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L. VIOLA, Universal character of interpretative criteria[1]

(*translated by J. Geric*)

In fact, the rules provided for in Article 12 are universal, being an expression of the natural need for legal certainty and, therefore, for the survival of social peace.
In essence, Article 12 highlights the fact that to understand the meaning of a text of law we must start from what is written (IL), together with the reason for which it was written (IR), i.e. the "why" of the law. It starts with the text because it is common to all and cannot be contested, as opposed to what is implicit, which is more variable and more questionable.

[1] Taken from VIOLA, *Interpretation of the law through mathematical models. Trial, a.d.r., predictive justice*, DirittoAvanzato, Milan, 2018.

Only if what is written, which is the clear starting point, does not produce a sufficiently certain meaning, do we then look for a similar situation in the legal system (AL) that can help us solve a practical case. If we do not find a situation similar to the proposed case anywhere in the legal system, then we apply general principles (AI).
It is a method of investigation that starts with the specific (text) to progressively arrive at the general (principle). In other words, in relation to a dispute, we first read what is written in the law together with the reason for it, and only then do we go elsewhere to find answers (*analogia legis* and then *analogia iuris*).
The pronunciation of the universality of interpretative criteria, crystallized in Italy in Article 12 Preliminary Provisions, also has important repercussions on systems where it is not codified, or in so-called *common law* (partially different from ours, which is *civil law*[2]), since these criteria could be followed in view of the logical fact that even a ruling needs an interpretation[3].
Before verifying the scope of interpretative criteria in *common law*, it should be noted, however, that these systems do have rules, albeit in fewer cases than in *civil law* systems. First and foremost, interpretation is carried out according to the *literal rule*, and then, in the event of uncertainty and/or an absurd result, essentially through teleological criteria[4] (*mischief rule*, also called *Heydon's case*) and the *golden rule*[5]. In the event of a conflict between the law and preceding case law, the first would prevail[6].
In common law jurisdiction, it is generally recognised that judges should preferably motivate their decisions, although it is not universally agreed that this is a mandatory requirement[7]. A system of circularity comes into play, starting with a concrete dispute, which is then purged of references to the particular circumstances of the case, then reduced to a principle, from which derives the rule of abstract law, which is then applied to other concrete cases[8], thus producing a binding precedent. Moreover, there are no temporal limits to this, with precedents dating back to 1700, provided that the assessment of the identity of the case, entrusted to the Judge, justifies its application. Vice versa, a new precedent is then formulated in such systems. The jurisprudential

[2] Although not in effect so pronounced, at least for civil law, as a result of Article 118 of the provisions implementing the Italian Code of Civil Procedure.
[3] SANTANGELI, *L'interpretazione della sentenza civile*, Milan, 1996, 39.
[4] The acceptance "*of a dynamic interpretation of the law, aimed at revealing the intention of the lawmaker, led the House of Lords, in its important Pepper vs. Hart ruling (1992), to annul the centuries-old prohibition of referring to the parliamentary proceedings that accompany the adoption of a law*", thus AJANI, FRANCAVILLA, PASA, *Diritto comparato*, Turin, 2018, 133.
[5] It is presumed that laws are formulated to protect fundamental rights: "*life, liberty and property*".
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[6] We read in AJANI, FRANCAVILLA, PASA, *Diritto comparato*, Turin, 2018, 129, that "*it is true that it is possible to appeal against a judicial decision issued without taking into account a law that regulates the matter, and that if the appeal is upheld, the appealed decision will no longer represent a precedent. This situation configures a hierarchy of sources within English law, resulting in the law being superordinate to jurisprudence*".
[7] MARINARI, *La motivazione della sentenza ed il confronto con la giurisprudenza inglese, tra requisiti sostanziali e struttura formale*, in the *Corriere Giur*., 2006, 8, 1167.
[8] TOMASINO, *La magistratura*, 2008, 115.

precedent is the source of law and this means that it will be necessary, once the case has been identified, to proceed with the interpretation of the same[9].
How should a *case* be interpreted? It would be logical to say: first, by looking at what is written in the ruling and then at the reasoning behind it.
Logically, this answer is the same as the one suggested in Article 12 Preliminary Provisions. The truth is that the wording of Article 12 is a common sense expression of the general theory of law, which can thus cover any question of legal interpretation, beyond national borders. It is universal[10].
Let us look at it more closely. In a *common law*[11] system, like the one in force in the United Kingdom[12], there is the rule of the binding precedent[13] (vertically[14] and horizontally[15]). However, not all of the ruling is binding for the future, but only the part consisting of the so-called *ratio decidendi*[16], which is a combination of the *material facts*[17] and the principle of enucleated law. The rest of the ruling constitutes an *obiter dictum*, which is not binding for future decisions, but merely persuasive.
Thus, to identify the *ratio decidendi*, we can only start with what is written in the ruling, together with the *voluntas* of the judge. If a single ruling is unsatisfactory, in the sense that it is imprecise in meaning, we start looking for other similar situations, and then, as a last resort, extract general principles from other cases that are further removed from the actual object of the trial.
This means that we follow an interpretative path equivalent to that of Article 12 Preliminary Provisions, changing only the object of the investigation. In common law systems, it is mostly the rulings that are interpreted, while in civil law systems, it is the mainly the laws.
The universality of the interpretative criteria is also confirmed by the wording of the Convention on the Law of Treaties, adopted in Vienna on 23.5.1969, ratified in Italy by Law No. 112 of 12.2.1974[18], which reads: "*A treaty shall be*

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[9] TOMASINO, cit.
[10] TOZZI, in a speech during the *Interpretazione dei testi normative* conference, held in Rieti on 9.6.2018, organised by Scuola forense.
[11] It is present in the UK, USA, Canada, India, Ireland, albeit with different nuances (for example, in Canada the binding precedent does not operate horizontally).
[12] It should be pointed out that in contrast to "*the banal image of common law as a system of rules created by judges alone, English law has, over the centuries, emphasized the importance of authoritative sources. At first, interpreters formalized recourse to the precedent, while later, as of the nineteenth century, they also theorized extensive interpretation, thanks to the theoretical impulse given by Jeremy Bentham (1748-1832), who, inspired by French revolutionary ideals, dedicated his writings to the reform of English legislation on a rational basis";* see AJANI, FRANCAVILLA, PASA, cit., 129.
[13] There are also laws, but they do not refer to general cases. In the case of contrasts between law and previous case law, however, the first takes precedence (law> case law precedent).
[14] The Supreme Court binds the so-called lower courts: Court of Appeal, Divisional Court of the High Court, High Court, Crown Courts, County Courts, Magistrates' Courts).
[15] The only court that is not bound to its own precedents or to previous courts of equal rank is the Supreme Court.
[16] As regards *ratio decidendi*, we read in CROSS, HARRIS, *Precedent in English law, Gloucestershire, 1991, 43 "the probability that a court will decide a new case in the same way as would the court which decided one of the cases cited becomes less and less as the differences between the facts of the two cases increase".* STONE, *The ratio of the ratio decidendi, in Modern Law Review, 1959, 597.*
[17] PASSANANTE, *Il precedente impossibile. Contributo allo studio di diritto giurisprudenziale nel processo civile*, Turin, 2018, 249.
[18] Published in the Official Gazette no. 111 of 30.4.1974.

interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose". (Article 31). In interpretation, the objective method is preferred[19], which gives the text its ordinary meaning, in its context, and in the light of the object and purpose of the treaty. It is a literal interpretation ("*ordinary meaning to be given to the terms*") together with the *ratio* ("its purpose"), in which prevalence is given to the sense made clear by the text[20]:

- It is possible to resort to "*Supplementary means of interpretation ... to determine the meaning when the interpretation according to* Article *31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable" (*Article 32). Other interpretations are possible, only if the literal interpretation fails;

- "*Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of* Article*s 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted*" (Article 33). In essence, should all interpretative criteria fail, a general principle shall be used.

[19] In *Treccani Enc. Giur*. (treccani.it), under Treaties. *Enciclopedia Juridica* also states that *the objectivistic method of interpreting international treaties consists in attributing "the international treaty the meaning that is made clear by the text, which follows from the logical connection between the various parts of the text that harmonize with the object and purpose inferable from the same text. Under this method, preparatory work acquires a subsidiary function only to confirm an interpretation that can already be deduced, to a certain extent, from the text itself. The Vienna Convention of May 23, 1969, on the law of treaties, establishes, in Article 31, that a treaty must be interpreted in good faith according to the ordinary meaning to be attributed to the terms of the treaty in their context and in the light of the object and purpose of the treaty itself".*

[20] PALMARIA, *Diritto internazionale pubblico*, Pesaro and Urbino, 2004, 48.