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EXTENDING INTERPRETATION AND ANALOGY IN LAW

INTRODUCTION

In the science of law there is often a difficulty in distinguishing concepts, which range is seemingly selfimposing. The title extending interpretation and analogy are undoubtly among those concepts. The goal of this article is to compare them by showing the similarities and differences between them, which was, as of yet, not covered in the literature of the subject. It is understandable, that it is not possible to exhaust the subject in such narrow publication, so only the most important aspects of it will be shown. It would therefore be required, in order for realization of the topic, to place extending interpretation and analogy in the theory of law, as it has significant importance for understanding of the subject. The next step should be to lean on each of the subjects seperatly and to distinguish their characteristic features. It would rise no question, that the last step to realize the subject will be a attempt to compare the title concepts.

1. POSSITION OF EXTENDING INTERPRETATION AND ANALOGY IN INTERPRETATION OF THE LAW

According to dictionary definition, interpretation is explanation, comment on something, rendition [Sobol 1995, 1059]. According to J. Krukowski, the inter-

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pretation of law is a cognitive process aimed at establish the meaning of the law [Krukowski 2004, 137]. So the central concept of interpretation is the concept of meaning. Establishing the meaning consists of determining which entities, situations or objects a given norm refers to [Morawski 2014, 15].

The distinction between declaratory and constitutive theory is significant for the topic discussed in this article. The first assumes, that the intention of the interpreter is to recreate the meaning of the law. In turn constitutive theory allows, in certain circumstances, the creative nature of interpretation. The blurring of the border between imitative and creative concept is a non-insignificant problem, often it is even impossible to find it. There are two views in the literature on the distinction between these theories. The first concept states, that according to creative interpretation is when the interpreter departs from the literal meaning of the law, the second takes for creative interpretation such, which contains the element of normative novelty, thus changing the scope of the current rule. In law theory and practice the declarative conception is more common, however the constitutive interpretation has more and more followers who point out, that in view of the blurriness, impreciseness and ambiguity of the legal language and its dependence on changing social, political or economic contexts, creative interpretation of legal texts can be inevitable [Morawski 2014, 18-19].

The interpretation can be separated by the range into narrower interpretation (*sensu stricto*) and broader interpretation (*sensu largo*). In a narrower sense, the interpretation includes activities related to the understanding of legal texts [Zieliński 2002, 46]. Interpretation in a narrower sense includes not only a linguistic, systemic and functional interpretation, but also the preference directive, interpretative presumptions, issues regarding the binding power of interpretation, and rules for the use of literal, narrowing and extending interpretation [Morawski 2014, 23].

Due to the goal of this article, the focus should be put on the last of the above distinctions. Thus, literal interpretation is the basic principle of the interpretation of the law. It takes place when, from the different meanings obtained by different directives, the meaning determined by the linguistic interpretation is chosen [Płeszka 2010, 17]. The greatest importance of literal interpretation is noted in those branches of law in which regulations impose obligations, burdens and penalties on the addressees, which are tax and criminal law [Morawski 2014, 196-97]. Another type of interpretation in this category is the narrowing interpretation, also referred to as a restrictive, which consists in the fact that in establishing the meaning of the law the interpreter assumes a meaning narrower than what he would assume in a literal interpretation [Krukowski 2004, 151]. The last kind of

interpretation distinguished by their scope and, as L. Morawski observes, used more often than the narrowing interpretation [Morawski 2014, 207], is the extending interpretation, in which the interpreter, by comparing the scope of a legal provision obtained through various directives, selects the understanding resulting from non-linguistic directives, wider than linguistic interpretation [Płeszka 2010, 17].

As mentioned above, we divide the interpretation of the law into interpretation *sensu stricto* and *sensu largo.* A broader interpretation, which in addition to the activities connected with the understanding of the law, includes activities consisting in deriving from norms reproduced from the legal text of other norms. It allows a more holistic look at the regularities that govern the interpretation of the rules. Legal cultures assume the existence of not only the norms laid down explicitly in the legal texts, but also norms derived from the rules [Zieliński 2002, 46].

It is often found in the legal system, that the legislator did not regulate certain issues that should be regulated. In such case, we are talking about the appearance of a gap in the law (*lacuna iuris*). Then arises the problem of removing it. [Krukowski 2004, 128-29] J. Krukowski distinguishes two ways of eliminating gaps in the law. The first one, which is somewhat problematic, is the establishment of a new law that completely regulates the issue. It may, however, be too time-consuming due to the length of the legislative process. The authority exercising the law can not afford to delay in such cases [Krukowski 2004, 129]. The second way to remove a gap is to use analogy, also called analogy inference (*per analogy*). There are two types of such inference: the analogy of the act (*analogia legis*) and the analogy of law (*analogia iuris*). The first consists in referring to a norm issued in a similar situation and finding that there is the same *ratio legis* to the application of the act. The paremia *ubi eadem ratio, ibi idem lex* (where is the same reason, the same law should apply) is justifiable in this case. The basis for *legis* analogy is a specific provision or legal text [Morawski 2014, 230]. *Analogia iuris* consists in the creation of a norm for the purpose of a given solution, at the same time taking into account the principles of the legal system and its given branch as well as the axiological premises [Krukowski 2004, 128-29]. It is a time consuming process and requires a lot of caution. The boundary between these types of analogies is very blurred and differently defined by the representatives of the doctrine [Nowacki 1966, 126].

2. EXTENDING INTERPRETATION

When analyzing the concept of extending interpretation one should refer to the definitions proposed by various experts in the theory of law. J. Krukowski calls extending such interpretation, where "by setting the final result of the interpretation using interpretative directives, the interpreter goes beyond the scope established in the light of the linguistic interpretation" [Krukowski 2004, 151]. Similarly, L. Morawski states that any interpretation that yields a broader result than the language interpretation is an extending interpretation [Morawski 2004, 168]. A. Korybski and A. Pieniążek draw attention to the corrective character of the extending interpretation with respect to the effects achieved by the language directives [Korybski and Pieniążek 1998, 95]. J. Jabłońska–Bońca also refers to corrective function. The author describes the extending interpretation as a process of assigning broader scope of normalization to a norm or application, with use of the rules of extra-linguistic (systemic or functional), than the scope can be grasped directly and without any doubt from the literal wording of the norm, after the use of linguistic rules of interpretation [Jabłońska–Bońca 1996, 171].

Civil rights and freedoms are the field of laws where the possibility of use of extending interpretation is the most transparent. The fundamental principle of the democratic state of law is the broad interpretation of all the rights and freedoms of its citizens, and their limitations can only be made by way of an exception and should be interpreted strictly[1].

Another example of the possibility of applying an extending interpretation is the branch of law, which, as a rule, should be interpreted literally, is criminal law. The doctrine and jurisprudence is of the opinion that the penal provisions should be interpreted strictly because of the principles of *nullum crimen sine lege* and *nulla poena sine lege*. However, if a broader interpretation would be beneficial to the accused, it is not excluded, and, in case of doubt, even advisable (*in dubio pro reo*). The Court of Appeal in Lublin states that since the institution of resumption of proceedings in criminal proceedings relates only to the person convicted, the term "convicted" should be interpreted extendingly. Such interpretation will allow for the inclusion into convicts of, for example, those in which proceedings have been discontinued conditionally, and in which the accused has been charged with committing an offense [Morawski 2002, 263; 265-66].

As in criminal law, the extending interpretation is, in principle, prohibited by the tax law. According to this statement, the provisions of tax law must be inter-

[1] Wyrok Trybunału Konstytucyjnego z dnia 10 listopada 1998 r., sygn. akt K 39/97, OTK Nr 6/1998, poz. 99.

preted literally. However, according to the principle of *in dubio pro tributario*, the tax authorities should interpret the doubts in favor of the taxpayer. As an example, L. Morawski gives the judgment of The Supreme Administrative Court: "The systematic and functional interpretation used (included, however, in a grammatical interpretation) allows the fence construction expenditure to be recognized under certain conditions as deductible as part of the building concession consumed during the construction of a residential building". According to the author, this illustrates the openness of interpretation directives to exceptions to commonly accepted rules [Morawski 2002, 268].

The possibility of applying the extending interpretation, as indicated above, is commonly found in the Polish legal order, however, the catalog of restrictions applying to the extending interpretation is much more extensive in this system of law. These exclusions are usually based on the statement that "a given kind of norms are not to be interpreted extendingly" or that such "interpretation of a provision is not admissible" [Wojciechowski 2016, 281].

The first area of the legal order, in which the use of a extending interpretation is prohibited, are the competence laws. Confirmation of this statement is part of the ruling of the Constitutional Tribunal: "When applying Art. 87 sec. 1 and Art. 92 sec. 1 of the Constitution during the interpretation, referring to the sources of law, rules adopted in the Polish system of law such as: prohibition of presumption of legislative powers, prohibition of extendinginterpretation of legislative powers, and the principle of proclaiming that the appointment of certaint tasks to a specific authority does not mean giving it the power to legislate for the fulfillment of these tasks; and having regard to Art. 7th of The Constitution, it is to be assumed that the Constitution closes the system of sources of common law objectively – by listing exhaustively the forms of universally binding acts, and subjectively – by unambiguous indication of the authorities authorized to issue such normative acts"[2].

A well-known and respected principle of interpretation of the law is the ban on the extending interpretation of the exeptions (*exceptiones non sunt extendendae*). This thesis is supported by the ruling of the Supreme Court, which, by referring to the regulation of civil proceedings in the field of issuing a preliminary judgment, ruled that this institution, against the background of the principles of continuity and procedural integrity, is an exception because it divides the process into two separate substantive stages. Such nature of the provision requires its strict inter-

[2] Wyrok Trybunału Konstytucyjnego z dnia 28 czerwca 2000 r., sygn. akt K 25/99, OTK Nr 5/2000, poz. 141.

pretation, which should also take into account the purpose of the described regulation, which is to be used in the process economy [Morawski 2002, 254-55].

The special form of the *exceptiones non sunt excendendae* rule are reductions, relief and other tax benefits. The Supreme Administrative Court, in numerous rulings, stresses that such legislation is an exception to the principle of fiscal justice and therefore cannot be interpreted extendingly [Morawski 2014, 203]. However, it is worth noting that "from the point of view of the claimant", the effect of the prohibition of the extending interpretation can be described as "unfavorable refusal of discretionary decision as a result of prohibition of the extending interpretation" [Wojciechowski 2016, 287].

Another limitation of the application of the extending interpretation is in the field of special provisions, which are usually exempt from generally accepted principles. Such regulations are most often introduced for a specially segregated group of entities or states of things. However, a special rule does not need to be a derogation from the general rule, and it may be what makes it different from categories such as exceptions [Morawski 2002, 257].

Often the legislator given instructions on the interpretation in the law itself. The use of words such as "only", "solely" or "purely" implies the prohibition of an extending interpretation and strict observance of the rules of literal interpretation. Similarly, it is the case when defining in a closed manner the scope of regulation or enumerating the factual situations to which it refers to [Morawski 2002, 260-61].

One of the most important areas of the legal order, in which there is an injunction for strict interpretation of all the provisions, and even more, the prohibition of the use of an extending interpretation, is criminal law. It is not acceptable to broaden the interpretation to the detriment of the perpetrator and to increase the criminal liability by interpretation. These are related to the principles of *nullum crimen sine lege* (no crime without law), *nulla poena sine lege* (no punishment without law) and *in dubio pro reo* (in case of doubt ruling should be in favor of the accused) [Morawski 2002, 263].

Another branch of law, in which the extending interpretation is forbidden, is the tax law. The form of interpretation of the legislation imposing tax obligations is largely determined by two principles: *in dubio pro tributario* (in case of doubt ruling should be in favor of the taxpayer) and a ban on interpretation *in dubio pro fisco* (in case of doubt ruling should not be in favor of the tax authorities)[3].

[3] Wyrok Sądu Najwyższego z dnia 24 kwietnia 1997 r., sygn. akt III RN 14/97, OSNAP 1997/20/394.

3. ANALOGY IN LAW

Etymology of the word "analogy" is to be found in the Greek term "analogy", derived from the combination of the prefix "ana" with the noun "logos". One of the concepts assumes that the noun can be understood as "reason", and this in turn indicates that the concept of analogy has long been used to determine the basis of reasoning [Biela 1989, 10]. To understand the notion of analogy, various concepts of it must be investigated. According to the distinction made by M. Walasik, one can distinguish several theories that explain inference *per analogiam* in different ways.

The first of the concepts, introduced by E. Waśkowski, presents analogy as a method of logical development of legal norms (*ratiocinatio*), by extracting new norms from the norms in force. The need for such kind of inference occurs when there is a gap in the law, which is understood as an absence of norms in the applicable legislation, which may be applied to the resolution of a given issue, as a contradiction of two norms or as an ambiguity of the norm [Walasik 2013, 198-99].

Another concept, proclaimed by S. Rosmarin, shows analogy as a method for determining the will of the legislator. There are no indications in its assumptions that would indicate when it is possible to use inference by analogy or by opposition.

According to this author, the only justification for the use of analogy is the will of the legislator [Rosmarin 1939, 115; 125-27].

M. Walasik, referring to J. Wróblewski's concepts, distinguishes analogy in his division as a method of sliding contradiction between negative and positive conclusions. The completeness of the system of law is presupposed here, that is situations where, by means of the norms contained in it, every legal issue can be resolved, determining its consequences. However, the legislator does not regulate certain relations, because not all require regulating. This kind of relationship lies outside the realm of applicable law, and this makes it possible to take a negative conclusion in their case (assumtion that the law does not tie any legal effects with them). The described concept also includes the indirect situations that occur when certain institutions are only partially regulated. This type of situation has been called gaps, which consist in the contradiction between positive and negative conclusion – due to the regulation, the institution deserves a positive conclusion, but there are no suitable norms, assuming the completeness of the system, a negative decision should be taken. In such case, analogy is the only proper way (as understood by the author of the concept *analogia legis*) [Walasik 2013, 202-204].

Another concept of analogy was presented by J. Nowacki, who distinguished two understandings of this notion: *analogia extra legem* and *analogia intra legem.* The first leads to results that go beyond the scope regulated by law [Nowacki 1966, 13; 49]. *Analogia intra legem* on the other hand, it leads to results that fall within the applicable legal order. In both cases, the mechanism of inference is the same – the conclusion is based on similarity to the case explicitly regulated by law [Walasik 2013, 221]. This kind of analogy can be seen in two aspects. The first may lead to the establishment of a similarity or a lack thereof between the case covered by the given norm and the case in which it is doubtful whether it still is or is not within its scope. The second aspect of the understanding of *intra-legem* analogy is that the meaning of the norms is determined by comparison with similar case covered by the law. This process leads to the reproduction of a norm which range is the same or even narrower then the range after the linguistic interpretation [Nowacki 1966, 51-56].

The division into the *legis* and *iuris* analogies has been highlighted above. J. Nowacki, in order to decide what is the starting point for the analogy of *legis*, distinguishes four groups of views. The first group includes those that claim a single rule of positive law as the basis of inference. In the second group, the author takes into account the view that the *legis* analogy has its starting point in one or more laws enacted together. Another group of views, where "the Latin distinction between *lex* and *ius* is honored, by *legis* analogy understands settleing cases based on the act". To the fourth group of views, J. Nowacki includes the views of authors who construct the notion of analogy from the act in such a way that it is difficult to define at all in what it is different from the *iuris* analogy [Nowacki 1966, 122-29].

The Supreme Court determines the concept of *legis* analogy as one of the technical means of *sensu largo* interpretation, which occurs when the subject matter is to be a fact not provided for in a legal act but containing elements similar to another factual state governed by the law. In such cases, the act may be applied to similar factual state[4].

The admissibility of applying the analogy of the act does not pose greater problems for law enforcement authorities. However, the second type of reasoning in question – the *iuris* analogy – is often treated skeptically because it gives the authority which applies it a broad spectrum of freedom, which can lead to serious abuse. Inference from law has its basis in principles of law, and sometimes even in the values upon which the legal order is based on [Morawski 2014, 240].

[4] Uchwała Sądu Najwyższego z dnia 22 września 1995 r., sygn. akt III CZP 119/95, OSNC 1995/12/180.

The aforementioned division into four groups of views, proposed by J. Nowacki, also refers to analogy with the law. The author includes the views which base the *iuris* analogy on only a few provisions, collected together in the first group. In the second group of views regarding the analogy with the law one can speak in the case of inference from the category of norms, branches of law and the rule of law. Another group, referring to the division into *lex* and *ius*, treats as analogy *iuris* the case based on the general principles of law that have been established for a similar institution. The fourth group includes the views of the authors, who, as mentioned above, do not perceive the boundary between the *legis* analogy and the *iuris* analogy [Nowacki 1966, 129].

The first branch of law that allows analogy in certain cases is criminal law. This is a unique situation due to the fact that criminal law rules, in principle, are literal and even strict. "On the other hand, the possibility to use analogy in criminal law is determined in different ways insofar as it does not lead to the deterioration of the perpetrator's situation. The view was expressed that the analogy is permissible in this respect as in any other area of law, which means that it should not be used exclusively for exceptional laws. However, the view prevails that analogy may be used in criminal law only in the determination of circumstances which exclude or mitigate the responsibility or punishment of the perpetrator, provided that this does not take place at the expense of the interests of other persons and, above all, the victim" [Walasik 2013, 238].

In tax law, in principle, inference of similarity should not apply. However, the analogy in favor of the taxpayer is permissible, as the Supreme Administrative Court argues extensively[5].

Analogy, as has already been said several times, serves to fill the gaps in the law. The above similarity inference task satisfies the filling of technical gaps, although the case law does not exclude the possibility of complementing, by analogy, the axiological gap as well [Morawski 2002, 316].

The above-mentioned branches of law, in which analogy may be used, constitute a minority compared to situations where it is prohibited to use it.

Criminal law, as indicated above, should be interpreted literally. The ban on the application of similarity inference in this branch of law has two sides. The first concept assumes the inadmissibility of the analogy to the detriment of the accused, but does not forbid the analogy in favor of the perpetrator. The second view refers to the principle of closeness of penal sanctions and recognizes that the

[5] Wyrok Naczelnego Sądu Administracyjnego z dnia 24 października 2006 r., sygn. akt I FSK 93/06, OSP 2007, Nr 12, poz. 137.

rights and obligations of entities in criminal proceedings must result directly from laws and that the analogy is unacceptable here [Morawski 2014, 233].

On the basis of tax law, two concepts of similarity have also distinguished themselves. The first of them treats the analogy to the disadvantage of the taxpayer as unacceptable, but allows it to be used hisits favor. Especially the *per analogiam* inference cannot create "new taxable realities, and the legislature's silence should be regarded as a tax-free area, not a legal vacuum, even if the legislative error could be presumed". The second concept refers to the principle of the closure of tax regulations and assumes that all tax laws and obligations should come directly from the act and therefore analogy is not admissible here. The first view seems to be more common in both the doctrine and the jurisprudence of the courts [Morawski 2014, 234].

The ban on the use of analogy also applies to competence laws. There should be no presumption of the powers of the administrative authorities, which must arise directly from the law[6].

4. COMPARATIVE ANALYSIS OF EXTENDING INTERPRETATION AND ANALOGY IN LAW

As the above considerations show, the premises and the rules of application of interpretation *per analogiam* and extending interpretation are largely overlapping.

A field in which the extending interpretation and analogy are permissible are civil rights and freedoms, but they are not admissible in respect of the limitations of these rights and freedoms or the imposition of new obligations on citizens, which may be imposed only by law.

As stated above, the rules governing the competence laws should be interpreted strictly and the use of analogy is prohibited. This is aimed at limiting the risk associated with individual bodies allocating too much authority to themselves.

The ban on extending interpretation and inference*per analogiam* also applies to exceptions, as the opposite conduct could lead to serious misuses and distortion of the substance of certain rules.

Another common feature of the discussed concepts is the prohibition of extending interpretation and the analogy with regard to regulations whose editorial indicates that they are to be received strictly. This applies to laws that contain terms such as "exclusively", "only" or "solely".

[6] Uchwała Sądu Najwyższego z dnia 22 kwietnia 1997 r., sygn. akt III ZP 1/97, OSNAP 1997/23/453.

A very important branch of the law, where the rules of application of the extending interpretation and analogy are identical, is criminal law. L. Morawski writes about the prohibition of using similarity inference and extending interpretation to criminal law, if this is would increase the liability of the accused (due to the *nullum crimen, nulla poena sine lege* principle) [Morawski 2002, 243; 292]. Analogy and extended interpretation are acceptable only in case of doubt about the defendants guilt (*in dubio pro reo*).

The interpretation of tax law is guided by very similar rules to those of criminal law. The use of an extending interpretation is prohibited in tax regulations and *per analogiam* inference, that could lead to an increase in the tax range (*nullum tributum sine lege*). However, in case of doubt, the analogy and the extending interpretation are allowed in favor of the taxpayer (*in dubio pro tributario*) [Morawski 2002, 243; 292].

J. Nowacki divides the views on the relation of the analogy and the extending interpretation to several groups. The views can be counted to one of such groups, whose followers do not notice any difference between the terms described and even claim them to be identical. In the case of such understanding, "every case of determining the legal effects by way of analogy […] may be called an extending interpretation, and any case of «extending» the scope of a given provision is called analogy". The central notion of such reasoning is the result which, in the case of inference *per analogiam* and extending interpretation, goes beyond the statutory scope [Nowacki 1966, 94-96]. Thus, according to the author, attempting to delimit the boundaries of both concepts is unsuccessful because they do not show any clear separation criterion [Nowacki 1966, 102].

The relationships described above clearly show the relationship between the analogy and the extending interpretation. In these branches of law where similarity inference can be applied, a broader understanding of the laws is also permitted and vice versa – in norms where extending interpretation is prohibited, analogy should also not be used. The situation is much more complicated at the time of trying to distinguish the concepts in question. There is no agreement in science of law about the distinctive features of the analogy and the extending interpretation, so any arrangement in this subject is nothing but the reference to different concepts.

M. Walasik, referring to Z. Ziembiński's concept, refers to the clear boundary between analogy and the extending interpretation. "In the case of an extending interpretation, the linguistic meaning of the law is quite clear, but it is not considered to be valid because of convincing axiological justification, as a result, it is assumed that these provisions formulate a norm with a wider scope of application

or regulation than that obtained after interpretation by linguistic rules. In this sense, the extending interpretation corrects the clear linguistic meaning of the rules, and its result goes beyond this meaning, so without reservation it can be interpreted as permissible in relation to obsolete laws and or affected by any editorial error. On the other hand, the *analogia legis* refers to cases where the provision is linguistically vague and, by way of interpretation, the meaning of that provision is chosen, which includes situations not only explicitly mentioned in it, but also similar ones, because of the supposed axiological justification of the norm" [Walasik 2013, 208-209].

J. Nowacki, referring to doctrinal views, writes that, when looking at the results obtained by the use of extending interpretation and by analogy, it can be said that the latter can be conceived as continuation of the first, except that the results obtained by inference from similarities differ more from a commonly accepted measure than in the case of extending interpretation [Nowacki 1966, 98].

By adopting a methodological criteria, the boundary between the extending interpretation and the analogy seems to be quite clear. The first is one is counted among interpretations *sensu stricto*, and it is treated as a thought operation, which gives the possibility of understanding a given message by some sort of enrichment of its meaning. On the other hand, analogy is one of inferential rules that allow us to reconstruct a legal norm for an issue that is not regulated by law, based on the awareness of binding legal norms included directly in the legal text. However, it does not matter from the perspective of legal practice, whether the legal norm was reconstructed as a result of inference *per analogiam* or in the process of extending interpretation [Walasik 2013, 442-43].

L. Morawski reminds that the fundamental difference between the extending interpretation and inference *per analogiam* is that the former should remain within the linguistic meaning of the provision, while the analogy serves to introduce new norms in situations where the legislation has gaps [Morawski 2014, 229].

CONCLUSION

The purpose of this article was to consider the relationship between the extending interpretation and the analogy. For this goal, it was necessary to describe this general concept of interpretation of law in general. Next, the essence of the title issues was identified from the point of view of legal theory as well as case law practice. Significant for the purpose of the article was The final comparison of the analogy and the interpretation was significant for the purpose of the article.

Through the aforementioned analysis of both analyzed concepts, and then their further comparison, their common features and differences were both distinguished. The first of these is undoubtedly that in those branches of law where it is permissible to use an extending interpretation, the use of analogy is also permitted by principle. This principle works the other way, but with some exceptions. Inference from similarity is to complement the gaps in the law, which forces it to often exceeds the linguistic sense of the analysed legislation. The extending interpretation is however, in the opinion of most authors, to remain within the scope of a possible linguistic meaning, which shows the main difference between these concepts. In border situations, there may be doubts as to whether we are dealing with analogy or with an extending interpretation.

The views of authors as to whether to treat the described terms as identical or separate them decisively, are present in the science of law in a comparable scope. Some doctrine representatives argue that there is no clear criteria on which to separate the two concepts clearly. The remaining ones argue that at the methodological level the distinguishing features can be separated, and the final indication of this border are the circumstances in which we apply the analogy and the extending interpretation.

Personally, I do not share the views of any of mentioned groups of authors. What is more, in my opinion, trying hard to identify the discussed concepts with one another, or to separate them, are pointless. Both concepts are part of the interpretation of the law, and this is undoubtedly a common feature. As a rule, they are to be used in the same branches of law. However, it should be borne in mind that the extending interpretation is the *sensu stricto*, interpretation, and thus remains within the possible linguistic meanings of the provision. Analogy, as an element of the *sensu largo* interpretation, can go beyond such lexical meaning, which makes its use unacceptable when the interpreter can obtain the result by the *sensu stricto* interpretation. So before applying similarity inference, one should consider whether the desired norm cannot be obtained with the help of interpretative actions in the strict sense. Such action is dictated by the principle of priority of the *sensu stricto* interpretation. Therefore, in order to fully understand the relation of these concepts, both the similarities and the differences between them must be seen, as only this way we can get a full picture of this relationship, without having to occupy extreme positions.

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EXTENDING INTERPRETATION AND ANALOGY IN LAW

Summary

This article focuses on comparing exponential interpretations and analogy in law. For this purpose, the author places both title concepts in the theory of law in general. Then both the exponent interpretation and the analogy are analyzed separately to distinguish their particular features. The final stage is a comprehensive comparison of both concepts. Such analysis leads to the separation of two extreme positions. According to some doctrine, the title terms must be strictly separated. In turn, other authors claim that the boundary between analogy and the expansive interpretation is very unstable. The author does not agree with these extreme positions, presenting his own point of view.

Key words: concept; linguistic; criminal; tax

WYKŁADNIA ROZSZERZAJĄCA I ANALOGIA W PRAWIE

Streszczenie

W artykule omówiona została wykładnia rozszerzająca i analogia w prawie. W tym celu umiejscowiono tytułowe pojęcia w teorii prawa. Następnie, zarówno wykładnia rozszerzająca, jak i analogia zostały opisane osobno, wyodrębniono także ich szczególne cechy. Ostatnim etapem było porównanie wykładni rozszerzającej i analogii. Analiza obu pojęć ukazała dwa skrajne stanowiska panujące w doktrynie, bowiem część autorów opowiada się za bezwzględnym rozróżnianiem ich od siebie, a pozostali z kolei zwracają uwagę na nieostrość granic między analogią i wykładnią rozszerzającą. Autor, nie zgadzając się z tak skrajnymi opiniami, przedstawia swój pogląd.

Słowa kluczowe: pojęcia; literalny; karny; podatek