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TRUTH IN JUDICIAL INTERPRETATION FROM POSITIVIST AND NON-POSITIVIST PERSPECTIVES[2]

Lawyers work with statements about verisimilitude of factual statements, while trustworthiness of these statements is evaluated against the backdrop of coherence of factual descriptions. A correct conclusion in law means a consistent reconstruction of normative meanings in the way that fits best the normative system and that allows to cogently subsume factual state of affair under the established normative meaning.
Keywords: *judicial interpretation, truth in interpretation, truth-value, validity, legal norms, Hans Kelsen, legal process, Ronald Dworkin.*

Introduction

Intuitively, lay people bringing lawsuits to courts or defending themselves there from such lawsuits normally expect the courts to ascertain all the details of their cases before passing a decision. Lawyers know that this picture is incorrect, as courts in adversarial procedural systems are limited with what parties and their representatives brought before the courts as their arguments and evidence. Also, many procedural tools, such as burden of proof, are at the disposal of judges to ascertain legal facts that never correlate with reality. Nonetheless, the main procedural strategy is usually to bring evidence before the court and to ascertain the facts that are relevant for one's case at the court, and among the main tasks of judges is to evaluate the "truth-value" of this evidence and its correlation with the respective facts. This aspect demonstrates that the issue of truth in the court process is far from be-

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Аннотация. Те утверждения о фактах, с которыми работают юристы, имеют только вероятностное значение. Истинность таких утверждений оценивается с точки зрения последовательности описания фактов. Правильный вывод в праве означает непротиворечивую реконструкцию нормативных значений так, чтобы она наиболее полно соответствовала нормативной системе и позволяла провести правдоподобную субсумцию фактического состояния дел под выявленное нормативное значение.

Ключевые слова: судебное толкование, истина в толковании, истинностное значение, действительность, правовые нормы, Ганс Кельзен, юридический процесс, Рональд Дворкин.

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ing simple. Also, judges have to reveal the "true" meanings of legal texts and to apply them to the cases. Here, judges have no reference points for establishing the "truth-value" of the meanings they reveal as the imaginary "authors" of legal texts (sovereign people, parliament, etc.) in fact do not create the meanings which are attributed to these texts only *a posteriori*, in legal interpretation. This normative situation can prompt to the conclusion that judges have unbridled power to interpret the laws as they please. However, this conclusion is counterintuitive: in each legal order courts develop more or less coherent and sensible interpretative practices that make out of the law a predictable regulatory machinery. This would be impossible unless judges did not correlate their interpretative acts with certain criteria of "truth" and unless the high courts did not overturn the decisions that do not correlate with such criteria. These two aspects – ascertainment of facts and precisification of legal meanings – are focal points in legal philosophy for the problem of correctness/truth in judicial interpretation. These aspects will be addressed in the present paper with reference to the two major philosophical traditions in the law: positivism and non-positivism, and, namely, to the two most influential conceptions that characterize these respective traditions: Hans Kelsen's pure theory of law and Ronald Dworkin's interpretative theory of law.

1. Indeterminacy of truth about facts and meanings

The concept of truth in legal parlance has a specific and limited meaning as judges and other legal actors usually do not pretend to discover any objective facts or properties that pertain to the contentious situations they deal with. Many legal orders set out deadlines for considering cases and impose procedural limits on independent collection of evidence by judges which impede judges from getting fully ascertained about facts. At the same time, the best standards of legal process usually include the idea of "correctness" or "truth"[1], even if this idea remains rather blurred and does not necessarily suppose that court decisions are made with the certainty of logical operations. What is more, the judge has to decide the case even if there are not enough facts and evidence: it is to say, to decide knowing that her decision will unlikely be true about the facts of the case, e.g., deciding according to the rule of burden of proof against the party which failed to support her case with due evidence; one can draw here also on the example of presumptions and fictions in law [1. P. 168–184].

Fact-finding in adversarial legal process normally implies a competition between different assertions about facts. Participants to a legal dispute support these assertions with evidence before the court, seeking to persuade judges who only have to choose between these assertions. Therefore, truth in finding facts is relative to what participants argue basing on what is known to them and what they want to disclose before the court, as well relative to how they manage to prove the facts and how the judge evaluates their evidence [2. P. 164–214]. This inevitably brings a drop of subjectivity in fact-finding and evaluation of facts; this may mean that, after all, courts are inadequate forums for the search of truth, so that administering justice has to do only with plausibility and not with truth. As one prominent English lawyer voiced it: "This is not the business of a court of justice to discover the

[1] For the purposes of the present paper these concepts ("correctness" and "truth") will be used as interchangeable, although they have quite different meanings in other aspects.

truth. Its real business is to pronounce upon the justice of particular claims, and incidentally to test the truth of the assertions of fact made in support of the claim in law, provided that those assertions are relevant in law to the establishment of the desired conclusion; and this is by no means the same thing" [3. P. 275].

This suggests that there is no authority in legal process that checks and ensures that fact-statements correspond to facts themselves. Sometimes judges even have to discard certain fact-statements based on ascertained facts, if this ascertainment took place with procedural violations (e.g., pleading guilty under intimidations or collecting evidence without witnesses). Legal process in many civil-law countries is based on the assumption that it is the right of each participant to choose how to argue her case before the court and that there is no obligation for participants to tell the truth to the court[1]. Accordingly, fact-finding in legal process is not about finding factual truths: the best cognitive standards of judicial fact-finding in the Western jurisdictions are to establish the facts "beyond reasonable doubt" or to strike the best possible "balance of probabilities", which by far does not imply finding out what happened indeed. From this vantage point, it seems that lawyers[2] do not deal with factual truths in their legal universe and frequently they have to prefer "formal truth" to "substantial truth" [4. P. 497–511]. In this sense, Hans Kelsen argued that "In case a fact is disputed, the judicial decision which determines that the fact has occurred... 'creates' legally the fact and consequently constitutes the applicability of the general rule of law referring to the fact. In the sphere of law the fact 'exists', even if in the sphere of nature the fact has not occurred" [5. P. 218].

Along with establishing relevant facts, judicial process also implies determining "true" meanings of legal rules – this intellectual process is dubbed as "legal interpretation" or, respectively, "judicial interpretation", if such determination is confined to judges. Quite frequently people disagree about meanings of words and phrases, especially in contentious situations in which their interests are at stake. It does not come as a surprise that such disagreements are common at courts, where people usually seek to convince the judge that the words have the meanings that play in their favor. This strategy is at work not only when the issue is about terms of contracts and covenants, but also when there is more than one meaning in the words of constitutions or statutory laws or, in other terms, when the law speaks with multiple voices. The Roman maxima says that *jura novit curia*, but in fact it happens that court decisions are overturned by higher court instances because of incorrect interpretation of legal norms. Undisputedly, judges can err when finding "appropriate" or "true" meanings of legal rules, and that is the main function of higher courts to check appropriateness of legal interpretation and, eventually, fact-finding by lower courts. One possible implication of this is that some of interpretation acts are correct and some are not, which, in other terms, can suggest that there are true and false interpretations.

Legal interpretation in the civil-law countries3 generally implies that there are general prescriptions (norms) which embody the purported will of the legislator, be it parliament, people, king or other subjects to whom the regulatory legal will is

[1] Unlike witnesses or experts, litigants do not swear before the court to tell the truth.

[2] For the purposes of this paper terms "lawyers", "judges", and "adjudicators" are utilized as interchangeable (as most conclusions concerning judicial interpretation are valid for legal interpretation, and *vice versa*), without suggesting the equivalence of these terms in other respects.

[3] There are also legal systems of common law, traditional or religious law, customary law, in which interpretation can work somewhat differently – they will not be examined here.

attributed (ascribed, imputed). As Joseph Raz puts it, "the notion of legislation imports the idea of entrusting power over the law into the hands of a person or an institution, and this imports entrusting voluntary control over the development of the law, or an aspect of it, into the hands of the legislator" [6. P. 266]. However, a major problem with the identity of legislator is that it is impossible to establish its empirical will, so that in fact a certain will is rather ascribed to the legislator ("what the parliament wanted to achieve by this statute…", "what the king intended…", etc.) by the judge or by another interpreter. After this ascription, judges consider factual situations, define their legally relevant properties, choose among the applicable legal norms the one that fits best to the situation, subsume this situation under this norm, and infer normative consequences for this situation. One can ask whether and under which conditions such interpretative decisions (acts of interpretation) are correct. That is exactly where legal scholars face the issue of truth in judicial interpretation.

Here, the main cognitive limitation is that judgments in the law are always hypothetical: e.g., decisions made by the judge are valid under the condition that this judge was appointed pursuant to the appropriate law, this law is valid if it was passed according to the constitutional procedure, the constitution is valid if..., and so on up to Hans Kelsen's "basic norm", H.L.A. Hart's "rule or recognition", or any other supreme criterion of validity. This chain of "ifs" finally leads to a presupposition of validity (binding force) of law which cannot be ascertained with certitude. Therefore, legal judgments are true / correct only provided (or rather supposed) that the starting presupposition is accepted to be true. But it is impossible to empirically or logically establish the true character of such presuppositions: they can be an object of belief, moral certitude, or epistemic revelation which does not confer on them any truth-value properly speaking [7. P. 143–168]. Here, the Aristotelian "to say of what is that it is, or of what is not that it is not, is true" [8. P. 201] does not work out.

2. Truth-value of legal propositions

"When I use a word," Humpty Dumpty said, in a rather scornful tone, "it means just what I choose it to mean – nothing more nor less." "The question is," said Alice, "whether you can make words mean so many different things."

– Lewis Carroll, *Through the Looking Glass*.

This dialogue could eventually have taken place between a judge and a litigant. If, as it follows from the aforesaid, judges make only hypothetical judgments with no truth-value, does it mean that judges are free to select any meaning whatsoever when interpreting statutes? This idea is reiterated by legal realists but it sounds somewhat counterintuitive. At face value, lawyers usually have no doubt that their legal system is, at least to a certain extent, based on the common interpretation of law, even if this unity is epistemologically never guaranteed. In terms of Jerzy Wroblewski [9. P. 239–255], the appearing coherence of terminology in legal language can stem either from the doctrinal interpretation (what legal scholars say about the law) or from the operative interpretation (how adjudicators apply the law in solving concrete cases). If similar acts of doctrinal and operative interpretation repeat consistently over the time, this can suggest that such interpretations are well established and that, consequently, all other interpretations that are derived from them are true / correct, whilst interpretations with adverse content are false. Albeit, these factors are contingent and there can always be legal controversies arising

from different interpretations that lawyers give to the same legal texts. These discrepancies are due not only to the fussiness of legal language. It is widely recognized that legal interpretation does not take into account only literal meaning of the texts (even the most rigorous formalists agree that literal meaning can be overruled in certain situations), but also considers values and changing social conditions which can easily collide with each other and lead to contradictory judgments [10].

This leads to one of the central problems of legal philosophy: that of indeterminacy of norm-application and interpretation[1]. For lawyers this indeterminacy may signify that (a) it is impossible to determine in advance whether certain facts can be subsumed under a norm, (b) there can be syntactical fussiness in the formulation of a norm, (c) it can be unclear whether a norm is valid or not, (d) there can be inconsistencies in legal system so that apparently some norms contradict each other, (e) subsumption of the facts under a legal norm can lead to unreasonable and unjust results [11. P. 19 ff]. Evidently, some of these indeterminacies pertain to fact-finding and some concern the determination of meanings of legal texts. This indeterminacy of legal language led some legal realists to the conclusion that legal philosophy had better get rid of any conception of truth/correctness in law and in interpretation. The law is what judges say the law is, as realists argue, insisting that the life of law has not been logic but experience. Nonetheless, this critical assault on objectivity in legal reasoning was basically not, as Hart rightly demonstrated, an assault on logic and truth but rather on something else, primarily on the principle of literalist interpretation [12. P. 132–137].

Legal interpretation involves another major problem: that of two logical dimensions in factual statements and in normative statements. On the one hand, standard notions of logical consequence and truth do not apply directly to normative sentences, because they are neither true nor false (Joergensen's dilemma), so that one (factual) part of interpretation falls in the domain of the classical logic, while another (normative) part escapes this logic as imperatives cannot be true or false, even if modal statements are capable of working as premises and consequences in logical inferences. On the other hand, even if the principle of inference and the principle of non-contradiction have no application to norms, lawyers inevitably evoke the "true/correct" vs "untrue/incorrect" properties when speaking about judicial interpretation, and make (quasi-)logical inferences from norms. In this legal parlance, a valid deductive argument is one in which the "truth" of the premises (a general legal norm plus facts) results in the "truth" of the conclusion (an individual legal norm created by a court decision). As Neil Maccormick puts it, "'Rule plus facts yields conclusion' is the essential truth in law" [13. P. X].

From this vantage point, lawyers prefer to consider legal propositions as having truth-value due to a set of commonplace reasons. Whatever cognitive limits lawyers may theoretically face, they all (or almost all) recognize that there are logically incompatible legal norms between which judges shall make a logical choice. Judges also usually make inferences from general statements on particular facts and commonly utilize logical or, as some might argue, quasi-logical terms in legal reasoning: treating conflicting norms as a contradiction or making judgments in the way of logical consequence from operative facts to normative consequences.

[1] Here these terms will be used as interchangeable in the sense specified by Hans Kelsen: every application of the law is at the same time interpretation of the law, although in other respects these notions may have different meanings.

Eugenio Bulygin wisely insists that "If there were no logical relations between legal norms and if the derivation of an individual norm from a general norm were impossible, then general norms would be meaningless and the issuance of general norms – legislation – a meaningless undertaking" [14. P. 71].

There is a plethora of theories of legal interpretation, most of which accept there being a kind of "truth" or "correctness" in law (be it moral, logical, pragmatic, or other), but disagree about what is its nature and how to establish this "truth". Legal scholars generally recognize that interpretation in the law implies at the same time cognitive (adjudicators choose and apply legal texts for justification of their decisions, somehow grasping the meanings of these texts) and volitive (judges express their will as to how distribute the contested rights and obligations, somehow justifying their volition with reference to legal texts) aspects.

Since centuries, this "somehow" used to be subject to intense debates in legal philosophy. Realist legal scholars focus on this latter volitive perspective and argue that judges may take any decision and attach any justification to it: justification comes only afterwards and cannot be effectively checked as there is no necessary connection between decisions, legal rules and facts: "truth" is what the supreme court says is true. Another extremity is legal formalism which focuses on the cognitive aspect and implies that legal texts *ab initio* contain meanings which were invested into these texts by lawmakers and can be extracted with the help of a set of dogmatic methods [15]. On this formalist view, deductive justification from predetermined premises is the normal mode of interpretation, so that judges have only to abide by the laws and be, according to the famous phrase of Montesquieu, "the mount that pronounces the words of the law".

The contemporary legal philosophy oscillates between these two extremities of realism and formalism, paying attention to both these basic dimensions of truth / correctness in interpretation: consistency and coherence [13. P. 103–108]. Correspondingly, coherence implies that an interpretative act makes sense in the legal system if this act fits the framework of previous interpretations, the prevailing legal practice and scholarship, the canons of legal technique and legal reasoning, and fits other major rationales of the legal system. In its turn, consistency means that an interpretative act does not bring contradictions into the legal system or, in other words, that this act does not result in making two legal norms contradict each other and that there is a reasonable link between the individual legal norm created by the judge and the general legal norm she refers to in order to justify her decision. These are two relative criteria of truth / correctness of legal interpretation, although their exact conceptualization incites substantial disagreements among legal philosophers. To illustrate these disagreements, I will shortly examine two key conceptions which are in-between in these philosophical debates and which are representative for the positivist and non-positivist approaches to law[1]: the conceptions of Hans Kelsen and of Ronald Dworkin.

3. Kelsen and the positivist approach to truth in law

To understand Kelsen's point about truth in law, it is necessary to consider that for him legal norms are but artificial constructs of legal thinking: "Legal science as cognition of the law is, as all cognition is, constitutive in character, 'creating' its

[1] The difference between them can be drawn according to the social sources thesis and the separation thesis [6].

object in so far as it comprehends the object as a meaningful whole" [16. P. 72]. In other words, lawyers create legal norms which are meanings established by lawyers on the basis of legal texts, so that norms do not exist prior to interpretations. This Kantian filter (in terms of Stanley L. Paulson) means that legal scholars and practitioners create the law rather than cognize it. Thus, there can be no legal norms before the competent legal organ (judge or else) pronounces about the distribution of rights and obligations. It means that there is no criterion for assessing truth-value of judicial interpretations, as their correctness cannot be checked against the backdrop of legal norms, these latter being created simultaneously with interpretations. In other words, whatever is declared by the competent adjudicator duly empowered in the given legal system will be deemed correct and legally valid.

The purity of legal science mandates that no exterior judgments (based on political, moral or other reasons) against this authoritative declaration are admissible within the province of the law, and that even a flagrant logical inconsistency of judicial decisions does not mean any defect in their "legal trustworthiness". As Kelsen argued in 1934, results of interpretation "can only be the discovery of the frame that the norm to be interpreted represents and, within this frame, the cognition of several possibilities for implementation. Interpreting a statute then leads not necessarily to a single decision as the only correct decision but possibly to several decisions, all of them of equal standing measured solely against the norm to be applied, even if only a single one of them becomes, in the act of the judicial decision, positive law . . . There is no criterion on the basis of which one of the possibilities given within the frame of the norm to be applied could be favored over the other possibilities. In terms of positive law, there is simply no method according to which only one of the several readings of a norm could be distinguished as correct" [17. P. 129–130].

Despite the seeming simplicity of this categorical approach, Kelsen's conception of truth in legal interpretation is more nuanced and difficult. The Austrian philosopher had anyways to tackle the problem of collision of legal norms and to consider the question about veracity of legal judgments in order to escape the traps of legal realism and of non-cognitivism. Kelsen's initial approach in his first books (until the mid-1930s) turned on an appeal to the principle of non-contradiction, whereby one of the conflicting legal norms (or its interpretation) shall be rendered invalid if it is logically incompatible with a higher norm. Therefore, the correctness of judicial interpretation can be assessed from the standpoint of the logical laws (the excluded middle, etc.): the judgment that corresponds to the highest legal norm involved in the given case will be legally correct. Also Kelsen meant that there can be true and untrue interpretation acts depending on which is the closest to its textual meaning, adopted later in time (the *lex posteriori* principle), and so on.

In the 1940s, Kelsen came to the conclusion that direct application of truth-values to legal norms is impossible because of Joergensen's dilemma which precludes a direct application of the laws of logic in legal interpretation [18. P. 44–70]. To solve this problem, Kelsen proposed to distinguish between legal norms as acts of will ("meanings") invested into legal texts, and legal propositions[1] which are legal texts themselves. These latter describe legal norms and have a truth-value

[1] The German term "Rechtssatz" has been translated by the first English translators as "rule of law", but, as Stanley L. Paulson persuasively shows, this term can be better expressed in English as "legal proposition" [19. P. 860].

character, while the former have a normative character. With this, in legal interpretation one can apply logic and confer truth-value on legal propositions and on conclusions inferred from these propositions, while legal norms remain impenetrable to truth-judgments, so that two conflicting legal norms are simply "two forces operating in opposing directions on the same point" [20. P. 235]. Gradually, Kelsen came to the recognition of applicability of logical consequences also to the conflict of norms: "The logic that the Pure Theory of Law first discovered, so to speak, is a general logic of norms, that is, a logic of the 'ought' or of 'ought'-propositions, a logic of cognition that is directed to norms and not to natural reality" [21. P. 149–150]. In the second edition of *Pure Theory of Law* (1960), he explicitly recognized that "two legal norms are contradictory and therefore cannot be claimed to be simultaneously valid if the two legal propositions describing them are contradictory" [16. P. 74].

However, in the last phase of his work, Kelsen arrived at the conclusion that legal interpretation can have no truth-value as legal norms (both individual and general) do not necessarily coincide with the descriptive legal propositions. Norms are merely products of will. This will can be imputed to the basic norm (*Grundnorm*), but such an imputation is fictitious insofar as the basic norm itself is a fiction. This *Grundnorm* is an act of will that has never taken place, is a counterfactual claim: "The basic norm is not a positive norm, but a merely thought norm, that is, a fictitious norm, the meaning of a merely fictitious, not a real, act of will. As such, it is, in the sense of Vaihinger's philosophy of as-if, a genuine or 'proper' fiction, which is characterized not only as contradicting reality but also as being self-contradictory" [22. P. 256]. The acts of will imputed to legal organs have to be treated as if they could be understood normatively, not empirically, but this normative understanding / interpretation has no truth-value, because it is a priori untrue, likewise all other legal propositions and statements which are normatively derived from the *Grundnorm*. In the final count, it means that every judicial interpretation is only conditionally "true" until it is overruled by another act of interpretation by a hierarchically higher organ [23]. This leads to a pure decisionism, against which Kelsen once fiercely fought in his debates with Karl Schmitt [24]. Quite a few attempts have been undertaken by legal positivists (such as Herbert Hart or Joseph Raz) to solve this Kelsenian problem of truth in legal interpretation, but any satisfactory solution is far from being evident [25].

4. Dworkin and the non-positivist approach to truth in law

Non-positivists tried to find solutions to this problem from another methodological perspective which implies addressing ideal criteria of correctness. According to the famous thesis of Gustav Radbruch, there is a degree of injustice that invalidates formally correct judgments and inferences from legal norms, making them false from the standpoint of legal interpretation (e.g., a judgment "A is obligatory and therefore B is obligated to make C" can be held false if A commands something overtly unjust). Radbruch's famous formula mandates that "Where justice is not even strived for, where equality, which is the core of justice, is renounced in the process of legislation, there a statute is not just 'erroneous law', in fact is not of legal nature at all. That is because law, also positive law, cannot be defined otherwise as a rule, that is precisely intended to serve justice" [26. P. 1–11].

How can such a flagrant degree of injustice be established in legal interpretation? Positivists would say that this degree is the matter of moral consciousness which makes this and similar conceptions vulnerable to the centuries-old criticism against the natural-law doctrines [27]. Unless a system of absolute morality is presupposed (this presupposition inevitably will be debatable because of the multitude of moral systems and their formal parity), the subjectivity of moral emotions prevents lawyers from ascribing any truth-value to propositions about justice. If presupposed, this ideal interpretative system would exist parallelly to the legal system and would turn into one of the versions of the notorious dualism of "posited law" and "correct law" that characterizes most of the natural-law doctrines. In the second half of the XX century, a number of non-positivist legal scholars tried solve this problem by singling out certain principles which, albeit not having absolute character, are the indispensable prerequisite to legal interpretation and reasoning.

Thus, Robert Alexy undertook a remarkable attempt to circumvent the problem of subjectivity of legal judgments with the help of "claim to correctness" which is intended to be the objective criterion of truth in legal interpretation: a judgment is true/correct if it is inferred from a legal norm that is compatible with the fundamental legal principles. A claim to correctness is imbedded to any charitable interpretation of legal norms that links these norms to the fundamental principles. Unless such a claim is seriously asserted by the interpreter, any act of interpretation would fail to have truth-value. and it is this claim that can work out as a criterion of truth / correctness of the corresponding judgment [28]. Although, it still remains to be proved that Alexy's theoretical construction of "claim to correctness" really brings the non-positivism out of the impasse of subjective evaluations [29. P. 61–114].

The most consecutive non-positivist system of ideas to overcome the subjectivity of moral judgments in the law was elaborated by Ronald Dworkin in his famous "one-right-answer" theory. Dworkin sought to reformulate the question of truth in judicial interpretation and criticizes the conventional approach according to which "everyone thinks that propositions of law are true or false (or neither) in virtue of other, more familiar kinds of propositions on which these propositions of law are (as we might put it) parasitic" [30. P. 4]. On the contrary, Dworkin believes that finding truth requires an interpretive reasoning based on both facts and moral principles inherent to the interpreted propositions of law themselves. He argues that lawyers and judges should try to identify general principles that underlie and justify the settled law, which opens up the way to interpreting this law in the best possible light [Ibid. P. 230]. These principles allow for making inferences from institutional and other social facts to legal rights and duties, and therefore they are not merely subjective. This methodological model opens up the way for assessing truth in legal interpretation: "According to law as integrity, propositions of law are true if they figure in or follow from the principles of justice, fairness, and procedural due process that provide the best constructive interpretation of the community's legal practice" [Ibid. P. 225].

This image of law as integrity leads Dworkin to his binary thesis, pursuant to which "in every case either the positive claim, that the case falls under a dispositive concept, or the opposite claim, that it does not, must be true even when it is controversial which is true" [31. P. 119–120]. This thesis serves as the foundation for the

conclusory claims about rights and duties – truth-value of these claims is analyzed by Dworkin in the perspective of his assertion that there is a unique, right answer to each legal problem, not limited to the laws of logic. This answer is based on "the community's structure of institutions and decisions –its public standards as a whole – in a better light from the standpoint of political morality" [30. P. 256]. Such one-right-answer thesis assumes that in every contentious situation there can be only one charitable judicial interpretation that provides the "best fit" with respect to both the legal and moral facts involved in the interpretative reasoning of the judge.

However, the question looms large about how judges can define this "fit", provided that human beings have incomplete knowledge of facts and may err in their understanding of moral principles. Dworkin agrees that no mortal judge can unmistakably fulfill all demands of integrity, but argues that this is nonetheless possible theoretically. To illustrate this possibility, he introduces the ideal figure of Hercules, "the imaginary judge of superhuman intellectual power and patience who accepts law as integrity" [Ibid. P. 239]. Hercules knows that the law is built upon a coherent set of principles about justice and fairness and that law as integrity requires him to satisfy these principles in each particular case. Every judge may try to imitate Hercules in a limited way (given their real human conditions), looking for the proper interpretive fit in every considered case. However, "the community's legal practice" evoked by Dworkin is not a social fact like Hart's secondary rules, so that the "best fit" can be sought and found despite the opinions that prevail in a legal community. Dworkin makes it explicit that "a proposition of law might rationally be supposed to be true even if lawyers continue to disagree about the proposition after all the hard facts are known or stipulated. It might be true in virtue of a moral fact which is not known or stipulated" [31. P. 138].

This short presentation of Dworkin's ideas allows to conclude that the "best fit" as a criterion of truth in legal interpretation is nothing but an ideal speech situation (like in Alexy's or Habermas' theories) in which all forms of domination and influence are theoretically put aside to arrive to a sort of a solution whose correctness is presupposed but cannot be categorically ascertained because of multiple moral narratives and insufficient knowledge of facts. At best, an act of interpretation can be held correct/true relatively to the concrete moral or political framework of a given situation, which implies that the interpretative truth can be found only in particular situations (what is illustrated by Dworkin by his reference to the *Riggs vs Palmer* and other cases). As Brian Leiter correctly remarks, "there can only be a single right answer as a matter of law if there is a single right answer to the question of political morality" [32. P. 66]. That is why, "to talk about 'objective' rightness and wrongness is to talk about metaphysical or ontological issues, about what properties the world contains quite apart from what we happen to know about them" [32. P. 69].

With all other important differences being put aside, this conclusion sounds quite like that proposed by Kelsen: the veracity of an act of interpretation is evaluated against the backdrop of an ideal situation (presupposition of the basic norm or modeling the ideal judge) and is justified through unwrapping of general legal norms and principles in concrete situations, in which individual normative prescriptions are framed relatively to the facts of these situations. In Dworkin's terms, this presupposition cannot have truth-value and is only the matter of belief [33].

From this standpoint, the beliefs we retain and can claim are "objectively true" are those which we have good reason for believing, and which we choose for constructing our axiomatic systems [34].

Conclusion

This short presentation intends to underscore the variability of possible conceptualizations of truth/correctness in judicial interpretation. These conceptualizations do not correspond to the standard notion of truth, as the normative component in judicial interpretation cannot be described in the legal language in terms "false" and "true"[1]. Interpretation in law deals with both normative and factual dimensions, being limited by the procedural frameworks imposed on judges (and virtually also on other lawyers) by the legal system [35]. Because of these frameworks, judges do not establish ultimate truths about facts – they work with statements about verisimilitude of factual statements conferring onto them validity, while trustworthiness of these statements is evaluated by judges against the backdrop of the coherence of narratives describing the facts and the evidence supporting these facts.

Along with legal facts, judges interpret legal norms. Plausibility of this interpretation hinges on a coherent and consistent description of the normative system. A correct / true interpretation is the one which reconstructs the meaning of the legal norm in the way that fits best the normative system and does not bring inconsistency or incoherence into it, while the normative system can be conceived of either as consisting only of legal norms and propositions (Kelsen) or also inclusive of principles and policies (Dworkin). This normative reconstruction can be formulated either relatively to an abstract situation (dogmatic interpretation) or to concrete facts of a case (operative interpretation). Within the latter, norms are concretized and reinterpreted by judges as to the circumstances of the case, so that the correctness of this interpretation can be checked by superior instances (if such are available[2]) which would reconsider the case. This procedural verification indicates the prevailing criterion correctness in judicial interpretation.

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[1] Surely, being transposed into other epistemic system, the judicial decisions, interpretations and reasoning can be eventually described in these terms. But this possible transposition is not a subject of the present paper.

[2] It might be that an act of judicial interpretation cannot be checked and has to be considered to be correct/true from the standpoint of the legal system. Here, one can draw on the example of constitutional interpretation. Thus, every interpretation (even with evident logical flaws) the RF Constitutional Court gives to the RF Constitution or to the federal law is true in the sense that the meanings discovered by the Court are binding on all other legal actors of Russian legal system.

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TRUTH IN JUDICIAL INTERPRETATION FROM POSITIVIST AND NON-POSITIVIST PERSPECTIVES

Keywords: judicial interpretation; truth in interpretation; truth-value; validity; legal norms; Hans Kelsen; legal process; Ronald Dworkin.

This paper considers possible methodological approaches to determine the correctness of judicial interpretation. In legal parlance, this correctness is usually equated with truth, although these terms reveal two different perspectives: justification of a court decision and its correlation with facts. The author analyzes fact-finding and norm-application in judicial process, pointing out procedural and cognitive factors which bring indeterminacy in the administration of justice. To circumvent this indeterminacy, a number of methodological solutions were proposed in legal philosophy. Among these solutions, the author addresses two main philosophical traditions in the law: positivism and non-positivism. Within the range of these conceptions, the author examines how the most prominent representatives of positivism and non-positivism, Hans Kelsen and Ronald Dworkin respectively, tackled the problem of truth in judicial interpretation. In the author's opinion, the normative component in judicial interpretation cannot be described in the legal language in the terms "false" and "true". Interpretation in the law deals with both normative and factual dimensions, being limited by the procedural frameworks imposed on judges by their legal system. Because of these frameworks, judges do not establish ultimate truths about facts – they work with statements about verisimilitude of factual statements conferring validity onto them, while trustworthiness of these statements is evaluated by judges against the backdrop of the coherence of narratives describing the facts and the evidence supporting these facts. Plausibility of this interpretation hinges on a coherent and consistent description of the normative system. A true interpretation is the one which reconstructs the meaning of the legal norm in the way that fits best the normative system and does not bring inconsistency or incoherence into it, while the normative system can be conceived of either as consisting only of legal norms and propositions (Kelsen) or also inclusive of principles and policies (Dworkin).