

THINKING LIKE A LAWYER. TWO DETERMINANTS OF LEGAL REASONING

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Summary. This paper aims to show circumstances deciding on legal reasoning. This is undertaken with reference to the rhetorical concept of an argument and in regard to attributes of legal interpretation. Thus, on the basis of an argument conceived as a set of utterances, the author investigates utterances formulated in a perspective of law application. Then, there are examined points of common agreement among legal scholars on rules of legal interpretation. The received data disclose two determinants of legal reasoning.

Key words: legal reasoning, argument, utterance, rules of legal interpretation, legal norm, legal syllogism

There is a reason why we question the statement that “thinking like a lawyer means just ordinary forms of thinking clearly and well”¹. We have vast literature on legal reasoning², and if we investigate these texts, then surely we can come to the conclusion that some circumstances make the thinking

¹ L. Alexander, *The Banality of Legal Reasoning*, “Notre Dame Law Review” 73 (1998), no. 3, p. 517.

² Much has been said in jurisprudential literature about “thinking like a lawyer”. See, in addition to the publications cited, for example: K.J. Vandavelde, *Thinking Like a Lawyer: An Introduction to Legal Reasoning*, Westview Press, Boulder 2011; S.J. Burton, *An Introduction to Law and Legal Reasoning*, Aspen Publishers, New York 2007; L.O. Natt Gantt II, *Deconstructing Thinking Like a Lawyer: Analyzing the Cognitive Components of the Analytical Mind*, “Campbell Law Review” 29 (2007), no. 3, pp. 413–482; F. Atria, *On Law and Legal Reasoning*, Hart Publishing, Oxford–Portland 2001; E. Savellos, R.F. Galvin, *Reasoning and the Law: The Elements*, Wadsworth Publishing, Belmont 2000; R.J. Aldisert, *Logic for Lawyers: A Guide to Clear Legal Thinking*, NITA, Boulder 1997; R. Alexy, *Theorie der juristischen Argumentation: Die Theorie des rationalen Diskurses als Theorie der juristischen Begründung*, Suhrkamp, Frankfurt am Main 1991; W. Read, *Legal Thinking. Its Limits and Tensions*, University of Pennsylvania Press, Philadelphia 1986; G.J. Postema, *A similibus ad similia: Analogical thinking in law*, in: *Common Law Theory*, ed. D.E. Edlin, Cambridge University Press, Cambridge 2007, pp. 117–127; S. Brewer, *Exemplary Reasoning: Semantics, Pragmatics, and the Rational Force of Legal Argument by Analogy*, “Harvard Law Review” 109 (1996), no. 5, pp. 923–1028.

processes of lawyers unusual. Legal scholars, however, mostly approach such determinants as a way of escaping the theoretical description. Thus, there are opinions that life is too rich and complex for us to be able to establish which items determine certain instances of reasoning to be legal. Edward Levi's statement may serve as an example, pronounced in his classical study that "the kind of legal reasoning involved in the legal process is one in which the classification changes as the classification is made"³. At the other extreme, there are views that the circumstances deciding whether legal reasoning happens boil down to some form of immediate, yet undefined, insight. For instance, Lloyd L. Weinreb explains these determinants as an amalgamation of one's "cognitive ability as such" and the "experience and the knowledge that goes with it"⁴.

I share the above-mentioned assumption; there are circumstances deciding whether a certain instance of thinking is an instance of legal reasoning⁵. I cannot, however, agree with all statements that such determinants are simply reduced to a reasoner's intuition or their capacities. What is more, these entities include not only one-shot objects constituting unrepeated environments that dictate the ways of thinking. I tend to accept the view that there are determinants of legal reasoning which: 1) are independent of a reasoner's mental abilities and 2) at least potentially apply to each instance of such kinds of

³ E.H. Levi, *An Introduction to Legal Argument*, "University of Chicago Law Review" 15 (1948), no. 3, p. 503.

⁴ L.L. Weinreb, *Legal Reason. The Use Of Analogy In Legal Argument*, Cambridge University Press, New York 2005, pp. 131–132.

⁵ Two remarks are worth nothing. First, I refer to reasoning as an activity of the mind focused on finding a solution to a problem. It covers intellectual operations aimed at recognizing as true propositions in the logical sense (on the basis that the other, at least one proposition, has been recognized as true). This also embraces operations of organizing, compiling and converting concepts. I reason, therefore, when I recognize as true the statement "it is cold outdoors" (because of the true statements "the mercury in the thermometer outside the window fell" and "the mercury in the outside thermometer falls, if it is cold outdoors"). I also reason when I compile the data about a horse and a bird in the course of organizing the concept of the Pegasus (see, e.g., Z. Ziembiński, *Practical Logic*, Reidel, Dordrecht–Boston 1976, pp. 179–180; M. Oaksford, *Reasoning*, in: *Encyclopedia of Cognitive Science*, ed. L. Nadel, vol. III, Nature Publishing Group, London–Tokio–New York 2003, pp. 863–869). The second remark is based on the fact that questions encountered by lawyers in supporting their clients are practical problems. Reasoning, as far as it deals with practical problems, is a process of breathtaking complexity: every instance of practical reasoning boils down to a procedure where "that which is steered by logical principles interweaves inseparably with that which consists of the world of concepts" (W. Marciszewski, *Sztuka rozumowania w świetle logiki*, Aleph, Warszawa 1994, p. 3). Furthermore, activities of these two kinds affect each other. A person undertaking actions aimed at recognizing propositions as true in the logical sense has to organize a conceptual basis prior to this. The example taken from the literature illustrates this fact: "Holmes and Dr. Watson come to entirely different conclusions, even if they know exactly the same facts; this is because Holmes has a vast and well-structured conceptual system of the world of crime which Watson lacks" (ibidem, pp. 3–4).

thinking. Two of these determinants constitute the subject of this article. The first includes features of utterances that are proclaimed in the course of law application, whereas the second follows from a few attributes of rules governing legal interpretation. Below, I attempt to give details about these features and attributes as well as endeavor to clarify the relationship between them. This will be done in three stages. I will start by examining the structure of arguments that are organized by lawyers when supporting their clients. Next, I will focus on the rules governing legal interpretation. Finally, I will conclude with a juxtaposition of the findings using arguments and rules.

1. THE ARGUMENTS USED BY LAWYERS

The term “argument” is frequently used in all kinds of discussions concerning law. Thus, we can hear words like “I have to disagree with the following arguments [...]” or “the opposite party does not have any evidence to support their argument for [...]” in courtrooms. We may find expressions like “the applicants contested the argument that [...]”⁶ or “in her closing argument, the prosecutor said that [...]”⁷ in written reasons for judicial judgments as well as motivations of pleadings. The term “argument” refers to a certain complex of utterances in each of these instances. Thus, in particular, if one says “I have to disagree with arguments [...]” they disclose their disapproval for utterance X despite the fact that there are utterances Y and Z aiming to trigger or modify their approval of utterance X. In turn, the wording “in his closing argument, the prosecutor said that [...]” informs us of some announcement. Namely, it indicates that the prosecutor has proclaimed a set of utterances with the intention of producing an agreement for something.

Let me therefore introduce a universal argument’s notion based on such usage⁸. The term “utterance” in the phrase “a complex set of utterances” refers to every application of any expression; and the word “expression” designates an arrangement with a minimum of one word which reveals the thoughts of a person who uses this arrangement. Thus, an utterance is an individual and finite string of words with associated notions or meanings. The word “complex”, in turn, indicates that the utterances of an argument are divisible in up to two sets. The first is composed of a single utterance (conclusion), and it is to receive the approval of the people it was presented to (audience). Such a set embraces an utterance which is destined to attain the audience’s approval

⁶ *Paradiso and Campanelli v. Italy*, Judgment of European Court of Human Rights of January 24, 2017 on 25358/12, in: <http://hudoc.echr.coe.int/eng?i=001-170359> [accessed: 18.10.2017].

⁷ *State of Utah v. Cude*, Judgment of Supreme Court of Utah of December 29, 1989 on 784 P.2d 1197 (1989), in: <http://law.justia.com/cases/utah/supreme-court/1989/880115.html> [accessed: 18.10.2017].

⁸ I have used the word ‘universal’ because this notion is proper not only for use by lawyers.

about what this utterance informs, evaluates, performs or suggests⁹. The second set comprises a minimum of one utterance (premise); and all utterances of such a set are presented to the audience with the view to bring about their approval for the utterance belonging to the first set¹⁰.

Approving of the conclusion of each argument is done under two circumstances. An audience is ready to accept data contained in a conclusion because of: 1) the contents of a premise and 2) the relationship between premises and a conclusion. This relationship, however, may be different in nature. Utterances can be formulated into an argument under a scheme based on entailment. An argument can also be organized according to directives which do not constitute any logical principle but state that it is reasonable to approve of an argument's conclusion¹¹. Thus, for example, one of the most popular way of triggering approval for conclusions in humanities, consisting in recalling existing scholars' views, is based on the non-deductive directive known as an appeal to authority¹².

The above remarks are pivotal to our purpose. It is because legal reasoning is undertaken in order to organize an argument's utterances. In turn, complexes of utterances organized as arguments by lawyers in support of their clients are ordered to application of law. This means that lawyers cannot ignore the

⁹ The described concept of 'utterance' is based on the proposition given by Z. Ziemiński on utterances (Z. Ziemiński, *Practical Logic*, note 5, pp. 122–143) and the theory of meaning reconstructed by Ralph McNerny (R. McNerny, *Aquinas and Analogy*, The Catholic University of America Press, Washington 1996, pp. 53–85).

¹⁰ See, e.g., Ch. Perelman, *L'empire rhétorique: rhétorique et argumentation*, Vrin–Bibliothèque des Textes Philosophiques, Paris 2002, pp. 21–22; M. Korolko, *Sztuka retoryki*, Wiedza Powszechna, Warszawa 1990, p. 84; D.J. Soccio, V.E. Barry, *Practical Logic. An Antidote for Uncritical Thinking*, Harcourt Brace Jovanovich College Publishers, Fort Worth 1991, pp. 6–7; S. Lewandowski, *Retoryczne i logiczne podstawy argumentacji prawniczej*, LexisNexis Polska, Warszawa 2013, p. 89. The part of an argument delivered in order to receive approval is indicated by the wording "the premise (or the premises) of the argument". The part which is to receive approval is pointed out by the expression "the conclusion of the argument". To illustrate the bipartite structure, I appeal to the following complex of utterances: "[1] Salt removes stains caused by cranberry juice. [2] Cranberry juice is similar to wine. [3] They are both red and liquid. [4] Therefore, salt helps remove wine stains". Thus, utterance [1] builds the concluding set. Utterances [2], [3] and [4], in turn, are premises destined to call forth approval for utterance [1].

¹¹ See, e.g., Ch. Perelman, *L'empire rhétorique*, note 10, pp. 36–45, 63–67; Z. Ziemiński, *Practical Logic*, note 5, pp. 232–245.

¹² H. Kahane, N.M. Cavender, *Logic and Contemporary Rhetoric: The Use of Reason in Everyday Life*, Cengage Learning, Wadsworth 2013, pp. 50–54; C. Sagan, *Demon-Haunted World: Science as a Candle in the Dark*, Headline Book Publishing, London 1996, p. 31. We should underscore the point that reasoning always arranges an argument treated as a complex of utterances. For example, the argument given in note 10 is fixed by the reasoning *per analogiam* to the essential and quantitative extent. As a result, the rules under which an instance of reasoning is taken determine the contents and quantity of an argument-utterances arranged according to it.

circumstance in which an authority (exactly: an office holder) applied the law and another authority (exactly: someone in the office) will apply the law¹³. Thus, generally speaking, what determines reasoning to be a legal reasoning depends on utterances given during the course of application of law.

In traditional terms, the entire operation of applying the law is seen as an act similar to a syllogism. Its major premise is a legal norm, the minor premise is a description of facts and the conclusion consists of a legal decision. For example, there is a legal norm LN: "It is punishable by fine *f* for vehicles to enter city park CP" and facts F: "Person P entered CP in vehicle V". Therefore, there is also legal decision LD: "F are subject to LN and, as a result, P ought to be punished with *f*". This notion of applying the law independently of its limitations and objections as we find them in contemporary jurisprudential literature¹⁴ discloses the triadic arrangement of questions which lawyers have to solve during their everyday work. Therefore, it is important for the lawyer's craft to find a way of dealing with problems concerning: 1) the validity of a legal norm; 2) establishing the facts; and 3) the consequences which entail these facts on the basis of this norm¹⁵.

The arrangement of these problems reveals what is special in the arguments conceived as complexes of utterances formulated during the course of law application. Now, each and every such argument should have a conclusion belonging to one of the three sets. The first set embraces utterances concerning the basis for a legal decision. A legal norm can be a basis for a legal decision if within a certain legal system (according to which a legal decision is to be made) a certain kind of subject is ordered, allowed, or prohibited from being performed or aborting a certain kind of action under certain kinds of circumstances. When we find these elements of a norm, then we are able to say that this norm is valid. This discovery, of course, is to be made by means of juxtaposing normative acts, evaluations, values and court practices, with the rules minimally approved of by jurisprudence as well as legal practice; such juxtaposition is traditionally called legal interpretation. Thus, wording "utterances concerning a norm basis for a legal decision" means utterances about the legal

¹³ Ch. Perelman, *Judicial Reasoning*, "Israel Law Review" 1 (1966), issue 3, pp. 373–375.

¹⁴ Cf., e.g., B. Brożek, *Analogy in Legal Discourse*, "Archiv für Rechts- und Sozialphilosophie" 94 (2008), no. 2, pp. 188–189; Ch. Perelman, *Judicial Reasoning*, note 13, pp. 373–375; T. Chauvin, T. Stawiecki, P. Winczorek, *Wstęp do prawoznawstwa*, ed. 9, Wydawnictwo C.H. Beck, Warszawa 2014, pp. 229–230.

¹⁵ It is worth making a convention about the expression "legal norm" which will denote rules as well as principles. The difference between them is not relevant in the considerations. For a discussion of this distinction, see, e.g., R. Dworkin, *Taking Rights Seriously*, Gerald Duckworth & Co Ltd, New York 1977, pp. 14–45; D. Kennedy, *Form and Substance in Private Law Adjudication*, "Harvard Law Review" 89 (1976), pp. 1685–1778; R. Alexy, *Teoria praw podstawowych*, Wydawnictwo Sejmowe, Warszawa 2010, pp. 74–99; H.L.A. Hart, *The Concept of Law*, Clarendon Press, Oxford 1994, pp. 254–262.

system and the subject, action and circumstances of the legal norm. If this is so, the first set is composed of verbalizations of a legal interpretation's results; and the best schematic description of this kind of an argument's conclusion seems to be the expression "legal norm LN is valid". The second set is composed of utterances based on facts, namely utterances informing us about the features of facts. Each of these utterances is a verbalization of the result of the fact's establishment, which is essential to the solution of a case. In turn, their sum provides a profile of factual circumstances, meaning the actual states of affairs, based on a legal decision which can be made under an interpreted legal norm. Therefore, the wording "fact F occurred" is a suitable form for this kind of conclusion. The last set covers utterances on the consequences for the established facts on the basis of an interpreted legal norm. Each utterance of this kind either claims that a particular fact is relevant in the framework of a particular legal norm or entails, within the framework of a legal norm, specific effects. A corollary of this statement is that this set should be indicated by the wording "fact F results in consequences defined by legal norm LN"¹⁶.

What about the premises of the arguments at hand? Since the scheme "legal norm LN is valid" covers utterances about a legal norm, then an argument with the conclusion fitting this scheme concerns actions undertaken to interpret a norm. Thus, its premises can be: 1. utterances regarding materials which are the basis for a norm (normative acts, evaluations, values, court practices and so forth); and 2. utterances which are rules leading to such a norm (the rules of legal interpretation). In turn, an argument with a conclusion encapsulated in the scheme "fact F occurred" is an instrument for bringing about approval for facts whose legal effects are to be determined. Hence, it is possible to build the premises of: 1) utterances describing elements of a given actual state of affairs; and 2) utterances determining a legal permission, order or prohibition with regard to the establishment of this state. The set of the last-mentioned utterances consists of utterances on materials which are the basis for a norm and the utterance-rules governing actions which lead to it¹⁷. If a conclusion takes on the form "fact F results in consequences defined by legal norm LN", then the premises are utterances belonging to one of two sets. The former set embraces utterances fitting the scheme "legal norm LN is valid" and utterances fitting the scheme "fact F occurred". The latter set consists of utterances eligible to be premises of utterances constituting the former set. To formulate an argument for a conclusion fitting the form "fact F results

¹⁶ See, e.g., Z. Pulka, *Argumentacja prawnicza*, in: *Wprowadzenie do nauk prawnych. Leksykon tematyczny*, ed. A. Bator, LexisNexis, Warszawa 2010, p. 244.

¹⁷ The establishment of facts accounts for legal norms, especially the norms regulating the evidence procedure. Hence, there is a need for the data concerning legally classifiable facts (i.e. data communicating by utterances encompassed in the expression "fact F occurred") to be obtained in compliance with legal norms defined in the course of legal interpretation.

in consequences defined by legal norm LN” requires a prior interpretation of a legal norm and the establishment of facts¹⁸.

In view of the foregoing considerations, we can define the cardinal circumstance determining a certain instance of reasoning to be an instance of legal reasoning. This is done by using reasoning during the course of organizing utterances into a certain kind of argument. Namely, it is made into an argument which has a conclusion either fulfilling the schemes “legal norm LN is valid”, “fact F occurred”, or “fact F results in consequences defined by legal norm LN”. Each instance of reasoning is, therefore, an instance of legal reasoning as far as it is used for formulating an order of utterances aimed at bringing about the approval of an utterance fulfilling one of these three schemes. There is, however, another important determinant of legal reasoning. It is to be discovered within qualities of rules according to which the interpretation of the law takes place.

2. RULES OF LEGAL INTERPRETATION

How a legal norm should be reconstructed is a theoretical battleground? There are all sorts of theories of legal interpretation to choose from. However, we do not have to make a case for them. It is sufficient to ascertain that a few uncontroversial ideas can be found, i.e. points of agreement among legal scholars and practitioners on legal interpretation. Two of them are crucial for our purposes.

The former idea concerns the use of the term “interpretation”. This term is used to denote entities of two kinds in discussions carried out within legal transactions. The first kind embraces some acts of the human mind concerning law, whereas the second covers verbalizations of such an act’s results. Of course, there is no consensus on the nature of these acts; and what these verbalizations should look like is rather a question of choice. Thus, lawyers interpret the law if they explain it, verify it, demonstrate it and so forth. In turn, the wording “it is a search to which the Fourth Amendment applies if a trained dog sniffs closed luggage left in a public place and signals to the police that it contains drugs”¹⁹ is the interpretation, as is the expression “[t]hose provisions applied to all participants in the proceedings, which included journalists in

¹⁸ T. Barszcz, *On the argumentative structure of the references of the term “argument” in legal discourse*, “Argumentum” 11 (2015), pp. 38–47.

¹⁹ L.L. Weinreb, *Legal Reason*, note 4, p. 20. See also *United States v. Chadwick*, Judgment of U.S. Supreme Court of June 21, 1977 on 433 U.S. 1 (1977).

the gallery”²⁰. Legal interpretation can be, therefore, generally classified as reasoning with an outcome stated by means of utterances²¹.

The latter idea may be expressed as follows: an utterance communicating data gained during the course of interpretation-reasoning is valuable when it can be controlled. Namely, it should be possible to explain why such and such meanings have been associated with the utterance as well as why they have been arranged in this and not another manner. Lawyers deal with this condition in one main way, which consists in recognizing and enumerating rules according to which reasoning was undertaken in a particular case²². Thus, it is necessary for an instance of well-performed interpretation of the law to be able to indicate the rules under which an interpreter made it. It should be possible to give information about the rules of legal interpretation.

Concerning the nature of a legal interpretation’s rules we meet with only a few uncontested points. I arranged them into two theses. The first thesis concerns the function of the rules. All of them serve as potential requirements for correct settlements of issues which appear during the course of legal interpretation. The second thesis discloses the scope of the applicability of the rules. Now, only some of the rules under which a legal interpretation may be accepted are applicable exclusively within the sphere of such interpretation.

Let me explain the provided theses. Concerning to the first, there are two important things that have to be said. One is reflected in the word “requirements”. Thus, these rules function as requirements for correct settlements of issues appearing in the course of legal interpretation. This is because they do not constitute the norm basis for a legal decision, albeit they are abstract and general indicators of a certain way of behaving. Each of these rules, to be precise, does not grant any right or impose any obligation; it covers only information that is a part of an instruction about determining or disclosing a right or an obligation. In other words, such rules suggest what to do in order to reconstruct a legal norm or how to do it. For instance, *ubi aedem legis ratio, ibi aedem legis dispositio* indicates “since there is norm X concerning a certain activity, there should be norm Y concerning different activity if both X and Y have the same *ratio legis*”. Therefore, this rule recommends, if the interpreter disposes a single legal norm, the establishment of its *ratio legis* in reconstructing another legal norm. In turn, the rule “an interpreter is not allowed to ignore any word building when interpreting legal texts” recommends only one clue. Namely, an interpreter should consider every element of the legal provisions that are the materials of law in the particular interpretation’s instance.

²⁰ Selmani and Others v. “The Former Yugoslav Republic of Macedonia”, Judgment of European Court of Human Rights of 9 February 2017 on 67259/14, in: <http://hudoc.echr.coe.int/eng?i=001-170839> [accessed: 18.10.2017].

²¹ T. Chauvin, T. Stawecki, P. Winczorek, *Wstęp do prawoznawstwa*, note 14, pp. 232–233.

²² L.L. Weinreb, *Legal Reason*, note 4, pp. 2–3.

The second circumstance is denoted by the word “potential”. This includes the requirements for correct settlements of issues which appear during the course of legal interpretation. Thus, the rules under which reasoning and legal interpretation are based on do not absolutely bind an interpreter; an interpreter must have the opportunity to settle in a different way. This is because there are two or more alternative rules of interpretation at hand. For instance, article 179 of The Constitution of the Republic of Poland of April 2, 1997 provides: “Judges are appointed for an indefinite period by the President of the Republic on the motion of the National Council of the Judiciary”²³. Also, there are two rules accepted in Polish jurisprudence, namely: “1. a sentence in the indicative mood, when it is used to formulate a normative act, should be understood as expressing legal obligation”; and “2. it is prohibited to understand normative acts in the way leading to contradictory results”²⁴. Thus, one appealing to rule 1) would be skeptical about reconstruction from article 179 the norm under which the President has a right to appoint judges. In turn, an interpreter who invokes rule 2) should maintain that article 179 contains the norm according to which the President has no order to appoint a judge (then, of course, we should add that “appointing judges” is conceived as a presidential prerogative on the basis of the Constitution’s article 144).

The plurality of applicable rules in an instance of legal interpretation follows from a single source, namely, from the lack of a detailed, all-embracing and commonly accepted specification of these rules²⁵. Such a specification is basically not possible. This is simply because rules of legal interpretation are organized as a result of reflection on the way to respond to countless ordinary questions encountered in everyday life. In turn, this must mean, and I am coming to the explanation of the second thesis, that some of them find use beyond the sphere of legal interpretation. For example, every arrangement for rules of legal interpretation contains linguistic rules; and the largest subset of linguistic rules covers rules of general-purpose language²⁶. These rules, however, usually apply in all human interrelations insofar as language is involved. Another instance, *suum cuique tribuere* is treated as the vital indicator of all legal activities, that is *inter alia* reasoning-interpretation. Nonetheless, the stance that this topic is applicable in every social intercourse is to be defended²⁷. Thus, some of rules

²³ „Sędziowie są powoływani przez Prezydenta Rzeczypospolitej, na wniosek Krajowej Rady Sądownictwa, na czas nieoznaczony”.

²⁴ T. Chauvin, T. Stawecki, P. Winczorek, *Wstęp do prawoznawstwa*, note 14, pp. 247–248.

²⁵ Cf. e.g. J. Stelmach, B. Brożek, *Methods of Legal Reasoning*, Springer Verlag, New York 2006, pp. 155, 162–163; Ch. Perelman, *Logique juridique. Nouvelle rhétorique*, Dalloz, Paris 1976, pp. 88–94; G. Struck, *Topische Jurisprudenz: Argument und Gemeinplatz in der juristischen Arbeit*, Athenäum Verlag, Frankfurt 1971, pp. 20–34; L. Morawski, *Zasady wykładni prawa*, Dom Organizatora, Toruń 2006, pp. 87–133.

²⁶ L. Morawski, *Zasady wykładni prawa*, note 25, pp. 62–63.

²⁷ A. Kość, *Zasady filozofii prawa*, Petit, Lublin 2005, p. 177.

under which legal interpretation may be accepted in a case are used in many spheres of human life, as the summoned examples reveal; and application of others is restricted to legal transactions. For instance, the rule is applied in such a way that extensive interpretation of criminal law's provisions is prohibited as well as the topic *in dubio pro reo*.

The last-mentioned circumstance reveals the searched determinant. On the basis of the difference in the range of usage of a legal interpretation's rules, it is reasonable to assume that there is a condition according to which an instance of thinking is an instance of legal reasoning. It is the reasoning's arrangement under at least one rule which is applied exclusively in the sphere of legal interpretation.

3. CODA

Legal reasoning is mainly determined by the specific problems arising before those who undertake it. These questions concern: 1) a norm basis for determining a case; 2) the facts of a case; and 3) the consequences defined on the basis of a legal norm for the facts of a case. Solutions to them are organized during discussions taking place within application of law (or, at least, in the perspective of such application). This means that every solution is not only open to amendments but also is expressible by means of utterances. Those who participate in such discussions, therefore, organize some complexes of utterances; and each utterance of such complexes belongs to one of two sets. The former set consists of utterances which serve as proposals for solutions to the mentioned problems (1-3); as such, each utterance of this set may be pictured by one of three schemes: "legal norm LN is valid", "fact F occurred", and "fact F results in consequences defined by legal norm LN". The latter set is composed of utterances formulated with the view to trigger or modify approval for the utterances belonging to the former set. It is the organization of utterances belonging to these sets into coherent complexes that determines every instance of reasoning as an instance of legal reasoning.

There are mental activities commonly conceived as a special domain of legal reasoning as well as the necessary stages of application of law. These activities constitute legal interpretation. But what differs legal interpretation from other kinds of interpretation? It is not, of course, the fact that a thinking processes building legal interpretation should be expressible by means of utterances. Nor are they the circumstance under which these processes should follow some rules (which serve as potential requirements for their issues' correct settlements). Although these features are doubtlessly conceived as intrinsic for legal interpretation, we also meet them in, for example, theological hermeneutics and translation studies. The answer to the question at hand is as follows: there are rules applicable exclusively within legal interpretation.

Since there are rules which serve legal interpretation exclusively (and work as potential requirements for correct settlements of the issues which appear only in legal interpretation), then the circumstance determining legal reasoning has to be designated under these rules.

It can be concluded that there are two determinants of legal reasoning. Accordingly, one can distinguish two ways of understanding it. Thus, legal reasoning in a broad sense is reasoning applied during discussions focused on an utterance-conclusion fulfilling one of the schemes described above (i.e. the discussion about legal norms, the facts of a case or the legal effects of such facts). However, each and every instance of legal reasoning understood in this way may be governed by rules of legal interpretation. This is quite easy to see in the argument whose conclusion is covered by schemes “legal norm LN is valid”, and “fact F results in consequences defined by legal norm LN”. The premises for the conclusion fulfilling the schemes “legal norm LN is valid” directly concern legal interpretation. In turn, the organization of an argument for a conclusion fitting the form “fact F results in consequences defined by legal norm LN” requires a prior legal interpretation. But even when the conclusion fulfills the scheme “fact F occurred”, then the set of premises can be organized under reasoning directed by rules of legal interpretation. Now, utterances fulfilling the scheme “fact F occurred” communicate facts which ought to be the basis for a legal decision. Such facts are always obtained with consideration for legal norms, especially with respect to norms constituting evidence hearing. Thus, since there are rules peculiar to legal interpretation, then legal reasoning in a narrow sense, besides the mentioned feature of legal reasoning in a broad sense, is marked by a single thing. Namely, it is carried out on the basis of a rule which is exclusively applicable during the course of legal interpretation.

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MYŚLEĆ JAK PRAWNIK.
O DWÓCH DETERMINANTACH ROZUMOWANIA PRAWNICZEGO

Streszczenie. Celem artykułu jest określenie okoliczności wyznaczających rozumowanie prawnicze. Wpierw zostają rozważone szczególne właściwości wypowiedzi formułowanych w toku stosowania prawa. Następnie analizie poddawane są niesporne w nauce prawa twierdzenia na temat reguł interpretacji prawniczej. Uzyskane dane ujawniają dwa determinanty rozumowania prawniczego.

Słowa kluczowe: rozumowanie prawnicze, argument, wypowiedź, reguły wykładni prawa, norma prawna, sylogizm prawniczy

