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## VALUES IN ZYGMUNT ZIEMBIŃSKI'S THEORY OF LEGAL INTERPRETATION: SOURCES

### WARTOŚCI W TEORII WYKŁADNI PRAWA ZYGMUNTA ZIEMBIŃSKIEGO: ŹRÓDŁA

The early phase of Zygmunt Ziemiński's theory of law interpretation was developed between the late 1950s and early 1970s. From the very outset, values would feature permanently in the theory as components of the axiological system of the legislator. Certain values, such as legal certainty and the correspondence between law and social life, became central to two interpretations: static and dynamic interpretation, respectively. Ziemiński was the first Polish legal theorist to define functional interpretation as a paradigm that invokes the legislator's values. As he argued, two types of functional interpretation: *analogia legis* or extensive interpretation have their effect anchored in the adopted values, thus preventing cases which happen to be strongly justified axiologically by such values from being excluded from regulation. Values also enable identification of the norms-conclusions derived through *analogia iuris* and *argumenta a fortiori*. By providing grounds for the postulation of the rule of law, values ultimately safeguard the legal system from abuse.

Keywords: law interpretation; values; axiologically rational legislator

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Wczesna faza teorii wykładni prawa Zygmunta Ziemińskiego to okres od końca lat 50. do początku lat 70. XX w. Od samego początku w teorii rozwijanej przez Ziemińskiego wartości były składnikiem aksjologicznego systemu prawodawcy. Określone wartości, takie jak bezpieczeństwo prawne oraz zgodność prawa z praktyką społeczną, stały się kluczowe dla dwóch typów interpretacji: statycznej i dynamicznej. Ziemiński jako pierwszy polski teoretyk prawa zdefiniował wykładnię funkcjonalną jako paradygmat odwołujący się do wartości prawodawcy. Jak argumentował, dwa typy wykładni funkcjonalnej: *analogia legis* czy wykładnia rozszerzająca mają swoje zakotwiczenie w przyjętych wartościach, przez co uniemożliwiają wyłączenie spod regulacji przypadków, które są silnie uzasadnione aksjologicznie tymi wartościami. Wartości umożliwiają również identyfikację norm-wniosków wyprowadzanych w drodze *analogia iuris* i *argumenta a fortiori*. Będąc podstawą rządów prawa, wartości ostatecznie chronią system prawny przed nadużyciami.

Słowa kluczowe: wykładnia prawa; wartości; aksjologicznie racjonalny prawodawca

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In his 1980 *Problemy podstawowe prawoznawstwa* [Fundamental Problems of Jurisprudence], Zygmunt Ziemiński presented a fully developed scientific theory that encompassed law in all its relevant aspects.<sup>1</sup> It represented the yield of nearly thirty years of research and at the same time – as his later work showed – set the intellectual course of further inquiry and highlighted new issues worthy of theoretical reflection. However, neither the development of individual parts in the original conception of law, nor the introduction of new elements to supplement the theory, resulted in a fundamental change of the overall picture. Constructed in line with the tenets of the analytical school, the system assigned a specific place to each of its components and coupled it with all the other parts by means of lucid interrelations, both direct and indirect. This is evident in the case of the original concept of the legal norm as the essential element of the legal system. Contrasted conceptually and functionally with the legal provision,<sup>2</sup> it was nevertheless genetically linked with the latter as the result of interpretation to which the provision was subjected. Hence, on the one hand, a transition is observed between the legal norm and normative acts, which are recognized in the developed normative conception of the sources of law as one of the outcomes of the formally designated sources of law (the theory of legislation), combined with the rules pertaining to interpretation, inference and conflict (the theory of legal interpretation): in other words, the tools used to devise a coherent set of norms currently in force. On the other hand, it is the legal norm rather than the provision which becomes the object of application of the law and the institutions associated with that conventional act (the theory of the application of law).

Much the same is true of legal interpretation and the values that law and legal science draw upon. Although the autonomy of these two spheres is unquestionable, they are simultaneously indispensable for the entire description of law: whether in the static aspect (the system of law) or dynamic aspect (the application of law). However, given the ultimate outcome of formulating a complete theory of legal interpretation, Ziemiński's baseline position should always be taken into account in its analyses.

By and large, the adopted definitional understanding of legal interpretation does not change in its essence, although later clarifications of its fragments result in new terminology. In 1958, interpretation assumes a fixed, pragmatic form:

The mental activity which consists in determining which norms can be inferred from a given provision, either by analysing its meaning or by drawing further conclusions from the norms which are directly contained in the provision or provisions in question, is called *interpretation* (in the broader sense). In the narrower sense, interpretation denotes the mere determination of the meaning of the provisions in question, whereas deriving further norms from the norms directly contained in the provision in question is called *logical elaboration of norms* (the term 'logical interpretation' is also often employed).<sup>3</sup>

<sup>1</sup> Ziemiński (1980).

<sup>2</sup> Ziemiński (1960): 105.

<sup>3</sup> Ziemiński (1958): 65 [emphasis added by M.K.]; Ziemiński in Łopatka et al. (1959): 281.

Even that early on, the legal norm – as a proper component of the legal system – is clearly distinguished from the legal provision, which functions as its vehicle, and whose shape is to a greater extent subordinated to the structural requirements of a normative act promulgated in an official journal than to the presumed syntactic model of the norm.<sup>4</sup> This categorial emancipation of the norm was combined with a rejection of ‘direct comprehension’ of the provision,<sup>5</sup> an idea underlying the clarification theory of legal interpretation propounded by Jerzy Wróblewski, which at the time predominated in the jurisprudence. According to the latter theory, a lucid, unequivocal text of a normative act should not undergo interpretation at all, because the correct outcome of its reading – the ‘pattern of due conduct’<sup>6</sup> – is taken as conveyed directly, without the need to apply any additional explanatory measures (hence the established principle of *clara non sunt interpretanda*). Evidently opposed to such a position, Ziemiński stated:

It seems, however, that it is more convenient to define the act of interpretation in the strict sense of the word (i n t e r p r e t a t i o) as the act of decoding, reconstructing – in line with simple or complex directives – a norm of conduct contained in a legal text, in legal provisions, regardless of whether this task is difficult or easy, whether the result of such an operation is obvious ... or whether it raises one’s doubts for one reason or another.<sup>7</sup>

In this understanding, the directives of legal interpretation also include those which invoked evaluations,<sup>8</sup> defined as the approval or disapproval of a state of affairs.<sup>9</sup> These evaluations operate in two dimensions: external and internal. The external aspect emphasizes the values which should govern the interpretation of law as a holistic process. The efforts to resolve this issue produced two pairs of opposing conceptions: the conservative and the developmental interpretation,<sup>10</sup> as well as the subjective and the objective interpretation.<sup>11</sup>

The essential premise of the conservative trend in interpretation is that, in the event of doubt as to the meaning of a provision(s), their ultimate meaning should be determined through reference to the will of the historical legislator; to the ideas they espoused when said provision was being formulated. Such a procedure guarantees interpretive uniformity and precludes uncertainty in the outcome of interpretation if each interpretive outcome were to be contingent on the will of the incumbent legislator at the time of interpretation. Interpretive conservatism sought its rationale in the fundamental value of

<sup>4</sup> Ziemiński (1958): 65.

<sup>5</sup> Wróblewski (1959): 129.

<sup>6</sup> Wróblewski (1959): 75.

<sup>7</sup> Ziemiński (1969): 140–141.

<sup>8</sup> In addition to evaluation, a number of contexts also feature the term ‘value’, which in later works can be found defined as ‘the designation for what is sufficiently permanently (due to the established dispositions) evaluated positively or negatively from someone’s point of view, in particular by the representatives of a certain social category’ (Ziemiński 1988: 41 n. 2).

<sup>9</sup> Ziemiński (1974): 20.

<sup>10</sup> Ziemiński (1958): 66–67.

<sup>11</sup> Ziemiński in Łopatka et al. (1959): 281.

law, namely legal security, understood as ‘a certain sufficient degree of permanence of legal rules and of the manner in which they are applied by state authorities.’<sup>12</sup> However, what constituted the strength of this conception was simultaneously its weakness. The need to invoke the actual position of the legislator inevitably raises the question of how such determinations should be made. Even with single-member bodies, reference to the will of the person who held that function when the normative act was being drafted may be erroneous if the draft act was prepared by the relevant legislative services whereas the official creator of the act merely assumed responsibility for its content by virtue of their signature. These difficulties become incomparably greater in the case of collective bodies. Determining the actual will of even a majority of the members of parliament who voted on a particular act seems impossible to accomplish.

Opposed to the conservative conception, the developmental paradigm recommends resolving interpretive doubts by taking the will of the current legislator into consideration.<sup>13</sup> Those are the ‘intentions of the current leadership of the state’<sup>14</sup> which should determine the accepted meaning of the provisions, as this safeguards the following value: ‘with such an interpretation, the law keeps up to date with the transformations in social life and responds better to the “demands of the times”.’<sup>15</sup>

As the theories evolved, the conservative interpretation transitioned into the static interpretation, while the developmental approach became the dynamic interpretation.<sup>16</sup> The two original values: legal certainty, and congruence between law and life, have invariably remained at the core of those conceptions.

The distinction between the theory of subjective and objective interpretation emerged from a dispute concerning what is to be understood as the ‘correct’ or ‘actual’ meaning of legal provisions. The proponents of the subjective paradigm take the view that only the actual intentions of the real legislator should determine the final outcome of interpreting a legal text.<sup>17</sup> If it is found that those semantic intentions fail to correspond to the changing social environment, it is the new legislator – not the interpreter – who has the prerogative to reformulate the law. In contrast, objective interpretation rests on the assumption that when a normative act is issued, it becomes ‘detached’ from its creator and henceforth possesses a meaning which is independent of the intentions of that creator. In such a situation, the language of a legal text serves

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<sup>12</sup> Ziemiński (1958): 66.

<sup>13</sup> Ziemiński (1958): 67.

<sup>14</sup> ‘[W]here a provision is ambiguous, it should be understood in such a way that it corresponds to the intentions of the legislators at the time when the discussion is taking place, and thus be interpreted in line with the intentions of the current leadership of the state as opposed to the intentions of those who were in charge of the state at the time when the norm-giving act in question was issued’ (Ziemiński 1958: 67).

<sup>15</sup> Ziemiński 1958: 67.

<sup>16</sup> Ziemiński in Łopatka et al. (1959): 282–283.

<sup>17</sup> Ziemiński in Łopatka et al. (1959): 281.

as the basic tool for its correct reading, as the semantic and syntactic rules of the language – both in common usage and in the specialized domain – are universally available.

In the internal dimension, values in the interpretation of law manifest internally in the functional interpretation and in axiologically-oriented inferences.

Ziemiński developed the conception of functional interpretation based on the types of interpretation distinguished by Wróblewski. However, in the version advanced by Ziemiński, this interpretation was radically simplified as its multiple and diverse components were subsumed under one single category: values. In Wróblewski's theory, one of the contexts in which a legal norm is found is the socio-political (functional) context, in addition to the linguistic and systemic contexts.<sup>18</sup> That context encompasses a set of specific factors<sup>19</sup>: (i) the economic and socio-political system, which determines the characteristics and functions of the state and the law in force there; (ii) the essential evaluations and social norms which constitute the core of the general culture of society; (iii) the socio-political tasks which the societal leadership is charged with; (iv) the reciprocal factual and legal relationships between the bodies which create and apply law; (v) the self-assessment of the subjects that apply and interpret law; and (vi) the phenomena which inform the regulation of one's behaviour, for example modes of communication, public health. Ziemiński situated all these components in the axiological perspective and, having translated them into directival terms, he determined that

Conversely, functional interpretive directives demonstrate significantly political character, as their premise is that regulations contain such norms for which one seeks axiological justification in a certain system of evaluations attributed to the 'legislator' – either current or dating to the time when the provisions in question were laid down – or in some evaluations of which it is claimed that they 'must' be the foundation of any legal system, or the foundation of the legal system of a specific formation, if that system is to merit such a name.<sup>20</sup>

The creation – and later reproduction – of the system of evaluations (values) that is relevant to the functional interpretation relies on multiple sources. The primary element around which one builds a certain axiological entirety is the *ratio legis* of a statute (normative act) or provision, which may be understood in at least a threefold sense. First, it is traditionally identified with the reasons why a particular act was issued by a particular legislative body.<sup>21</sup> Although that reason is articulated using factual terms – as an expected change in the world or perpetuation thereof – it is always accompanied by an axiological qualification, formulated either explicitly or implicitly. Hence, a given legal regulation comes into being because its effect is desirable from the standpoint of the legislator's evaluations.

<sup>18</sup> Wróblewski (1959): 96.

<sup>19</sup> Wróblewski (1959): 97.

<sup>20</sup> Ziemiński (1972): 107 [emphasis added by M.K.].

<sup>21</sup> Ziemiński (1972): 107.

The second method of establishing the *ratio legis* consists in revealing the presumed axiological justification behind the issuance of a given provision or a norm derived from that provision by a 'reasonable' interpreter.<sup>22</sup> This subsequent step in reconstructing the axiological system already involves double objectivization. Values are read using a permanent point of reference, namely the text of the normative act which has been 'immobilised' by its own validity and therefore allows intersubjective communicability and controllability of meaning. In consequence, one can take advantage of the tools provided by the objective interpretive theory, primarily the possibility of analysing the language of the normative act 'separately': thus disregarding its actual creator. The second act of objectivization takes place by invoking the standard of the 'reasonable' interpreter. These are not the values decoded from the provisions – and attributable to the actual lawmaker – that become the relevant element of interpretation, but those whose validity criterion draws on compliance with the accepted standard of the 'reasonable interpreter'. This is just one step away from the imminent emergence of the category of 'rational interpreter', a category modelled on the 'rational legislator'.

Third, *ratio legis* is defined as the anticipated social outcomes of having a specifically interpreted legal norm apply; being intended, such outcomes are assessed positively.<sup>23</sup> This positive qualification manifests itself in the fact that these outcomes function as an objective – the objective of the legislator, a statute, a legal institution, a provision, or a norm – which in itself harbours positive evaluation as a desired state of affairs.

If reconstructing the *ratio legis* in any of the three above senses from the text of the normative act proves problematic, one can avail themselves of another source involved in the axiological system, namely the broadly understood preparatory materials of the legislative process. The evaluations contained directly or indirectly in the rationale of a draft legislative act, cited in pertinent parliamentary debates, recorded in reports, or even invoked by political leaders to justify the necessity of having the act issued, suggest – at the very least – the path which the interpretation of the provisions should follow.

Where *ratio legis* draws on an individualized assessment of the normative act in question, the second source of the axiological system that guides functional interpretation is to be found in the general evaluations, formulated as general principles of law or principles of a given political system. Protected within either framework, both types of principles and values constitute an impassable barrier not only to functional interpretation, but to any act of 'developing law'. Thus, their role is primarily a negative one, as they do not permit the meaning of the norm to be formulated in a manner that would contravene such principles in any way. The positive influence of the general principles on the final substance of the norm is limited, in the sense that it is primarily the task of the legislator – not the interpreter – to

<sup>22</sup> Ziemiński (1972): 107.

<sup>23</sup> Ziemiński (1972): 107.

lay down such subconstitutional norms which correctly specify (concretize) the norms of the constitution.

As Ziemiński asserted in his early works, the fourth source of evaluations to be used by the interpreter centres around the method of attaining it, instead of prioritizing the outcome. They are made up of evaluations decoded in a peculiar kind of inductive reasoning.

Faced with a certain number of norms articulated in lucidly and unambiguously formulated statutory provisions, one reconstructs the implicit axiological justification of each. Then, upon finding that the evaluations which justify individual norms expressed in the statute can be organized into a relatively coherent system, it is to be presumed that these very evaluations should be taken into account when interpreting an otherwise unclear provision.<sup>24</sup>

The application of the externally formulated evaluations attributed to the legislator constitutes the internal plane of Ziemiński's theory of interpretation in its earliest iteration.

The rules of linguistic interpretation clearly take precedence over the rules of functional interpretation. If the meaning of the interpreted provision is lucid, given the directives of the general language, then this meaning is adopted as correct, whereas 'other directives are disregarded'.<sup>25</sup> There are only two exceptions: the provisions issued in the People's Republic of Poland which require extensive or restrictive interpretation, as well as non-repealed but clear former provisions which evidently conflict with the 'new, officially recognized system of values'.<sup>26</sup>

However, when the application of linguistic directives produces an ambiguous result, it becomes not just possible but necessary to resort to the functional directives. This is done by means of *analogia legis (analogia a simili)*, thanks to which it is resolved whether the norm contained in a given provision applies only to the situations it expressly refers to or to similar situations as well. To determine the similarity between the compared cases, it has to be established whether the axiological justifications in the evaluations attributed to the legislator of either regulation are similar.

Extensive interpretation represents the second type of functional interpretation. If the meaning of a provision is clear, but simultaneously there exists a counter-justification in the value system of the legislator, the scope of application or regulation of the norm decoded from it is extended to the point where a positive justification is found in the legislator's evaluations. Due to such a radical intervention in the text of the normative act, this type of interpretation is extremely seldom employed, in principle only in cases of an obvious editorial error. Furthermore, there are areas of law, for example criminal or tax law, where this type of interpretation is prohibited.

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<sup>24</sup> Ziemiński (1966): 220–221 [emphasis added by M.K.].

<sup>25</sup> Ziemiński (1969): 164.

<sup>26</sup> Ziemiński (1969): 164.

In all types of approaches to legal exegesis at the early stage of their conceptual development, Ziemiński consistently mentioned inferential directives alongside interpretative ones, including those which draw on the legislator's evaluations. These form two axiological blocks labelled as *analogia juris* and *argumenta a fortiori*.

*Analogia juris* is an inference based on the following paradigm:

if, for the undoubtedly valid legal norms  $N_1, N_2, N_3, N_4$ , an axiological justification may be sought in the evaluation  $E$ , then it may be concluded that 'by the will of the legislator' the valid norm is  $N_n$ , as it can be axiologically justified by the very same evaluation  $E$ , even though it cannot be interpreted from the issued provisions.<sup>27</sup>

*Argumenta a fortiori* provides the underpinning for two patterns, which exploit a particular property of values: their gradability.

In *argumentum a majori ad minus*, if a valid norm prescribes increasing efforts or costs to accomplish or protect some good, then, in view of the consistency of the evaluation attributed to the legislator, it must be assumed that there is a valid norm which prescribes lesser efforts in order to bring about or safeguard that very good.<sup>28</sup>

On the other hand, under *argumentum a minori ad majus*, one can assume the validity of a norm which prohibits the violation of a given good to a greater degree, if a clearly established norm which prohibits the violation of that good to a lesser degree is in effect.<sup>29</sup>

Formulated between the late 1950s and the early 1970s, the first phase of Ziemiński's conception of legal interpretation remained unchanged in its principal ideas even as it evolved later on. On the other hand, the emphasis placed on the individual components would vary. The early version strongly underscored the fact that interpretation – regardless of its autonomous status – should always be considered as a stage in the application of law. Moreover, from a theoretical-legal viewpoint, it is simply a fragment of the developed normative conception of the sources of law, while the axiological system of the legislator encompasses not only the values explicitly encoded in the provisions or derived from them by means of more or less formalized inference, but also includes the values which lie at the root of the ideological premises of the legal system (the first component of the developed normative conception of the sources of law).

When analysing the sources of the theory of interpretation conceived by Ziemiński, an axiological perspective warrants stating that the evaluations, as well as their clear and consistent distinction – which went well beyond mere considerations of terminology, took place as soon as the theory began to take its shape. Ultimately, drawing on the axiological justification of the interpreted or inferred norms proved not to be something exceptional but, on the contrary, something indispensable, without which the set of norms con-

<sup>27</sup> Ziemiński (1969): 172.

<sup>28</sup> Ziemiński (1969): 172–173.

<sup>29</sup> Ziemiński (1969): 173.



tained in the texts of legislative acts would have remained a simple, mutually incongruent plurality. The values underlying the provisions in force are not confined to making the norms decoded from them correspond to the social life and display an appropriate degree of flexibility. Indeed, they create an impassable boundary for all law, manifesting in the postulation of the rule of law. By establishing a standard of correctness, they either prevent the abuse of law or permit acts of the kind to be explicitly denounced as such.<sup>30</sup> Those are the values that sanction the rejection of the so-called social interpretation of law,<sup>31</sup> in which the linguistic shape of the norm may be flouted to advance current interests. Contrary to traditional concerns, the role of values in legal interpretation is not only growing, but is becoming increasingly irreplaceable. Not infrequently, the modern day comes to such a realization as well.

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<sup>30</sup> 'In any formation, moreover, the concept of the needs of society or legitimate social interests may prove to be very extensible and consequently obscure lawlessness perpetrated in the name of the law' (Ziemiński 1958: 77).

<sup>31</sup> Ziemiński (1958).

