ELEMENTS OF LOGICAL ANALYSIS REFERRING TO LEGAL TERMS, PHRASES AND NOTIONS IN CURRENT ROMANIAN

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Abstract

The definition of a term is the operation that focuses on the intension of that term and, indirectly, by means of implicature, on its extension. Definitions can also be those means of explanation or settlement of the meaning of terms, by means of which their extension is indicated. The role of definitions meant to specify the meaning of certain terms or phrases is to highlight the given examples.

Key words: *notion, term, logic, legal, definition*

La définition donnée à un terme est l'opération qui souligne l'intention vouée à l'analyse desdits termes et, indirectement, par voie de conséquence logique, l'extension de la sphère sémantique dudit terme. Les modalités d'explication ou de précision du sens des termes par où la dimension respective de leurs sphère sémantiques est indiquée pourraient aussi être nommées définitions. Les exemples illustratifs sont aussi appuyés par des définitions, dont le rôle est d'éclaircir le sens de certains termes ou syntagmes.

Mots-clés: *notion, terme, logique, juridique, définition*

Logic, although different as a subject of study from all the other subjects of linguistics pays, however, great attention to the general aspects of language, at both theoretical and applied levels, the latter involving the correspondences between terms and also the discrepancies between the logical and the linguistic form of the utterances. The rigour and accuracy of a reasoning (displayed, for instance, in a defense speech or in a speech of the prosecution) depend, to a great extent, on the clarity and rigour of the ideas expressed, on the systematicity and extremely precise "character" of the legal terms.

Explicit, clear criteria, which belong to logic, are useful landmarks and supporting points in the logical correctness of legal reasoning. From a logical point of view, the classification of legal terms into *absolute* and *relative* is of interest. *Relative* terms designate an object by means of its relation to another object, which is taken to be understood (for instance, *complice/*'*accomplice*' is a relative term, because it presupposes "being an

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accomplice with someone"). Therefore, the terms/phrases (except for proper names, which are non-descriptive) denote notions. The notion represents what is common to a term in a specific language and to the terms that are translations of that term in other languages. Phrases such as *circumstanță atenuantă/'mitigating circumstance*' or *flagrant delict/'flagrante delicto*' express legal concepts which have equivalents in the legal terminology of other languages as well.

The *classification* of the legal terms offered above is at the same time a classification of notions because in papers on logics, more often than not, the term *notion* is employed (instead of *term*). Furthermore, there are situations when a term or an expression has two or more meanings. In that case, the respective terms or phrases express two or more notions, which, sometimes, belong to different logical categories. For instance, the term *hotărâre penală/'sentence*' has two legal meanings: 1. "procedural provision act whereby the court resolves the criminal cause or some of its adjacent aspects"; 2. "act which takes notice of the solution adopted by the Court in dealing with the criminal case". As opposed to this phrase, the term *bună-credință/'good faith*' designates both a legal notion (1. fundamental principle, laid down by law, which governs the way of exercising rights and fulfilling duties; 2. mistaken belief of a person regarding the existence of a certain right or the legitimacy of a situation, although they do not hold true), and an abstract notion in common language: "fairness, loyalty, honour". The prepositional phrase *de bună-credință/'of good faith*' has the meaning of "fair, loyal, frank, honest".

As far as legal terms are concerned, one can ask several questions: a) what is the meaning of the term/what idea does it convey? B) what is it applied to? The answer to the first question refers to the explanation of the *intension* (it represents the whole of the features attributed to a notion), and in the case of the second question, it indicates the *extension* (it designates the sphere of the notion – the class of elements the notion can be applied to)[1]. The *intension* and *extension* represent the two sides of the same notion. The use of certain terms or phrases in legal texts, with the intension and extension correctly formulated and specified, imposes legal security, therefore the clear unitary application of the legal texts.

The formulations of legal norms usually employ terms and phrases taken over from common language. When one term has two or more

[1] Florin George Popovici, *Raportul dintre intensiunea* (*conținut*) *și extensiunea* (*sferă*) *unui termen*

http://floringeorgepopovici.wordpress.com/2011/10/03/raportul-dintre-intensiunea-continut-si-extensiunea-sfera-unui-termen/

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meanings, the legislator will stipulate, in a definition, which is the one implied by the legal text. Therefore, by means of formulating a definition, one has in mind the disambiguation of a text. Furthermore, by defining the terms and stipulating their meaning, one aims at avoiding any vague interpretation. Many terms from common language, used in the legal domain, are vague, that is they have an *intension* that does not offer univocal criteria in order to decide, in each case, whether it is part of the *extension* of the term or not. In scientific language, as well as in legal language, certain requirements are at work. An illustrating example is the one in which the accent falls on the unitary understanding of the provisions of a law, as well as on removing the arbitrariness and non-uniformity in applying them. This is accomplished either by using a term from common language, with an altered meaning[2], so that it eliminates or narrows the "margin" of imprecision, or by using rigorously defined terms instead of the vague ones.

Therefore, irrespective of the aim for which the definitions of certain legal terms are given and considering the fact that they have a lexical or stipulating character, the role of definitions is that of specifying the meaning of those terms. Many legal decisions contain specifying definitions in which certain terms are clarified so that they cover or exclude the respective case. The jurists usually present arguments meant to justify their decisions (referring to certain cases), and this practice of theirs shows that they do not regard their specifying definitions as mere stipulations; they will be guided by the presupposed intentions of the lawmakers who had set up a particular law. In establishing the manner in which a definition transgresses the common use, one can speak of its ability or inability/impossibility in that respect and, in legal contexts, about its correctness or lack of correctness.

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[2] Cf. Dănişor, 2012.

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