives, as only this preserves the assumption of axiology, which is broken as a result of applying language directives. Before one rejects the unambiguous result of language directive application, it is necessary to check thoroughly whether a mistake has not been made in applying these directives. If the process of interpretation has proceeded correctly, and despite this, the results of application of language and functional directives are incoherent, any assumption of the results of applying the functional directives on the aforementioned conditions requires particular justification.

In a derivative concept it is simultaneously assumed that despite fulfilling the conditions mentioned above, one cannot break the result of applying the language directives with reference to: (1) a linguistically unambiguously formulated legal definition; (2) a linguistically unambiguous legal provision assigning particular competences to some subjects (one is not allowed either to extend, or to narrow these); (3) a linguistically unambiguous legal provision granting particular rights to the citizens (protection of the acquired rights); (4) a linguistically unambiguous legal provision keeping particular legal provisions of the repealed act in force (narrowing the repeal through extending the range of legal provisions in force is not allowed); (5) a linguistically unambiguous

legal provision modifying the central legal provision by extending the range of this modifier (in compliance with the legal maxim *exceptiones non sunt extendendae* – exceptions shall not be interpreted by extending).

In the derivative concept, there is also room for the scenario in which, after application of the language directives, no result in the form of a linguistically unambiguous, norm-like expression is arrived at, because, due to ambiguity, there is **more than one result**. In compliance with the assumption that the interpretation process must be conclusive, an interpreter has to choose one of the results. His decision is not of arbitrary character, though. As in the first of the cases of applying language directives discussed above, in this case the interpreter moves on to apply the system and functional directives. This time he does it not in order to check the result of the language directive application, but to obtain clarity, that is, to eliminate any meanings that would lead to incoherence of norms in the legal system or to axiological incoherence (they would breach the assumption of the system of values that the legislator follows in the process of creating law).

In this case, application of the system directives leads to the elimination of any results which would result in the incoherence of norms in the legal system. The aim is to allow that particular result of language directive application that does not create such incoherence.

The aim of applying functional directives is to eliminate the results of applying language that lead to any of the underlying values in the legal system being breached. If it transpires that only one result of applying language directives ensures this, the interpreter accepts it as the result of the whole process of interpretation. If, however, it transpires that there is more than one such result, then the interpreter has to determine which has the strongest justification in the values that are the most crucial in the catalogue of values adopted in the legal system, and then accept this result as the result of the interpretation process.

5. *Omnia sunt interpretanda*

The comprehensive and universal character of M. Zieliński's derivative concept of legal interpretation is evident in that this concept enables any interpreting problem to be both identified and solved, including those interpretation problems that cannot be solved based on other concepts, or which are even overlooked by other concepts. This remark refers both

to the science of law and legal practice, hence “anything that is done in the science of law or legal practice comes either directly under the authority of interpretation, or applies to it, or expands the interpretation, or manifests the interpretation, or takes the interpretation into account, or simply conditions it” (trans. – A.Ch.)¹⁴.

M. Zieliński’s derivative concept of legal interpretation assumes a holistic approach to law, and thus to all the activities connected with it (creating law, its interpretation and application). As far as interpretation of law is concerned, this holistic approach to law (rejecting methodological individualism that assumes research into the behaviour of individuals as the starting point for analysis of social phenomena) reveals itself most of all in the principle *omnia sunt interpretanda*, which determines the whole interpreting process. This principle has almost from the start marked the attitude of the interpreter to the concept¹⁵.

It expresses the obligation to always carry out interpretation, irrespective of whether anyone has any interpretation intuitions, whether this is a difficult or an easy case, or whether something is clear or unclear (as without interpretation it will not be clear). Not only does applying the principle *omnia sunt interpretanda* concern a legal provision which is the direct subject of interpretation, but also all the legal provisions that are taken into consideration in relation to the interpretation of these provisions (e.g. with reference to the interpreted fringe legal provisions incomplete syntactically, the complementary legal provisions modifying it also undergo interpretation; the legal provisions, that is, a legal definition undergoes interpretation as well).

In M. Zieliński’s derivative concept of interpretation of law, the *omnia sunt interpretanda* principle has been juxtaposed with the principle *clara non sunt interpretanda* as understood by J. Wróblewski and which has dominated so far (in Z. Ziemiński’s version *interpretatio cessat in claris*), and the related clarifying concept. The attitude of the interpreter expressed in the application of a prohibition to carry out interpretation of law when the legal provision is clear (at the same time, it is not obvious for whom it shall be clear, what is meant by ‘clear’ and how this ‘clarity’ could be verified) or prohibition to interpret after having

¹⁴ M. Zieliński, *Wykładowia prawa...*, p. 11.

¹⁵ M. Zieliński formulated the principle *omnia sunt interpretanda* in Latin in his lecture *Basic rules of modern law interpretation*, which was presented at a scientific conference at the Department of Law and Administration, Warsaw University on 27 February 2004 and then published in: *Teoria i praktyka wykładni prawa*, red. P. Winczorek, Warszawa 2005, p. 117–125.

arrived at an unambiguous result based on application of language directives in the process of interpretation (*interpretatio cessat in claris*) has been juxtaposed with the attitude of the interpreter whose conduct in the process of interpretation is determined by an obligation to always carry out interpretation (*omnia sunt interpretanda*). The *omnia sunt interpretanda* principle is integrated with M. Zieliński's derivative concept of legal interpretation, which creates a theoretical background for the interpreter's conduct in the whole process of interpretation. Normativity is an inherent element of the legal culture, in which it is assumed that the legal system is an ordered set of legal norms.

As a result of the application of system and functional directives followed by application of language directives assumed by the derivative concept (although due to different reasons), there is one more principle to be followed in addition to *omnia sunt interpretanda*. The principle referring directly to the judge-interpreter in the derivative concept is *interpretatio cessat post applicationem trium typorum directionae*¹⁶. With respect to the interpreter's attitude as defined by the *omnia sunt interpretanda* principle, M. Zieliński drew attention to the fact that it is necessary to consider the *iura novit curia* principle with reference to the judge-interpreter. If law is obtained as a result of legal interpretation, then the directives for interpreting law need to be known. Therefore, M. Zieliński formulates the following meaning of the principle of *iura novit curia*: "the court [...] is obliged to be able to apply the directives for interpretation of law effectively in each situation in which the expertise of law is expected from it" (trans. – A.Ch.)¹⁷. One of the requirements set for the interpreter in the derivative concept is the requirement to justify the interpretation's result. The derivative concept assumes an objective way of arriving at a decision in the interpretation process due to the set of interpretation directives, the order of their application as determined by partial interpretation results, and, most importantly of all, the obligation of revealing, in a justification, the way in which the final decision has been arrived at. Therefore, in this concept, heuristic justification is preferred (out of the two possible types of justification: heuristic and follow-up).

Heuristic justification shows in a systematic way how the final result is arrived at in the process of the following interpretation activities.

¹⁶ In particular see M. Zieliński, *iura novit curia*, in: *Prawo – język – logika. Księga jubileuszowa Profesora Andrzeja Malinowskiego*, red. S. Lewandowski, H. Machińska, J. Petzel, Warszawa 2013, p. 297.

¹⁷ *Ibidem*.

Moreover, as the author of the concept himself has pointed out on numerous occasions, such a justification of the interpretation result is also of a discursive character. Even when there is only an interpreter, he is taking part in the interpretation process in a dispute (in the sense of an internal discussion) between the various possible partial results.

Conclusions

M. Zieliński's derivative concept of legal interpretation assumes undertaking interpretation activities aimed at achieving a result, which is a norm. There are two consequences of such an assumption. The first is that in this concept one assumes achieving an interpretation result, the second that there is only one result. In other words, each of the interpreters undertaking to interpret the same provision achieves the same result in the form of the same legal norm. This is possible because the derivative concept does not produce a set of accidental directives or a set of maxims collated through the centuries that various interpreters chose to follow in historically distant and culturally varied times. The derivative concept is a set of ordered interpretation directives, ordered not only by the chronology of their application, but more due to them being applied as a result of applying the former interpretation directive. It is a result arrived at by applying a particular interpretation directive obliging the interpreter to apply the next directive from among those directives available for use in a given interpretation situation. Thus the interpreter's actions always aim to arrive at an effect.

The interpretation of law in the derivative concept is not perceived as an intellectual experience (which it can be as well), but primarily as a set of activities aimed at an effective procedure to result in arriving at a legal norm from legal provisions. If interpretation is a set of activities resulting in an accurate, effective result, then the derivative concept is an operative concept¹⁸.

Moreover, even though M. Zieliński's derivative concept of legal interpretation relies on analysis of court rulings (just as a clarifying

¹⁸ Operative means "capable of acting effectively, acting in forceful way, effective," and if referring to actions of such a person – "bringing expected results, functioning effectively, efficient," see *Uniwersalny słownik języka polskiego*, t. 2, red. S. Dubisz, Warszawa 2003, p. 1268. This is a different meaning of operativeness than the one created based on the clarifying concept of J. Wróblewski.

concept), it is to a great extent, as analysis of these rulings shows¹⁹, an intuitive concept for an interpreter (also for a judge-interpreter). This means that the conduct of an interpreter who has knowledge of the texts of legal acts and the legal system (and in particular the relation between legal norms) and the assumed set of values in a given culture, coincides with the conduct set by the derivative concept for the case.

MACIEJA ZIELIŃSKIEGO (DERYWACYJNA) KONCEPCJA WYKŁADNI PRAWA

Streszczenie

Koncepcja (derywacyjna) Macieja Zielińskiego jest pierwszą w Polsce kompletną koncepcją wykładni prawa – koncepcją normatywną wykładni. To znaczy, że zawiera zbiór dyrektyw interpretacyjnych nakazujących interpretatorowi określone postępowanie wyznaczone rezultatami osiągniętymi przez zastosowanie poprzednich dyrektyw. Koncepcja ta jest kompletna zarówno co do określenia zbioru dyrektyw interpretacyjnych, jak i chronologii ich stosowania w procesie wykładni. Postępowanie w procesie wykładni wyznaczone jest przez zasadę *omnia sunt interpretanda*. Podstawę koncepcji derywacyjnej stanowi rozpoznanie rzeczywistych cech tekstów prawnych oraz założenie o ich dwupoziomowości, u podłoża którego leży rozróżnienie przepisu prawnego i normy prawnej. Techniki kodowania norm w przepisach prawnych (rozcłonkowanie syntaktyczne oraz kondensacja norm w przepisach prawnych) pozwoliły zwrócić uwagę na zagadnienia, które do tej pory w literaturze prawniczej dotyczącej wykładni prawa nie były w ogóle poruszane. Nadto zrekonstruowanie wypowiedzi kompletnej pod względem syntaktycznym wymaga, by uwzględnić znajdujące się w tekście prawnym przepisy, zawierające elementy modyfikujące odpowiednie elementy wypowiedzi normokształtnej w odniesieniu do treści. M. Zieliński zauważył, że wykładnia nie polega jedynie na ustaleniu znaczenia wyrazów znajdujących się w tekście aktu prawnego. W koncepcji tej przyjmuje się, że ustalenie znaczenia wyrażenia normokształtnego, które to znaczenie wyznaczone jest przez ustalenie znaczeń wyrazów na to wyrażenie się składających, dokonuje się za pomocą dyrektyw językowych, dyrektyw systemowych i dyrektyw funkcjonalnych. W tej koncepcji interpretacja jest postrzegana jako zespół czynności odnoszących się do skutecznego postępowania, których rezultatem jest uzyskanie z przepisów prawnych normy prawnej.

Słowa kluczowe: Macieja Zielińskiego wykładnia prawa – zasada *omnia sunt interpretanda* – przepis prawny a norma prawna – język tekstów aktów prawnych – rekonstruowanie norm prawnych z przepisów prawnych

¹⁹ See A. Munczewski, *Reguły interpretacyjne w działalności orzeczniczej Sądu Najwyższego*, Szczecin 2004; O. Bogucki, *Wykładnia funkcjonalna w działalności najwyższych organów władzy sądowniczej*, Szczecin 2011.