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On the maxim of *clara non sunt interpretanda*

Dedicated to Professor Maciej Zieliński
on His 75th Birthday

Introduction

Apart from substantive disagreements, lawyers carry out not only axiological, but also verbal, disputes. While the substantive and axiological discussions seem to be useful, the latter appear to merely complicate the matter which frequently is already complicated in itself. One would think that this situation should be brought to an end: if not through a considerate alignment on the terminology used, then, at least, through its explanation, allowing the opponents to proceed to substantive discussions. However, the usual problem is that with the charitable interpretation of the arguments provided by other parties to the discussion (excluding those rare cases of complete awkwardness in the use of terminology), even those disputes that appear verbal, actually only seemingly concern verbal expressions; what is more, only exceptionally do they result from awkward formulations.

So it seems to be the case as far as the maxim *clara non sunt interpretanda* is concerned. Of course, while discussing it, one ought to take into account the indisputable fact that a variety of different meanings is now associated with this maxim. Sometimes it is used to express a legal principle, or more precisely one may encounter the whole class of its various understandings that amount to different principles of law[1]. The

[1] On the discrimination criteria applicable to the principles of law in the Polish legal theory cf.: W. Lang, J. Wróblewski, S. Zawadzki, *Teoria państwa i prawa*, Warszawa 1979, p. 359 et seq. (classic textbook account). On the distinction between descriptive

very status of the phrase *clara non sunt interpretanda* is not simple. When analyzing the legal literature, one would realize that it is used in a variety of meanings denoting various kinds of designata. This fact already merits a far-reaching caution, in order to avoid an unintentional deviation from the discussion on the merits into a dispute which may turn out to be barely verbal, or a deviation from the essential matters to sheer accidentals[2]. The purpose of this article is not to set in order the conceptual apparatus of jurisprudence by demonstrating, in particular, the ambiguity of the maxim in question, but to express an opinion in a substantive discussion on selected issues concerning the maxim *clara non sunt interpretanda* (which determined the choice of the subject matter of this article).

Although this term does not necessarily need to be regarded as expressing any principle (putting aside, for the moment, the descriptive and directival principles[3], it seems that its "categorical aspect" conceived in a certain manner, among other things, accounts for the fact that it has remained, with a varying degree of intensity, a subject of discussion for forty years now.

Considerations in this study are based on the extended concept of sources of law developed by Z. Ziembiński, focusing in particular, on the concept of derivative legal interpretation developed by Maciej Zieliński. It is most certainly on the basis of the latter that one can present, and possibly solve, many remarkable legal issues relating to legal interpretation discussed within the framework of *clara*… .

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and directive principles, see S. Wronkowska, M. Zieliński, Z. Ziembiński, *Zasady prawa. Zagadnienia podstawowe*, Warszawa 1974, p. 5 et seq.

[2] It seems that such a situation occurs, for example, in the article by T. Grzybowski on disputes over the principle of *clara non sunt interpretanda*. An article that is generally speaking full of imperfections. Cf. T. Grzybowski, *Spory wokół reguły clara non sunt interpretanda*, "Państwo i Prawo" 2012, z. 9. For example, in Poznań the concept of principle of law has been developed by three authors: S. Wronkowska, M. Zieliński and Z. Ziembiński (op. cit.), and not two of them, as the author states in footnote 1, omitting the otherwise dominant in this team Z. Ziembiński, although the extremely fruitful theoretical distinction between the principles in a descriptive and directive sense has been developed by M. Zieliński. The concepts of R. Dworkin and R. Alex are not identical either (although it can be shown that Alex's concept is a derivative of Dworkin's concept) and the assertion that allegedly the two authors from Poznan (putting aside the fact that they jointly did not at all formulate any concept of the principle of law that would be independent of the above mentioned concept developed with Z. Ziembiński) together with J. Wróblewski created a uniform Polish concept of the principle of law has completely nothing to do with reality. This is only as far as one footnote is concerned. Since T. Grzybowski's article does not constitute a point of reference for this study, it would be unwarranted to consider it further.

[3] If one was to account for the two languages of the Polish legal theory.

1. *Clara non sunt interpretanda* in a descriptive sense

If this maxim were to be understood in a descriptive way, it would express a trivial observation on the correctness of the interpretative behaviour of lawyers. Once they have arrived at a result which meets – at least in their opinion – the criterion of unambiguity[4], they will not undertake further interpretative actions. Nonetheless, it would be useful – at least from the point of view of civil rights – if this belief found due justification in the acts of interpretation performed in a reliable manner. Thus, even a research into this trivially understood principle of *clara*… (in its descriptive sense), even if it were to lead to not fundamentally important results, may not be considered a trivial issue as such. Clarifying the conditions under which a particular result of interpretation may be recognized as satisfactory for its application as part of the process of applying the law, constitutes an immediate condition for the rule of law. There will surely be no one among the opponents of the derivative concept of legal interpretation, who would not appreciate the importance of this issue; and if sometimes one is under a different impression, it must stem from the shortcomings of the language or languages one speaks. Moreover, the derivative concept of legal interpretation does not assume a "never-ending" act of interpretation, either. Speaking of the remedial role of interpretation, one does not at all claim that interpretation should be a means to remedy the unconstitutional character of any normative acts. On the contrary, without excluding the remedial interpretation completely[5], it may be allowed only under certain conditions. Since this issue cannot be discussed in more depth here, it must be emphasized that the mode of reasoning applied in such cases should not be disputable at least in the sense that it is recognized in a legal discourse. This issue should not be confused with cases where a properly performed act of interpretation demonstrates constitutionality of a particular legal regulation, often despite a simplified understanding of the principle of *clara*… . It seems that it is the derivative concept of legal interpretation that allows to actually pose and (at least) outline a proposal to resolve these, by no means trivial, problems. Moreover, the protective function of the derivative concept of legal interpretation, which may be reduced to the imposition of methodological requirements restricting

[4] This is, in particular, the case with the so-called operative interpretation.

[5] Cf. J. Mikołajewicz, *Glosa do wyroku Wojewódzkiego Sądu Administracyjnego w Poznaniu z 27 listopada 2008 r., IV SA/Po 210/08*, OSP 2009, nr 11, poz. 116a.

the possible arbitrariness of judges, is rarely raised. It is a shame to the extent that it is the derivative concept of interpretation that seems to best safeguard such legal values as separation of powers and transparency of the application of law in terms of disclosing its legal basis. In terms of the Popperian category of justification, it may be said that the derivative concept of interpretation forces the disclosure not only of the context of justification, but also discovery. This in itself constitutes an important guarantee of the rule of law in the process of its application, which cannot be accomplished through a simplified understanding of the *clara*… principle.

2. Discussions on the content and interpretation of *clara*…

Sometimes it may seem that the dispute over the content of the maxim *clara non sunt interpretanda*[6] involves the adherents and opponents of the derivative concept of interpretation[7]. Sometimes it may also seem that it is all about being an opponent of that school rather than about the actual dispute. From the point of view of the derivative concept of interpretation, it is indeed obvious that *omnia sunt interpretanda*. But just as well, other schools of interpretation – even if they do not support the idea of "total interpretation" – admit that the law comes about or realizes in the course of its interpretation. After all, this approach excludes the very possibility of existence of any law allegedly provided for directly, as maintained under an interpretation of the *clara non sunt interpretanda*

[6] The phrase *clara non sunt interpretanda* as a maxim is used by M. Zieliński. See Z. Radwański, M. Zieliński, *Wykładnia prawa cywilnego*, "Studia Prawa Prywatnego" 2006, z. 1, p. 17 et seq.; M. Zieliński, *Clara non sunt interpretanda – mity i rzeczywistość*, "Zeszyty Naukowe Sądownictwa Administracyjnego" 2012, nr 6(45), p. 9 et seq. This way of treating the expression in question has this fundamental advantage that *prima vista* it determines nothing of significance. Particularly, as regards the content expressed by that maxim.

[7] In fact, it is a local dispute in the sense that it takes place only within the Polish legal community. Moreover, it is conditioned by the Polish theoretical legal tradition concerning the concept of principles of law, whereby there is no room for legal rules of a varying degree of precision or different categories of legal rules. On the account of that tradition, such expressions are simply considered as certain definition shortcuts, normative expressions resulting from initial interpretation, or tokens of such expressions. It is suggested that not only do these facts not prove any backwardness of our native theory of law, but – on the contrary – they demonstrate its significant maturity. If only from the point of view of the methodological principle *entia non sunt multiplicanda praeter necessitatem* attributed, although somewhat erroneously, to W. Ockham.

maxim[8]. Therefore, the fact the objections against the attack on this maxim are raised by the adherents of the schools of interpretation oriented hermeneutically or towards argumentation is quite incomprehensible. In the first case, the ontology of the law immediately forces its interpretation. Even if such an act of interpretation were to be easy, it is still necessary. In the second case – even if one were to adopt a version of the theory of legal argumentation maintaining that the law may only be cognized within a certain interpretation community (irrespective whether an existing or an ideal community)[9], certain actions based on intersubjective test methods[10] must nevertheless always be undertaken.

Undoubtedly, this fact cannot eliminate the fundamental differences between the school of derivative legal interpretation and the above mentioned schools. In the metaphysical realm, as far as the views on the very existence of the law are concerned, in the ethical sphere it is of particular importance to the adherents of derivative school to discriminate between applying and laying down the law. This is particularly so in the context of substantive guarantees for the principle of separation of powers and – still very traditionally understood – principle of democracy and its constitutional instantiation.

No matter the arguments, it is still quite unexpected to see the Polish adherents of argumentation methods supporting the maxim of *clara non sunt interpretanda*, or advocating for its anti-initiating interpretation, or at least not appearing to recognize any reason to distinguish the two of its most widely adopted interpretations[11].

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[8] This interpretation, *per* O. Bogucki and M. Zieliński, used to be called the anti-initiating principle, in opposition to the second interpretation of the maxim, which the authors called the anti-continuation principle, and which can be reduced to the maxim (in one of the interpretations) *interpretatio cessat in claris*. See A. Bogucki, M. Zieliński, *Wykładnia prawa we współczesnym orzecznictwie najwyższych organów sądowniczych*, in: *Standardy konstytucyjne a problem władzy sądowniczej i samorządu terytorialnego*, red. O. Bogucki, J. Ciapała, P. Mijal, Szczecin 2007, p. 30.

[9] As *per* Ch. Perelmann, a particular auditorium (including concrete auditoria) and the universal auditorium; for simplicity the problem of "close universal auditoria" is not considered.

[10] It is precisely from the point of view of the attempts to construct intersubjective research methods that J. Oniszczuk reconstructs the argumentation theories. See J. Oniszczuk, *Filozofia i teoria prawa*, Warszawa 2008, p. 47. It should be noted that an attentive reading through this text could remove at least some misunderstandings associated with the discussion on the maxim of *clara non sunt interpretanda*.

[11] L. Morawski, *Wykładnia prawa w orzecznictwie sądów. Komentarz*, Toruń 2002, p. 63.

From the point of view of the adherents of the derivative concept of interpretation, the interpretation of the maxim *clara…* in the version attributed to J. Wróblewski is anachronistic and the objections against it are formulated on the grounds of the characteristics of the legal[12] rather than philosophical text[13]. Yet, this does not mean that the maxim in itself is empty or, worse, harmful. The discussion on it revealed a number of significant problems. Reading this maxim "backwards," for example, one can formulate quite a large group of useful principles applicable to the drafting of legal texts. Whereas any attempts to successfully advocate for the anti-initiating nature of that principle appear impossible[14], its anti-continuation version[15] seems to provide for a fertile field to theoretical considerations. Even if one were to reject Z. Ziembiński's proposal that this principle allows for the application of no cannons of interpretation other than the linguistic rules, where they yield a "clear" result, then the problem of linguistic clarity of the text still remains. And by no means can it be reduced to the maxim *interpretatio cessat in claris*; rather it provides this maxim with a unique sense. A sense that evolves with the changes in the institutional reality. Suffice it to say that arguably this maxim has a different social meaning within the legal framework that guarantees the institutional control of constitutionality, yet another meaning of such control does not exist.

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[12] Z. Ziembiński notes that an exceptionally clear case is "when one legal provision exhaustively provides the information as to who has an obligation of a given type, the second provision – in what circumstances his obligation actualises, and the third provision – how the addressee should behave" (trans. – J.M.). See Z. Ziembiński, *Problemy podstawowe prawoznawstwa*, Warszawa 1980, p. 285.

[13] After F. Schleiermacher, maintaining the thesis of clarity of individually detached fragments of any text seems almost impossible.

[14] One might argue that the recent philosophical research nevertheless provides for significant arguments in support of this principle that have not been previously articulated. B. Brożek is directly in favour of the principle of *clara non sunt interpretanda*. See B. Brożek, *Normatywność prawa*, Warszawa 2012, p. 256. It should be noted, however, that the author draws his attention to the law – as conceived by that author – consisting of abstract rules, and which remains in complex relations (although not further characterized by the author for the lack of significance to his considerations) with the law encoded in cultural artefacts. Moreover, on Brożek's account, the maxim in question performs the function of a thesis in the ontology of law that – without denying the intellectual value of the author's work – appears extremely doubtful. Indeed, for the sake of its very existence, the law, as it is presented in Brożek's concept, must be "directly given".

[15] Z. Ziembiński treats it as such in *Logika praktyczna*, numerous editions, the chapter on legal interpretation (and refers to the views of M. Zieliński).

It is sensible to note that, as exemplified by the above remark, legal interpretation is carried out within a particular social community involving diverse participants with different positions and social roles. In view of a variety of institutional frameworks, the "law game" necessitates researching for or developing the correlated cannons of interpretation[16]. It can be assumed that further research will reveal issues that up until now have been barely perceived[17], and probably some of them may conveniently be articulated in the Polish cultural "consituation" using the phrase *clara*… .

The relationship between the text and the interpreter, especially a legal text and a lawyer, may in no case be considered as being of little importance, unworthy of any serious theoretical consideration. Nevertheless, its importance does not, in fact, depend so much on the nature of the maxim *clara*…, but rather on the issues raised during the discussion and on its quality.

3. *Clara*… as a rule of interpretation?

Based on the formulated theses, it is (for instance) worth noting that in fact, no one considers the principle of *clara*… to be a rule of interpretation. It is a directive relating to interpretation, but it may not be in itself considered as such, for it does not prescribe how interpretation ought to be carried out. This conclusion provides for an opportunity to reconcile the different positions maintained by the partners in this discussion, at least as regards the rudimentary issues. In fact, the status of this maxim is not the same as the status of its alleged counter-part maintained by the partners on the other side of the alleged dispute, namely the maxim of *omnia sunt interpretanda*. This is because the latter

[16] There has even been an attempt to consider the directives of interpretation in terms of validity. Cf. R. Piszko, *Wyznaczniki treści i obowiązywania dyrektyw wykładni prawa w prawoznawstwie i w praktyce prawniczej*, Szczecin 2007. This is regardless of the extent to which the mind of the author failed to realize that it is worth stressing, and he gave the same problem more attention (especially in Part I).

[17] Cf. A. Kozak, *Granice prawniczej władzy dyskrecjonalnej*, Wrocław 2002; J. Mikołajewicz, *Wspólnota juryscentryczna w ujęciu Artura Kozaka jako podstawa legitymizacji decyzji stosowania prawa*, in: *Prawowitość czy zgodność z prawem. Legitymacja władzy w państwach demokratycznych*, red. A. Preisner, Wrocław 2010. See especially the following work dedicated to the memory of A. Kozak, J. Mikołajewicz, *O niemożliwości stworzenia pozateoretycznego obrazu rzeczywistości instytucjonalnej*, in: *Czy koniec teorii prawa?*, red. P. Jabłoński, Wrocław 2011.

expresses an idea that every phrase in the interpreted text ought to be subject of interpretation. And this by no means is a correlate of a thesis that interpretation may not be initiated or that it should not be allowed under certain conditions. Any interpretation that considers a directive that mandates acceptance of any result of interpretation without performing any act of interpretation to be directive of legal interpretation seems, in fact, to amount to placing the opponent's head in the role of a "Turk's head" prepared for the execution. Considering this view while adopting a charitable attitude towards the opponents in this discussion, it may be possible to develop an interpretation of their understanding of the *clara*… maxim that could be articulated as follows: interpretation of any text should not be initiated or should cease at a point where its outcome presents itself in some way *prima vista*. As a result, a sensible discussion on this topic could be concerned with the conditions under which an outcome of interpretation may be considered as such (if at all). By no means does such friendly interpretation of the maxim *clara*… lead to a non-conformity with the views held by the derivative school, for its adherents recognize the existence of easy cases of interpretation. Thus the problem would consist in defining the semantic relation between different uses of the term *interpretation*, in a certain sense probably also the relation between that term and the term *legal interpretation*.

Recognizing the principle of *clara*… as a directive of interpretation seems to be defendable, if it is considered as its particular type, namely a meta-directive. But in this case one would have to assume that it is concerned with the actions that are part of an act of interpretation, more precisely the rules of conduct governing such an act. There are two objective arguments, however, that stand in its way: first, no action is a directive prescribing how it is to be carried out; second, directives that would include as part of their scope of application another directive are inconceivable. A hypothesis that a result of interpretation could also be a directive appears to be unfounded, too. Actually, if the result of these activities would be a directive, then such directive could not be reflexive. Only an element of a set may be reflexive if it entails a conclusion that *clara non sunt interpretanda* would be a first-order directive and a directive on this very directive at the same time, and this is logically excluded.

It must be emphasized that an important achievement of the discourse in question is the realization that, essentially, the principle *clara*… is not a rule of interpretation, because it concerns the recognition of

its result and not the method of conducting the act of interpretation. This allows one to focus on its essential content as understood by its adherents, rather than the multiplication of misunderstandings.

From the point of view of the derivative school, it may be assumed that *clara non sunt interpretanda* is a maxim that expresses more than one rule (important elements of such rules), based on the same principle as the principle under which legal rules are condensed in the same legal provision, irrespective of the fact that under different concepts of that maxim such rules are not identical.

4. Practical obscurity and established practice of interpretation

In the literature one encounters a category that could be called "practical obscurity". For example, a given term is considered as practically obscure until its sense has been determined by the judicature[18]. The elementary knowledge on the functioning of law supports this thesis. Even if the authorities applying the law showed a high degree of initiative and diligence in its interpretation, there would always remain a class of problems considered by the interpreter as dubious or ambiguous. That is so also at the level of interpretation and even where such interpretation is based on linguistic rules. The fair interpretation argument could probably support the thesis that in such a case it is necessary and at the same time sufficient for the authority applying the law to refer to the general language dictionaries[19]. Yet, this is not the case, since general language dictionaries contain a collection of various dictionaries addressed to specific groups of speakers (including individual dictionaries that, in very simple terms, form the basis for idiolects) rather than a universal base for solving any problems of interpretation. This situation is also due to the fact that too often two or more meanings of a term may be considered as adequate. In addition, if one takes into account that the intertextual relations are often

[18] This was pointed out by E. Łętowska in the judgments of the Constitutional Court, where she was a reporting judge, and in particular concerning the amendment of the Civil Code with respect to the cassation appeal, but also in her research work. Cf. E. Łętowska, *Kilka uwag o praktyce wykładni*, "Kwartalnik Prawa Prywatnego" 2002, nr 1.

[19] Otherwise, a concern would arise about the very possibility of the knowledge of law by its addressees.

very complex and it requires extraordinary legal knowledge to become aware of them[20] because they do not just concern semantic issues, but the entire semiotics, then the above argument turns out to be not only weak, but actually off the mark. Specifically, in those cases where the mere reference to the lexical base of general language would lead to unacceptable consequences as to the result of interpretation.

The maxim of *clara non sunt interpretanda*, conceived in a specific manner, could be a remedy to this weakness in the practice of legal interpretation in relation to a stable, well-established and duly justified practice of interpretation by law enforcement authorities, particularly the highest authorities. Under the above conditions, such concept would not only be acceptable, but immediately justified[21], as long as there are no major arguments against relying on the existing case law in the practice of legal interpretation (other than the argument that any actual act of interpretation leads at least to the reassessment of the currently accepted interpretation results; for – contrary to appearances – in the rapidly transforming reality any such verification is valuable). Nevertheless, by saying this there is by no means a claim made that it is acceptable to substitute, or fake, the acts of true interpretation by adjudicating authorities in specific cases by any established practice of interpretation. Therefore, no such connection should be made between the refusal to accept such practice and the, supposedly essential, incorrectness of the newly outlined approach to the maxim of *clara non sunt interpretanda*, but

[20] For example, a great reward is given to whoever is able to determine the meaning of the following phrase based on the general language dictionaries: "a person authorized to make corrections to a VAT declaration in virtue of being a supplier or service provider". Seemingly one could probably arrive at a conclusion that this phrase aims at clarifying the scope of tax obligation. And so, had indeed, been its interpretation. Without diving into the details of this example, however, it must be emphasized that in the context of the tax law alone this phrase was already ambiguous: from the syntactic point of view, its syntax justified considering it as a clarification as regards the addressee of the legal rule as well as its scope of application. Its reconstruction required taking into account a number of modifying provisions, and the resulting outcome, which used to be accepted by the incidental court decisions, led to an absurd situation under insolvency law. Namely, a change in the satisfaction order within the insolvency proceedings, despite the lack of any express legal provision, as well as in the absence of any axiological justification. One may argue that it is an extremely complex example, yet one shall note that without interpretation this complexity would not have even been revealed.

[21] Unlike M. Zieliński, *Clara non sunt interpretanda*…, p. 20, it is in this way that M. Zirk-Sadowski's remarks made in: L. Leszczyński, B. Wojciechowski, M. Zirk-Sadowski, *Wykładnia w prawie administracyjnym*, seria *System Prawa Administracyjnego*, red. R. Hauser, Z. Niewiadomski, A. Wróbel, t. 4, Warszawa 2012, p. 156 et seq. should be understood.

rather associate it with the incompatibility of the anti-initiation interpretation of the term *clara non sunt interpretanda* with the legal reality. If the practice of legal interpretation were to reduce the newly outlined concept to any anti-initiation interpretation of the principle of *clara*…, it would make this concept not only unnecessary, but equally dangerous as the very understanding of the maxim *clara*… as an anti-initiation principle. Much as any text may appear clear in a certain respect, in the sense that its interpretation in that respect is not particularly complex, a mere reference to the anti-initiation interpretation of the principle of *clara*… can be used to avoid any responsibility for the act of interpretation, in particular by a frequent *pseudo* reference to case-law[22].

[22] An example may be quoted here, i.e. the *individual tax interpretation by the Tax Chamber in Katowice* dated on December 19, 2011: "On December 12, 2011 a resolution was adopted by the Supreme Administrative Court ref. II FPS 2/11, in which the Court held, *inter alia*, that «… the wording of Art. 15 paragraph 1 of the *income tax law for legal persons* clearly shows that the category of tax-deductible costs includes only those costs that have been incurred in order to generate the revenue or preserve or secure the sources of income. In turn, the concept of income within the meaning attributed to it by this provision cannot be understood in a different way than is apparent in the wording of Art. 7 paragraph 2 and Art. 12 paragraph 1 of the aforementioned Law. Beyond any doubt, the category 'income tax' is defined as the sum of the excess of revenues over the costs of obtaining them, and all the more this income cannot include obligations of the taxpayer (a capital company) to make payments to its shareholders (stockholders) on the account of their participation in the profit (dividends).The provision in question is in this regard clear and precisely formulates the conditions for matching the costs with the revenues or the source of revenue. With all the complexity of the regulation in Art. 15 paragraph 1 of the income tax law for legal persons, as regards the matter in question no doubts as to its interpretation arise in light of the principle that the clear text does not require any interpretation (*clara non sunt interpretanda*) […]»". Nonetheless it must be noted that the court has conducted quite a complex act of interpretation and its assertion that the text in the given area is clear should be interpreted in the context of the *clara…* maxim in its anti-continuation version. In light of the activities carried out by the Court, attributing the anti-initiation sense to the aforementioned maxim would be at odds with those activities. However, it is dangerous to finish this correct act of interpretation with this type of a formulation, with no additional explanation (even if the court found this anti-initiation understanding to be anachronistic). It must be noted that this phrase, more of a stylistic ornament in the context of the resolution of the Supreme Administrative Court than anything else, may serve as a kind of a precedent, a pattern of reasoning whereby the authorities would, in fact, refrain from carrying out an actual interpretation by invoking – to emphasize most strongly in the context of this resolution – the inappropriately used maxim of *clara non sunt interpretanda*. By no means is the fear that other authorities do not work as diligently as the Supreme Administrative Court unfounded; they simply would not conduct any act of interpretation by arbitrarily using the essential connotations of individual sections of the text, often omitting certain of its parts or by faking an act of interpretation altogether through the reception of the

Conclusions

The above remarks lead to the conclusion that the discussion on the principle of *clara non sunt interpretanda* is not a mere verbal dispute. In order to resolve it, it is not sufficient for its participants to agree on the concepts they associate with specific issues. It is an argument on the right way to interpret law, what should be interpreted and how it ought to be done. Finally, it is a discussion on when interpretation should cease and the conditions under which its result is considered to be "clear". It is therefore a substantive and axiological discussion at the same time, which in the case of jurisprudence is a rule rather than an exception.

From the point of view of an adherent of M. Zieliński's concept of interpretation, this discussion may be successfully concluded based on this concept, or at least clearly articulated. Although in such case, the views of the adherents of the principle of *clara*… should be subject to a far-reaching charitable reconstruction.

O PAREMII *CLARA NON SUNT INTERPRETANDA*

Streszczenie

Powstała na gruncie polskim oryginalna koncepcja wykładni Macieja Zielińskiego, zwana koncepcją derywacyjną, w sposób nieuchronny starła się z dotychczas przyjmowaną koncepcją wykładni prawa (której najwybitniejszym przedstawicielem był Jerzy Wróblewski), w myśl której przedmiotem wykładni prawniczej jest ujaśnianie tekstu prawnego (stąd stosowana nazwa tej koncepcji – koncepcja klaryfikacyjna).

Stanowisko M. Zielińskiego ująć by można za pomocą paremii *omnia sunt interpretanda* w opozycji do podnoszonej paremii *clara non sunt interpretanda*.

O ile stanowisko M. Zielińskiego (koncepcji derywacyjnej) w tym sensie jest niezmienne, że nieustannie podnosi wagę wykładni prawa dla samego odtworzenia normy prawnej, to stanowisko zwolenników paremii *clara non sunt interpretanda* – w toku sporu nie da się jej adherentów identyfikować jedynie ze zwolennikami stanowiska J. Wróblewskiego (koncepcja klaryfikacyjna) – ewoluuje. Stałym elementem tej ewolucji jest tendencja do nadawania sensowności samej tej paremii. W zabiegach tych uczestniczą również zwolennicy koncepcji derywacyjnej. O ile

interpretation results from other authorities, which must have happened in this case. However, this issue should not be confused with the critical use of the existing case law in the context of the newly outlined sense of the maxim *clara non sunt interpretanda*. See Dyrektor Izby Skarbowej w Katowicach, Interpretacja indywidualna z 19 XII 2011, ref. IBPBI/2/423-1165/11PC, http://interpretacje –podatkowe.org/dywidendy/ibpbi-2-423-1165-11-pc (accessed: 19 V 2015).

pierwotną treść tej paremii można by, za O. Boguckim i M. Zielińskim, sprowadzić do tezy o jej antyinicjacyjnym charakterze, to po reinterpretacji Z. Ziembińskiego, nadal posługując się lapidarnym ujęciem O. Boguckiego i M. Zielińskiego, trzeba by mówić o jej antykontynuacyjnym charakterze, co skądinąd zbliża tę swoiście polską paremię do powszechnej w naszym kręgu kulturowym zasady *interpretatio cessat in claris.* Zauważmy, że o ile pierwsza interpretacja przedstawia się jako metodologicznie bezzasadna, o tyle o zasadności drugiej można orzec dopiero po odniesieniu do przyjmowanego kryterium jasności rezultatu. Te oczywiste słabości obu wersji zasady *clara*… skłaniają zwolenników zachowania tego zwrotu w języku prawniczym do podania trzeciej, tym razem pragmatycznej wersji jej treści. Otóż sprowadzałaby się ona do przerwania dyskursu wykładniowego po podaniu jakiegoś autorytatywnego wyniku. Na interpretację tę, przynajmniej tak się wydaje *prima vista*, i zwolennicy M. Zielińskiego koncepcji wykładni mogliby się zgodzić, jednak z wyraźnym zaznaczeniem, że po pierwsze: pojęcia autorytatywny nie należy mylić z autorytarny, oraz po wtóre: przed przyjęciem określonego autorytatywnego wyniku wykładni zawsze dokona się sprawdzenia jego aktualności w stosunku do przedmiotowego momentu stosowania prawa.

Słowa kluczowe: wykładnia prawa – *clara non sunt interpretanda* – *omnia sunt interpretanda* – derywacyjna koncepcja wykładni prawnej Macieja Zielińskiego – klaryfikacyjna koncepcja wykładni prawnej Jerzego Wróblewskiego