

## I. ARTYKUŁY

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### REGARDING *INTENTIO OPERIS* IN THE TEXTS OF LEGAL ACTS

#### I. INTRODUCTORY REMARKS

The aim of the article is to present the concept of *intentio operis*, which was developed by Umberto Eco for considering intention in the interpretation of literary texts. In the way Eco understands it, *intentio operis* is meant to function as a form of restraint on the interpreter's far-reaching inclinations regarding the text. It is also, paradoxically, a certain way of revealing the author's intentions. This Italian semiologist, writer and publicist, while being an author himself, was at the same time opposed to giving the author power over his or her text. He thought that upon its completion, a text becomes separated from its author and lives a life of its own in the subsequent interpretations of its readers (interpreters). Eco's ideas on interpretation<sup>1</sup> evolved in terms of the reader's (interpreter's) activity. They were not, however, extreme. He did not agree that the interpreter had unrestrained freedom to eliminate the author completely. To him, a text was not a picnic to which 'the author brings the words and the reader brings the sense'.<sup>2</sup> What is consistent in Eco's approach to interpretation, is his demand that the text be respected as a creation of its author.

An analysis of Eco's idea of interpretation in the universal context (without limiting it to literary texts) reveals many elements analogous to the practice of legal interpretation.<sup>3</sup> One of these elements is the aforementioned idea of *intentio operis*. On the one hand, this refers to the approach of structuralist semantics to the text, in terms of its surface structure and deep structure (which also applies to legal text), and on the other, it concerns the pragmatolinguistic categories of the communicative competences possessed by the participants of

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<sup>1</sup> Eco identifies interpretation with understanding.

<sup>2</sup> This famous passage has often been mistakenly claimed as authored by Todorov (1987): 12, e.g. as Eco (1992a: 24) claims. According to Szajnert (2011): 133, the real author of this passage is Frye (1968).

<sup>3</sup> At least in the derivative conception of legal interpretation, which was fully expounded by Zieliński (2002).

the interpretive process, which is the implicit premise of interpretative directives in the derivative conception of legal interpretation.

In a previous monograph, I have already presented possible applications of some of the solutions proposed by Eco that bring the 'derivational' and pragmatolinguistic approaches to legal interpretation closer together.<sup>4</sup> In this article, I present Eco's deployment of *intentio operis* as an attempt to transcend the opposition between authorial intention and interpretive freedom, with the hope that this will prove beneficial to legal interpretation.

## II. WE HAVE TO RESPECT THE TEXT<sup>5</sup>

It seems that Eco's most important rule of textual interpretation is respect for the text. The text is approached from the perspective of the receiver. Since Eco's conception of interpretation is grounded in semiotics, a text is for him a 'syntactic-semantico-pragmatic device',<sup>6</sup> the consequence of which is the notion of textual cooperation as an interpretive strategy.

According to Eco, on its surface level a text comprises a chain of expressive devices that are actualized by the reader (interpreter). This actualisation involves, in Eco's words, opening the dictionary for every encountered word. This 'opening of the dictionary' implies that the reader consider not only the semantic issues but also the linguistic context in which the word has been used, in order to choose the most suitable sense from all the possible ones.

The reader encounters an additional difficulty in the fact that a text, as Eco conceives it, is not only a complex way of knowing but also an incomplete one. The incompleteness of a text is rooted in the fact that not everything that comprises a text has been explicitly uttered (it has not been uttered on the surface). This 'utterance' of what has not been 'uttered' on the surface (and therefore actualized in the text) happens in the process of actualization. In this process of actualization, Eco sees the reader (interpreter) as having an active role, while being nonetheless orientated on cooperating with the text, not on complete freedom or discretion in interpretation,<sup>7</sup> which he stated *expressis verbis*: 'I agree with the statement that a text can take on multiple meanings. I disagree that it can take on all the meanings.'<sup>8</sup>

What does this cooperation between the reader (interpreter) and the text involve? The Italian semiologist asserts that a text communicates something not just to anyone, but to someone who actualizes this text, which requires certain skills. The meaning generated by a text and interpreted by the reader (receiver) is not based solely on the linguistic code, even though it can be

<sup>4</sup> Choduń (2018).

<sup>5</sup> Eco, (1992b): 182.

<sup>6</sup> Eco (1979a): 3.

<sup>7</sup> For more, see Eco (1979b).

<sup>8</sup> Eco (1992c): 141.

a source of problems if the text and the reader (interpreter) do not share a common code. As Eco writes, it requires not only linguistic competence, but also competence in the broader situational sense, activating mechanisms of presupposition, suppressing individual resentments, and so forth.<sup>9</sup>

Cooperation from the reader (interpreter) is the condition of actualization, postulated by the text itself. A text, according to Eco, 'foresees' the person it is written for, as the appropriate reader (interpreter). Of course a text does not create itself, but is created by the author and this author, with the help of certain devices, creates a textual strategy that foresees certain readers' actions towards this text. At this point, Eco invokes the concept of competences (in plural). They include not only linguistic competence but also, understood more broadly, communicative competence and even cultural competence. The author must then assume that the competences of the reader (interpreter) will match those of the author. And all of this, as a textual strategy, is generated by the text itself. Neither the author of a text nor its reader (interpreter) are understood by Eco empirically. It is not about the competences of a particular author or a particular reader. As was mentioned before, these are certain textual strategies that are present in the text in a way that generates the author as 'the Model Author' and the reader as 'the Model Reader'. The empirical author achieves this with the help of various linguistic, lexical and stylistic devices, the choice of genre, the choice of subject, and so on. Based on this repertoire of devices, the empirical author not only assumes that the text is written for a particular reader (interpreter) with particular competences, but also actually postulates such a reader (interpreter) by producing the text in this particular way. This of course all relates to the Model Reader.

Both the Model Author and the Model Reader are textual strategies that Eco introduced in order to present textual cooperation as an 'actualisation of intentions virtually contained in the utterance'.<sup>10</sup> At the same time, Eco argues, the empirical author does not hold a privileged interpretive position towards his or her own text, 'but becomes a potential model reader offering possible explanations for his or her creation'.<sup>11</sup>

These textual strategies do not come from nowhere, however. They are generated by the text, through the empirical author. This empirical author formulates hypotheses about the Model Reader, and at the same time, using a certain repertoire of devices, designates himself or herself as the Model Author. This way, both the Model Reader (interpreter) and the Model Author are manifested as certain textual strategies. The textual strategy of the Model Author allows the empirical reader to formulate a hypothesis of the Model Author. In this regard, Eco argues that the empirical reader is much more likely to successfully formulate a hypothesis regarding the Model Author than the empirical author is to formulate a hypothesis of the Model Reader. According to the author of *Lector in fabula*, the latter must postulate what does not yet

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<sup>9</sup> Cf. Eco (1979b).

<sup>10</sup> Eco (1979b): 63.

<sup>11</sup> For more, see Bondanella (1997): 143.

exist and realize it in a range of textual operations; the former, on the other hand, formulates a certain typical image from what has already existed as an utterance and is textually present as a statement.<sup>12</sup>

The aim of a text then, according to Eco, is to produce a reader (interpreter) who will read the text as it is 'programmed' to be read.

### III. *INTENTIO AUCTORIS, INTENTIO LECTORIS, INTENTIO OPERIS*

The introduction of the Model Author and the Model Reader was a way of shifting the issue of interpretation from the focus on the author and the reader (interpreter) to the focus on the text. 'The classical debate aimed at finding in a text either what its author intended to say or what the text said independently intentions of its author. Only after accepting the second horn of this dilemma can one ask if what is found is what the text says by virtue of its textual coherence and of an original underlying signification system, or what the addresses found in it by virtue of their own systems of expectations.'<sup>13</sup>

As was explored above (Section II), a text generates the Model Author and the Model Reader (interpreter). The text is their medium, so to speak. Therefore, the act (process) of interpretation comprises three elements: the Model Author, the Model Reader, and the text, which plays two roles. The text is in fact a way of knowing, as a text of a specific genre (literary or other), and at the same time a source of knowledge regarding the textual strategies of the author and the reader (interpreter).

On the one hand, it seems that the text is the central category here, but on the other, it is the reader (interpreter) to whom the 'last' word belongs. The need to limit the unrestrained interpretive freedom of the reader (interpreter), while denying the author full control over the text – this eternal conflict between the authorial intention and the reader's (interpreter's) freedom required that a compromise be found. Eco thus introduced three types of intention: *intentio operis* (the intention of the text), *intentio lectoris* (the intention of the reader) and *intentio auctoris* (the intention of the author) – in an attempt to achieve this compromise. The compromise was understood by him as 'a dialectical link between *intentio operis* and *intentio lectoris*'.<sup>14</sup>

The intention of the text refers to the internal structure of a text given to the reader at the exact time when the text enters circulation (what the text wants to say in the deep structure of its meanings). It breaks away from the empirical author, who in Eco's notion is not an element in the act (process)

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<sup>12</sup> It is worth noting that the problem is different in relation to highly conventionalized texts. These are the texts that use specific and set linguistic formulas akin to language clichés that determine both the Model Reader and the Model Author. For more, see Eco (1979b).

<sup>13</sup> Eco (1992b): 63–64.

<sup>14</sup> Eco (1992b): 64.

of interpretation.<sup>15</sup> As Eco states, ‘to recognise the *intentio operis* is to recognise a semiotic strategy.’<sup>16</sup> The intention of the reader is understood here as a contribution to the interpretation of the text. *Intentio lectoris*, however, does not imply that the reader (interpreter) has unrestricted flexibility in terms of meaning making. It involves their competences regarding ‘decoding codes’<sup>17</sup> and the conventions underlying the text. The last element is the intention of the author. This third type of intention proposed by Eco refers to the intention of the empirical author. Generally, it could be said that *intentio auctoris* refers to ‘what the empirical author intended to say’.

Between the *prima facie* irrelevant *intentio auctoris* and the potentially untamed *intentio lectoris*, Eco postulates the presence of *intentio operis*. The intention of the text serves as a check on the interpretive freedom of the empirical reader (interpreter), beyond which his or her interpretation will become an overinterpretation. The text itself is thus a parameter used to validate all possible interpretations of the text. Eco is consistent in his thesis that the characteristics of the text itself impose limits on permissible interpretations: ‘To establish how a text works is to establish which of its various aspects are or may become relevant or essential for a coherent interpretation, and which remain on the margin and prevent coherent interpretation.’<sup>18</sup> *Intentio operis* functions as a link (or intermediary) between the intention of the author, whose imprint it bears, and limiting the infinite number of potential interpretations made by the empirical reader (interpreter).

From the perspective of the empirical author, who chooses a specific communicative strategy,<sup>19</sup> he or she generates *intentio operis* in the text. From the perspective of the empirical reader (interpreter), *intentio operis* provides all possible interpretations of the text while relating them to the Model Reader. This shows that *intentio operis* is simultaneously a cause (basis, reason) of the results of interpretation and a set of all the possible senses of a given text. *Intentio operis*, according to Eco, includes all the potential interpretations, some of which actualize during the interpretation process performed by the empirical reader (interpreter). The empirical reader (interpreter) generates from the text some results of interpretation inherent in it, but does not exhaust them. The result of interpretation depends to a large extent on the degree to which the empirical reader (interpreter) resembles the Model Reader (with regard

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<sup>15</sup> As Eco (1992b: 65) admits: ‘I realise that in this dialectics between the intention of the reader and the intention of the text the intention of the empirical author has been totally disregarded.’

<sup>16</sup> Eco (1992b): 64.

<sup>17</sup> Eco does not equate decoding with interpretation. To him, interpretation is ‘understanding basis of some on the previous decoding, the general sense of a vast portion of discourse’ Eco (1975): 185, as cited in Bondanella (1997): 85. Decoding relates to reading a given utterance (text) based on a complex set of rules that make up a given code. A code is a structure that evolves in a model. Specific utterances that realize this structure become communicative precisely in relation to it. For more, see Eco (1968): 304–306. ‘Decoding’ an utterance requires communicative competence, not only linguistic competence.

<sup>18</sup> Eco (1992): 146.

<sup>19</sup> Through which he or she transforms into the Model Author.

to the level of competence in the area of textual interpretation), and to what extent he or she fulfils the requirements of the Model Reader.

Due to the fact that Eco, by focusing on the link between the Model Reader and the text, to an extent eliminates the empirical author, a question arises: what is the role of *intentio auctoris*? *Intentio auctoris*, after all, has been somewhat 'absorbed' by *intentio operis*. While it is clear that when it comes to *intentio auctoris* Eco largely disregards the relevance of the psychological state of the author, it is not so clear whether he eliminates the empirical author with regard to the circumstances, conditions, and the cultural context of the text.

#### IV. A LEGAL TEXT AND *INTENTIO OPERIS*

The text of a legal act is a conventionalized text. Its writing style depends on the directives of the regulations regarding legislative technique.<sup>20</sup> This is not the case with other types of text, particularly literary texts. From the start, the text of a legal act is therefore created in accordance with a specific strategy related to its reading. The creator of the text of a legal act (legislative drafter) cannot ignore these directives. The very directives governing the creation of the texts of legal acts thus formulate a certain strategy of writing in line with Eco's Model Author. At the same time, such a conventionalized way of creating a text means that the given text of a legal act is a realization of the normative model for this type of text.

Such a text can be certainly read in multiple ways, generated by the text itself. For an interpreter-historian it can be a text conveying some historical information (at the level of presupposition);<sup>21</sup> for an interpreter-linguist it can be a text in a given language, which can be looked at from the perspective of its grammatical, lexical or orthographic correctness. For an interpreter-lawyer, the above approaches can be useful in the process of interpreting the texts of legal acts but are not determined and anticipated by the textual strategy contained in those texts (i.e. the types of texts that are texts of legal acts). In the textual model determined by the directives related to writing texts of legal acts, such a strategy is already contained in an abstract way. It realizes itself in the text of a specific legal act and actualizes in the process of interpretation. It concerns both the structure of the text and the potential senses of the words used in the text. It is precisely in the example of the texts of legal acts that we can see the illusion of the surface structure and that which links with their 'literal' reading. We are not concerned with this kind of reading of a text, however, but with reaching the deep structure – in line with what the model text presupposes and what the text of a legal act is modelled on.

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<sup>20</sup> It concerns a set of directives that determine the textual standards of the texts of legal acts, which are often articulated as legal regulations in a legal act, similarly to the set of directives regarding writing Polish texts of legal acts.

<sup>21</sup> Cf. Sarkowicz (1995).

Due to the degree of conventionalization of the text of a legal act, the (empirical) interpreter need not build hypotheses regarding the textual strategy (identified with the genre of the utterance). Awareness of what the texts identified as texts of legal acts look like is common, especially since the very title of the text of a legal act reveals this information.

An accurate reading of the text of a legal act, though, requires specific competences in this area, competences not possessed by a 'naive reader'. The pool of such competences is postulated by the text itself. The production of this text, after all, assumed that the interpreter of the text would possess adequate knowledge and skills to accurately read this type of text, including the given specific text.

*Intentio operis* of the texts of legal acts presupposes the interpreter's competence regarding reading not only the overt content of the text, but also everything that has not been explicitly expressed but will be read as if it exists in the text. A good example of such a situation is the fact that the interpreter must bring to the process of interpretation a legal definition present in a different text from the one being interpreted, even if the text itself does not evoke another text of a legal act.<sup>22</sup> And there are many more examples of this kind. But the 'naive interpreter' is not aware of these techniques of producing texts of legal acts, even though they are written into the interpretive strategy of the texts of legal acts, or, as Eco would put it, into their *intentio operis*.

*Intentio operis* is a cooperative textual strategy between the interpreter and the text, which already recognizes the role of the empirical author. With regard to the texts of legal acts, identifying the author (empirical authors), although possible, is not always certain. It could be representatives, professional legislative drafters, or authorized legal entities. These issues have often been raised in the scholarship. Considering the level of the conventionalization of the text of a legal act, however, the need to identify the author seems redundant, especially when considering that variability is an intrinsic element of the texts of legal acts. The number of empirical authors would increase exponentially. The dominant opinion in jurisprudence is that the author of the text of a legal act should not be seen as an empirical author but rather as a legislator, understood as a theoretical-legal construct. This conventional approach to the legislator also generates a range of problems, for example when one evokes the 'will of the legislator', understood as an empirical entity.

Similar concerns can be raised with regard to *intentio operis*. How can we be sure that the 'intention of the text' actually exists? From the psychological perspective the answer is certainly 'we cannot', likewise regarding the intention of the author. Eco was opposed to evoking the intention of the empirical author. He thought that such an approach would be ineffective and misplaced, which he justified as follows: 'If we were to accept my idea of textual interpretation as the discovery of a strategy intended to produce a Model Reader –

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<sup>22</sup> This happens for example with regard to the definitions contained in acts fundamental to a specific type of cases.

conceived as the ideal counterpart of a Model Author (which appears only as a textual strategy) – then the notion of an empirical author's intention becomes fundamentally useless.<sup>23</sup>

## V. CONCLUSION

According to Eco, every author presupposes the existence of a model of their hypothetical reader, whose task is to closely cooperate with the author in the process of textual interpretation. Eco rejects the privileged position of the intention of the author and instead introduces the Model Author as a communicative textual strategy that determines the interpretive process for the reader (interpreter). The Model Reader is a textual strategy steeped in the text that serves as a restraint on the empirical interpreter, according to the presumed principles of each textual genre.

Eco looks at interpretation from the perspective of the reader (interpreter), which makes the process of textual understanding more dynamic and is consistent with his claim that a text can have multiple senses. This seems obvious not only in relation to literary texts, if interpretation is treated as a dynamic process determined by the moment in time when the interpretation is taking place, which means that a different moment may produce a different result of interpretation (sense of the text).

Despite accepting the point of view of the reader (interpreter), Eco does not allow for unrestricted freedom in his or her interpretation. The key word here is 'competence regarding interpreting specific types of texts', and therefore each particular text as a text belonging to a specific type of text. 'Every act [of interpretation] is therefore a difficult interaction between the reader's competence (his awareness of the world) and the competence postulated by a given text.'<sup>24</sup> Despite the different names Eco uses to identify textual strategies, what matters in the process of interpretation is not intentions but competences (communicative, cultural, and especially competences regarding textual interpretation).<sup>25</sup>

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<sup>23</sup> Eco (1992b): 66.

<sup>24</sup> Eco (1992d): 64.

<sup>25</sup> More broadly on this topic, see Choduń (2018).



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### Summary

The aim of the paper is to present *intentio operis* as an interpretative strategy created by a text. According to Umberto Eco, this strategy can help to transcend the opposition between *intentio auctoris* and the interpreter's unrestrained freedom. Although as a concept *intentio operis* belongs to literary texts, it seems to be an interesting construct to apply to legal interpretation, especially because it links different points of view on textual interpretation: the structural ('how the text is constructed') and the pragmatic (namely aspects of communication, such as the communicative intentions of the empirical author, the communicative intentions of the text).

Keywords: *intentio operis*; interpretation; communicative competence; textual cooperation; interpretive strategy

