

JAROSŁAW MIKOŁAJEWICZ

On the maxim of *clara non sunt interpretanda*

Summary

The original concept of legal interpretation developed in Poland by Professor Maciej Zieliński, also known as the derivative concept of interpretation, has inevitably been juxtaposed against the previously accepted concept of legal interpretation (the most prominent representative of which was J. Wróblewski), according to which the point of legal interpretation is to clarify a legal text (hence the name given to this concept: a clarification concept). M. Zieliński's views can be encapsulated in the maxim of *omnia sunt interpretanda*, in opposition to the maxim of *clara non sunt interpretanda* which is discussed in this study.

While M. Zieliński's view (the derivative concept) is in a certain sense stable in that it continually underscores the importance of legal interpretation for the purposes of the reconstruction of legal rules, the views of the adherents of the maxim *clara non sunt interpretanda* (who for the purposes of this discussion should not be identified with the adherents of J. Wróblewski's position falling under the clarification concept) continue to evolve. An inclination to attribute a meaning to this very maxim remains a permanent element of this evolution. Supporters of the derivative concept are also party to these discussions. While the original content of this maxim could, according to O. Bogucki and M. Zieliński, be reduced to a thesis of its anti-initiation nature, following the interpretation by Z. Ziemiński (but still using the concise concept of the two scholars), the maxim merits a different interpretation as an anti-continuation principle, which otherwise brings this specifically Polish maxim closer to the universal principle in our cultural sphere of *interpretatio cessat in claris*. It is also noteworthy that while the former interpretation appears as methodologically unfounded, the adequacy of the latter may be recognized only after its reference to the adopted criterion of the clarity of the result of interpretation. These obvious weaknesses of both versions of the principle of *clara...* prompt those who support maintaining this expression in the legal language to give it a third, this time pragmatic, version of its content. This third version would amount to bringing an interpretation discourse to an end, having first provided an authoritative result of interpretation.

Keywords: interpretation of law – *clara non sunt interpretanda* – *omnia sunt interpretanda* – Maciej Zieliński's derivative concept of legal interpretation – Jerzy Wróblewski's clarification concept of legal interpretation