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## Judicial Truth

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**Abstract:** All major world encyclopedias define the essence of a phenomenon as being the unification of traits and necessary internal relations, with a relative stability in connection with adjacent phenomena. In this study, we chose to investigate a concept that is the essence of the law, namely, the judicial truth. Starting from the social intent of the law, which is to regulate the social relations, we proposed as a priority objective of this study to highlight the idea that the science of law disregards any subjective human judgment and any values outside the values of true and false. So, in this paper, we analyzed both the concept of truth and the judicial truth. The legal phenomenon is not a specific thing, and its scientific truth is an argumentative construction of the idea of justice, depending on a legal doctrine or another.

**Keywords:** representation theory; legal consciousness; legal requirements

### 1. Introduction

The correspondence of knowledge and the object of knowledge represent a defining note of the concept of truth but not the only one (Phylosophy dictionary, 1978, pp. 16-17). This subject has been significantly approached by Hans G. Hershberger (H.G. Herzberger, Harper, & Freed, 1975, pp. 71-92). In this author's opinion, the dimension of correspondence that stands at the basis of truth has to be supplemented with auxiliary dimensions. The distinction between the assertive content of the sentence translating the idea of correspondence and the suppositional content of the sentence in which the auxiliary conditions of truth would be included, which the author reunites under the name of semantic competence. Among these auxiliary conditions one can list the accomplishment character, avoid self – reference, bivalence etc. In this context, the author builds a semantic endowed with four values: two for correspondence (True and False) and two for bivalence (the unsuccessful truth and unsuccessful false) and brings into discussion some logical systems able to represent properly the complex logical situation that occurs this way (Botezatu, 1981, p. 4).

### 2. The Notion of Truth

Along with the semantic dimensions of truth, also the importance of reference dimensions of truth introducing the idea of partial correspondence and partial truth, of truth levels are pointed out in the specialty literature, which can be noticed mainly in human sciences (Bunge, 1974, p. 8).

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Another dimension of truth appears in the function of representation. Any theory represents the structure of a group of phenomena. But a closer analysis convinces us that the function of representation is not finished in all cases. Not all the aspects of reality are represented in that theory, more precisely, in those theories. Some theories offer us more complete representations of facts, others are poorer in determinations. And the need of some representation levels appears. The different scientific theories interpreting the same domain of facts differentiate by their representative value. Thus, some theories include redundant constructs that cannot be represented and on the other hand the reality contains orphan entities that are not represented. As M. Bunge observed, rich theories are inclined to multiplying useless formulas and, on the other hand they tend towards the interpretation of all parameters, while superficial theories leave many parameters uninterpreted (Bunge, 1974, p. 22).

The researches upon inexact concepts and vague crowds have drawn the attention that logical objects suppose edging, external zones with inaccurate statute. It was noticed that natural languages currently use numerous specifications through which the affiliation to a class is approximate. It is said this way: a kind of, more or less, approximate, relative, so to say, sooner, strictly speaking, by excellence, often, in one way etc.

The investigations on vague crowds and inexact concepts underline the commandment of relativization of reference. The dimension of reference also involves reference degrees, which do not represent truth degrees but accuracy levels of reference.

Thus, for example, the appellation almost true has a narrower referential margin (higher accuracy level) than the partially true appellation.

The truth relation that establishes between constructs and facts also supposes the existence of an informational content. The truth and falsity refer to the information sent by factual or theoretical sentences. From the information point of view as a dimension of truth, neither the subject's contribution nor the information quantity is interesting. From this perspective, the information is associated to incertitude, namely the reduction of incertitude. Thus, in a given situation, as more alternatives are received, also the incertitude increases and, at the same time, improbability of the sentence. On the contrary, the information increases with the number of excluded possibilities.

Thus, four dimensions of truth appear: correspondence, representation, reference, information. The truth supposes a correspondence relation, a certain conduct between constructs and facts; includes also the representation relation, the structure of facts being somehow expressed in the constructs structure, it still conducts a reference relation, the construct indicating a certain objects; besides this, it involves an information relation, this meaning that the truth bearer is always a certain sentence content. These dimensions are susceptible of more or less and as a result achievement degrees were suggested, namely:

1. Truth levels of Correspondence;
2. Completeness levels of Representation;
3. Accuracy levels of Reference;
4. Certitude levels of Information.

In this perspective, open to amendments, „The truth is the evaluation of the correspondence degree among the multitude of constructs and multitude of objects, correspondence endowed with the representative capacity, with referential strength and information transport " (Botezatu, 1981, p. 47).

### **3. Judicial Truth**

Compared to the logical-semantic concept of truth, the attitude of the individual or of the society may differ. The admission, ignorance, or rejection of truth may occur depending on the needs, interests and aspirations of the individual, of social groups, of society, in a historical time. Uttering the truth can exceed the gnoseological plan and can receive value significance.

For Platon, the Good is a complex, supreme, syncretic value, the Truth stands near Beautiful, and partial content of Good (Platon, 1978, p. 296). In valorization process, appreciations regarding its quality and utility are conferred to the Truth.

Reflecting upon the preconceptions of philosophers, Fr. Nietzsche showed that the will for truth attracts us to all kind of dangerous adventures, that it is that famous credibility about which all philosophers up to now have spoken about with veneration, delaying longtime in front of the problem of origin of this will, until finally they poached completely in front of an even more profound problem. He also said: „I have thought upon the value of this will. Supposing that we want the truth: why not falsehood instead? Or uncertainty? Or even ignorance? – Is the problem of Truth value the one that was presented to us – or it was us those who stepped in front of it? ... To admit that falsehood is a condition of life, means of course opposing yourself dangerously to the usual feeling of values, and a philosophy allowing this courage is placed on it, beyond Good and Evil " (Nietzsche, 1992, pp. 7-10).

The truth as a value is involved in the moral world of the individual, in the rational foundation of action, in the contradictory continuity and discontinuity of social life, in making the individual and society more human.

Far from being a common place or a problem solved completely, the statute of Truth can be compared, as K. Popper wrote, with the one of a mountain peak, which is always or almost always encircled by clouds. The alpinist will never know if he reached the top: not even when on top, he will not be sure if he is on a secondary chine. If he reached the top, it will be much easier to know when he sees that in front of him there is a wall of rock. Knowing the truth is the ideal towards which the man aspires; but what we can know for sure is not that we touched the truth but only – as the alpinist in front of a rock wall – the fact that we have mistaken and that we are in the position of eliminating an error, an essential moment of the knowledge process. As it was appreciated in the specialty literature, the notion of Truth, although present in discussion from the beginning of philosophy is not shown yet as covered by numerous obscurities and perplexities.

Certain acquisitions, controversial problems, researched aspects of the theory of truth as well as its value reverberations can be found specifically in the juridical world. „Knowing right from juridical point of view does not mean only identifying the facts in their substantiality but particularly identifying the significance of facts and the characters of persons who participated to them, including the circumstances in which they were found and manifested and it can be stated that the subjects about truth in the law are the consequence of juridical culture of the person issuing those subjects, and the world that reveals itself to the wise subject is a world of juridical values " (Dobrinescu, 1992, p. 105).

The truth, desirable to be valued for juridical conscience, is the one characterized by a high evaluation level of correspondence, as precise as possible respectively certain – features validated by specific means, standards and juridical institutions being necessary at the same time, which should offer satisfactory solutions to the situations the social life, the complexity of truth raise, with innumerable aspects including also not knowing the truth or error.

Within the complex process of drafting juridical normativity, the correspondence between theoretical approaches contained for the foundation of the new regulatory document and the social aspects plays a significant role contributing to the viability of the new settlement or on the contrary, to a riot of facts against laws (Djuvara, 1930, pp. 118-159).

As all the rules belonging to social discipline, J. Dabin noted, the law is called to be accomplished effectively, its precepts being meant to guide the subjects' conduct. As a result, the law must be applicable, practicable, to correspond to the specific technical conditions that should assure its execution. In the process of building and shaping the rules of conceptual law, the legislator simplifies, schematizes and presumes. This technical deformation is an artifice that allows scientific truth to be put into practice (Craiovan, 1998, pp. 260-270).

A fundamental correlation to attract social facts on juridical field is analyzed under the sign of truth, that between facts and statements expressing the hypothesis of juridical norm, depending on which the legal constructions can be created from stage to stage or can be flawed decisively.

Being involved at the level of juridical norm, as for example in the case of that sanctioning the misleading of a person by presenting as true a false deed, or as false a true deed, or of testimony, at the level of juridical institutions as for example those gravitating around rectifying the legal error being intrinsic to the activities aiming at legal qualification, interpretation of legal standards, judgment of cause, valorization of truth in law is not and cannot be stereotype, without difficulties, infallible.

Investigating even briefly the relation of truth and juridical phenomenon, we notice its variety and specificity, the truth being valued in terms of some juridical exigencies regarding the semantic requirements, accuracy, validation, acceptance or rejection of error, instituting a specific truth – the legal truth, but there are also inedited situations in which the truth is ignored or even defied.

Exemplifying this with some legal norms, by rules-principles or juridical constructions, we mention: rejection of error of law, providing that not knowing or wrong knowledge of the penal law do not cast away the penal character of the deed; The rules-principles included in the perennial fund of juridical knowledge even since the roman law as: *Non enim ex optinionibus stngulorum sed ex comuni usu nomina exaudirii debere* (not from the sense given to words by isolated persons but according to their common use the words in a written document must be understood); *in dubio pro reo* (the doubt is interpreted in favor of the defendant or the indictee); *in dubio pro libertate civium* (the doubt is interpreted in favor of the citizens' freedom); *De his quae non sunt et quae non apparent idem estjudicium* (All which is not proved in the court is presumed as inexistent); *Non videntur qui errant consentire* (Those who are in error cannot be presumed to have given a true consent); *Error communis facis ius !* (Common error makes law!); *Res judicata pro veritate accipitur* (The thing judged is considered to be the expression of truth) §.a. (Molea, 1992, pp. 20-45).

Finding the truth is charged with specific issues in legal matters. Recalling in this context the psychological issue of judicial testimony and of the witness, the specialty literature analyzes many authorized opinions that *warn* about the difficulties related to the testimonial probation and especially upon infidelity and insincerity issues of testimonies, among which: unintentional errors the witnesses make frequently; hesitations of some witnesses to testify for fear of the consequences they might suffer from the declarations they have made; arranged judicial affairs, transactional justice system (specific to the American penal justice) and the publicity of the hearing; the instructions the lawyers give to witnesses to testify in a certain manner etc. Another research of the same matter concludes that: a testimony completely true is an exception; a sincere witness may be in error; the extent and trustiness of a judicial testimony diminishes proportionate to the age of the facts revealed; the value of

depositions is not proportionate to the number of witnesses and a minority may be right against a powerful majority; as a result, a great number of abnormal and unknown persons are listened as witnesses and deform the truth as a result of personal troubling and handicaps (Mitrofan, Zdrengea, & Butoi, 1992, p. 108).

There are cases in which the truth remains hidden, unrevealed, faint, which seem to contradict the main idea of certitude and the law specific evidence. Thus, in case of juridical presumptions, the legislator accepts or even imposes that something exists without the need to prove such a situation. For example, the presumption of knowing the law, the presumption of innocence, the presumption that the father of an innocent child born during a matrimony is the mother's husband etc.

The presumed situation can be true or not. The evidence must be made, when the legislator allows, by the one who contests the presumption, in case of relative presumptions. Not even one evidence is admitted against absolute presumptions. For example, the presumption regarding the authority of the judged thing, therefore the fair solution is presumed in a cause in which all the appeals foreseen by the law were exhausted.

At the same time, evading the truth cannot receive juridical protection. Thus, in case of abuse of law we assist to a contorsion of the correlation between the rights, competencies offered by juridical norms to citizens, state bodies or to other collective subjects of law and certain situations, when prerogatives are not exerted with good faith, breaking the law and Truth spirit, the intention of legislator finalities of juridical norms, the letter of law being used illegally, intentionally, as an instrument to produce unjust consequences, injurious for someone.

Also, juridical truth can be voided of its value content if the result of the fraud to the law – the illegal maneuver made with the purpose of evading the application of juridical standards, which are normally applicable in order to promote some interests illegally, to avoid certain legal consequences that are not convenient, to take advantage of more favorable juridical settlements by different artifices not allowed by the law. This way, for example, in contract, price simulation is a fraud to law, with the purpose of avoiding complete integration of taxes. An example in the matter of international law is recording one vessel under a foreign flag with the purpose of evading certain standards regarding taxes and fraudulent modification of certain circumstances in order to determine the application of the more favorable foreign law etc.

In the case of juridical fiction, a complex procedure of judicial technique, one fact is considered a judicial reality although the latter does not exist. From the perspective of juridical language, juridical fiction calls up the semantic dimension, which aims at the relation between reality and juridical expression but this correspondence is an artifice in the way that the reality pronounced in the law, expressed in the juridical text ... does not exist.

For example, the mobiles fixed on immovables are also considered immovables and they follow the juridical condition of immovables; the baby conceived shall be considered as existent before birth, if it is in its interest (*infans conceptus*); the buildings of foreign embassies are considered as existing on the territory of the state they represent etc. Referring to the role of juridical fiction, M. Djuvara remarked that the law always works with fictions and it is observed in the evolution of law, that the fiction was one of the most important lever of progress of law. Fiction is a lie and yet the law devotes it. „How, by what miracle?“ (Djuvara, 1930, p. 458). And to this question responds the above mentioned author himself when he detects that fiction is „only a helpful mean of the solution to accomplish the ideal of justice“ (Djuvara, 1930, p. 458). Regarding the nature of juridical fiction, M. Djuvara comments „But if we think that the entire law is not but an operation of spirit and not a pure

mirror of reality, that it starts from realities but it converts them according to his own nature, when we understand how this scandal specific to law is possible, which is called fiction. This way, the fiction infiltrated normally in the juridical world and it is not foreign of the nature itself of law, as the entire law is a product of our spirit" (Djuvara, 1930, p. 458).

## **5. Conclusions**

We could conclude that the complex and irreducible functionality of the truth in judicial world is expressed, among others, in institution of the connection between «must» and «is» (or has produced), in kneading juridical standard, inducing judicial, orientation and adjustment of juridical actions, its value appreciation, selection of juridical experience in cultivating the juridical dimension of human in achieving sociality and historical progress. At the same time, juridical truth has considerable relationship valences in the value constellation of a historical time, being also a Truth for Freedom, Truth for Justice and Truth for Human Dignity.

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