Logical Challenges
Логически предизвикателства

TRUTH IN LEGAL NORMS

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Abstract. The text examines the status of the truth in the legal norms, trying to answer the questions of whether they can be a subject to a truth assessment and, if such assessment is possible, how a truth value can be attributed to legal norms.

To achieve this goal, first of all, the text discusses some basic linguistic conceptions concerning the nature and truth of legal norms and subsequently, a complex approach is being proposed for attributing truth-value to legal norms. On the one hand, the latter's being studied by the methods of deontic logic and theory of possible worlds, and on the other hand, their relation to truth is being explained by semantic anti-realism.

Keywords: Anti-Realism; Deontic logic; legal norms; possible worlds; truth conditions

1. Introduction

The question of the truth of legal norms is intricate, as inherently the norms are a complex social phenomenon and therefore could not be studied unilaterally. Their primary (logical) source of validity is inclusion in the text of a normative act in the form of legal provisions. R. Tashev defines the normative act as "an act adopted by a competent state body by the legislative or executive power in compliance with a certain procedure, an act that contains legal norms with effect in domestic law, is drawn up in compliance with language rules and has a structure defined in Statutory Instruments Act" (Tashev, 2004: §49). Therefore, here we will focus only on this aspect of the nature of norms. Other contextual factors, such as social conditions (current ideas about the nature of justice, etc.) that participate in the process of their creation and justification, will remain outside the scope of our study.

There are various philosophical concepts concerning the truth of legal norms, but here we will focus only on the linguistic aspect, as this view of the norm's character will best serve us to achieve our goals, namely to seek an answer to the question of whether legal norms can be assessed in terms of truth and how their liability to truth-value ascriptions can be established and argued for. For this purpose, we will consider both arguments in support of the thesis that such an assessment is possible and some counter-arguments. Then, following the example of A. Marmor,

we will use the methods of deontic logic to examine the truth of legal norms, making some interpretations and additions.

2. Legal norms as a possible world

The representatives of the linguistic conception about legal norms, also defined as expressivist, perceive legal norms as a type of linguistic formations, which appear as a result of prescriptive use of language, are ruled by the authority, and are an expression of its will. The majority of legal positivists can be regarded as advocates of this thesis – J. Bentham, J. Austin, H. Kelsen and others. This in legal positivism, two opposing theses can be identified – the cognitivists and the non-cognitivists.

Representatives of legal cognitivism consider legal norms as „sentences in a logical sense that are subject to assessment of their truth" (Bouzov, 2006: 30). According to the cognitivists, Tarski's theory of T-sentences could be applied to its establishment – „T/X is true if and only if P" (Tarski, 1992: 104), i.e. X is a subject to a penalty for implemented violation is true if and only if X is a subject to a penalty for a violation. Here legal norms are considered to be descriptive sentences that reflect reality ("empirical or ideal" – Ibid.).

The most extreme representative of the legal cognitivism is J. Kalinovski, according to whom „any grammatical sentence potentially or actual can be a logical proposition and be a subject to truth assessment" (Ibid: 35).

On the other hand, the non-cognitivists accept that legal norms cannot be true or untrue because they do not describe the reality. They are designed to prescribe certain behaviors.[1)]

According to the representatives of this direction, the norms cannot have any cognitive value that can be examined as true or false. This notion of norms excludes the possibility of them being „subjects of logical dependencies" (Ibid: 35). This understanding comes from the logical-positivistic conception that „description requires direct and verifiable correspondence between what is affirmed by the sentence and the objective state of affairs" (Ibid). However, although legal norms do not have such cognitive value, they can still be accepted as „objects of logical law" (Von Wright, 1957 cited in Von Wright, 1986: 291).

Here, however, the question arises as to how a logical conclusion can be drawn from a legal norm, since they are neither true nor untrue – only sentences with verifiable truth value can function as a prerequisite or a conclusion. „However, a conclusion in the imperative mood can be drawn from two preconditions, one of which or both are also in the imperative mood" (Bouzov, 2006: 35). This can be transferred to the legal norms because although most of them are not formulated in the form of prescriptive sentences, they have mainly such a function К they produce certain actions. "When the law requires you to do something, say, that you „ought to do ϕ in circumstance C," it purports to say that you ought to do ϕ, and that you ought to do it because the law says so" (Marmor, 2014: 62).

In this sense, such statements of the legislator not only prescribe to the subjects what to do or not to do in certain circumstances, but at the same time they express the reason that motivates the prescription – you must do it because it is prescribed by the law. In this sense, we can consider the legal prescriptions as an example of "paradigmatic speech acts" (Ibid: 77).

The non-cognitivists consider it possible for only the deontic propositions to be sentences in a logical sense since the subject of the deontic logic is the content of the norms in a particular legal system, which makes it possible for the norms to be a subject of veracity. For example, the provision of Art. 194, Para. 1 of the Penal Code states that "whoever takes another's movable property from the possession of another person without his consent with the intention of illegally appropriating it, shall be punished for a theft by an imprisonment of up to eight years." This deontic proposition is true, because such a norm is derived from the relevant law, functioning in the Bulgarian legislation. "This type of norms always includes two elements: (a) a description of the necessary behavior and (b) a description of the consequences of behaving differently" (Aarnio, 1987: 78 – 79). These two elements in the theory of law are called hypothesis and disposition or hypothesis and sanction. In this form the following corresponding relations prevail: "(1) If someone owns the property of another person without his consent = a description of facts (legal facts); (2) he will be convicted = an element of obligation (a deontic operator) and (3) imprisonment for a certain period of time = a description of a consequence (legal consequence)" (Aarnio, 1987: 77 – 78). All sentences that contain deontic operators such as must, mandatory, forbidden, etc. (such as legal prescriptions) can be interpreted in two ways – „prescriptive (as a formulation of a norm of behavior or a normative content) and descriptive (deontic propositions)" (Bouzov, 2006: 38).

However, in order to be able to evaluate the veracity of legal norms, we must take into account that „the prescriptive content might be true in one legal system and/or at a given time and place, but not another" (Marmor, 2014: 77). Therefore, a rule R is true by virtue of the fact that it is included in a certain legal system, let's call it S, at time T and in relation to a certain territory P. „Law is one of those domains in which saying so (by the appropriate agent under the appropriate circumstances) makes it so" (Marmor, 2014: 77). This means that the example given above could not be assessed for veracity in the context of another legal system except the Bulgarian one, because each individual country has its own legislation.

The legal prescriptions have a legal validity precisely because they are included in a certain legal system, which gives A. Marmor a reason to define legal norms as part of a "prefixed context" (Ibid: 78), thus they may be a subject to veracity assessment.

According to Marmor, a statement is true in a prefixed context because it is made precisely in that particular context. Take, for example, the very popular children's song „Orange Song". It says that everything is orange – the sea, the sky, the

mothers, the children, etc. It is clear that in the real world (an un-prefixed context – Ibid.), this could not be a true statement, but by virtue of the prefix in the song, it iun just that. We can say that the song builds a possible world in which the real color of all objects so familiar to us is completely different from their color in our real world. According to Lewis„our actual world is only one world among others. We call it alone actual not because it differs in 'kind from all the rest but because it is the world we inhabit" (Lewis, 1973: 85). In a similar way, we can assume that the legal system builds an ideal reality - the world of what should be, the world of the law in force. Thus postulated, this possible world presents to us an ideal reality in which the rights and the obligations are strictly observed and the prohibitions are not violated. But even if there is a legal dispute, its proper resolution should restore the public relations to their proper state from the point of view of the law. In this sense, the legal norms can be assessed for veracity, because they belong to this prefix and by virtue of this, the content expressed by them is always realized as true in the prefix (the possible world). Here it is important to note that according to Marmor, the prefixed context can be "closed or open" (Ibid: 80). The law is a closed prefix, because the statements it expresses are true by virtue of the fact that they are contained in this context (world). A legal prefix, in other words, „is closed because it ties the truth-values of statements prefixed by it to the world designated by the prefix itself" (Ibid: 81).

Let us now return again to the provision of Art. 194, Para. 1 and to illustrate this thesis by considering the process of application of the legal norms, which is a legal syllogism. In this process, the norms play the role of the prefixed context, from which all legal conclusions are drawn.

(1) Whoever commits a theft shall be punished by an imprisonment of up to 8 years;

(2) X committed a theft.

(3) X should be sentenced by an imprisonment of to up to 8 years.

In order to be able to deduce (3) as a conclusion from the logical interaction between (1) and (2), we must first assume that the legal norm (1) is part of a predefined context, which introduces the rule that the theft is punishable by an imprisonment of up to 8 years. Thus, if we take into account this prefixed context, we can say that (3) X should be punished for a theft is the logical consequence of (1) and (2). In this sense, „the inference is valid only if the truth of its premises guarantees the truth of its conclusion" (Ibid: 61). Therefore, in order to be able to conclude (3), we must consider the whole premise (1) – (3) as included in the prefixed context, which will in fact lead to a valid conclusion. It will be valid only if „the minor premise is understood as prefixed by the operator" (Ibid: 81) – according to the law S during the time T, etc. In this way we can accept the legal norm as always truly realized in the prefixed context, as its veracity cannot be tied to its realization in the un-prefixed context. „the truth-value of an imperative cannot depend on compliance with it" (Ibid: 65).

3. Truth in legal norms in a real world

All this, however, leads us to another important question for our study: whether and how the norms thus realized as true in the closed prefixed content of the legal system can be assessed according to the truth in the un-prefixed context (our real world)? Probably the answer to this question can be found in the legal realization of legal norms in the un-prefixed context or the real, concrete public relations, which are subject of legal regulation. In this process, the legal norm is a kind of measure that „turns the existing to itself in order to prescribe characteristics and bring it in the line with itself. With its function as a criterion, it concludes whether the regulated factual has adopted the prescribed characteristics and whether the measure has become an existing" (Mihailova, 1996: 42).

Let us try to explain this by going back to the legal example given above. As we have already shown, this provision is true by virtue of the fact that it is part of the current legislation, i.e. from the prefixed context. If X commits a theft, then he should receive the appropriate defined statutory penalty, which is also considered true in the prefixed context. So in this case, if in the eyes of the law X is defined as the person who committed the crime, this is true in the prefixed context, regardless of whether the norm is actually implemented in the un-prefixed one. The conclusion here is that legal norms can be assessed in for truth in the un-prefixed context, when what is prescribed by the relevant norm is realized in the actual reality. But what would happen to the truth of the norm if X was not sanctioned for the crime committed? In this case the norm will not be observed and therefore it will be untrue, but only in this particular un-prefixed context, because in the prefixed context, the norm will always be true. When such a case arises, it is the court that can assess the truth in question and, depending on the outcome of the case, it may impose the compliance with the norm.

If, for example, a situation arises in the civil law in which the provisions of the legal norm are not complied with, either party could bring an action before the court, and „can contest the stipulation of the minor premise here, arguing that what he did does not count as violating the law" (Marmor, 2014: 84). However, if in the civil law the outcome of such a case could be decided at the discretion of the court[2], then in criminal law, the subject of which is the case under consideration, such an assessment by the court is required for almost every individual case. This is due to the fact that although in the general case the prosecutor is competent to bring an accusation and submit it before the relevant court, the court is the body that „regularly seized with an indictment, initiates court proceedings, hears and decides the case" (Manev, 2006: 359), making a comparison between the true legal norms in the prefixed context and the real facts and events (un-prefixed context), i.e. the panel of judges makes a logical judgment (example (1 – 3) above) in which the meaning could serve as the necessary explanatory method, because it is precisely this that makes the connection between the components of the world and the components

of language. As we have already shown, considered as a purely linguistic expression, the hypothesis of the legal norm is a predicate incorporating many referential relations, which refer to many potential addressees and realizations of factual circumstances.[3)] "The „signification" relationship should show how something that is linguistic is at the same time something outside of the language" (Karageorgieva, 2006: 128), how the linguistically expressed third person is at the same time X who has committed a theft. "Here it is important "the role of the linguistic expression, and in particular of the logical/grammatical subject, to refer, i.e. to select or specify a separate object" (Ibid.). If the court manages to recognize X as a referent of the norm, i.e. as the person who committed the theft due to which he was brought to justice, the legal case would be resolved successfully, but also the legal norm itself would be realized as true in the real world (un-prefixed context). So, in this case „we must rely on judges to grapple with the uncertain fit between the law, language and the world" (Hutton, 2009: 153).

The main precondition for the initiation of any criminal proceedings for crimes of a general nature (such as the example we are considering) is the indictment, the structure and the details of which are normatively defined in the Criminal Procedure Code. Each indictment is a descriptive content which aims to present to the court the facts and the circumstances relating to the already committed criminal act as an objective fact in the past, and accordingly it aims to attribute to the accused person certain universal properties, because "the attribution of properties by composing subject-predicate linguistic expressions makes a significant contribution to our orientation. It categorizes or classifies the objects, sorts them into certain groups as having this or that property and showing this or that "behavior" (Karageorgieva, 2006: 129). In this way, the main task before the court is formed – to establish the objective truth of this deception in the specific case, i.e. whether X corresponds to his categorization as the person who committed the theft. „Only if „the object fits the category under which it is misled, we can speak of truth, because the expression that performs this misrepresentation is true" (Ibid.). This raises the question of establishing the objective truth as a central one to the example considered here. In confirmation of this we can refer to Art. 13 of the Code of Criminal Procedure, which states that both the court and the prosecutor and the investigative bodies are obliged to take all measures to reveal the objective truth in the manner and by the means provided for in this code. Formulated in this way, the provision in question shows not only the central place that truth occupies in the criminal process, but also shows that the means for its comprehensive and objective establishment are regulated by the law. This applies to both the pre-trial and trial phase of the proceedings themselves. However, when we speak here for searching of the objective truth, it must be understood in the sense of logical monism, which assumes that „the truth is one (In Sivilov, 1992(1): 19), a thesis that is closely related to the ontological monism – "the doctrine that reality is one" (Ibid.). In this sense, at the ontological

level, these are the specific facts relating to the commission of the specific crime – when, what, in what way and in what factual situation the crime took place. "It manifests itself as it is – an objective fact with a certain characteristic left in the past" (Manev, 2006: 69).

However, we must take into account the fundamental principle expressed by B. Russell that „every proposition we can conceive of must be composed entirely of constituents we know directly" Russell, 1999: 48). But here the question arises, how can the judiciary, on the basis of this indictment, drawn up in a descriptive form, assess the veracity of all the legal norms applicable to the case without having such a perceptual access? Such an assessment potentially poses a number of difficulties: in the first place, the members of the judiciary, including the prosecutor, should not have any prior perceptual access to the facts of the case, i.e. they should not have been present at the events in question (they should not have witnessed the act) – if such circumstances exist, they should have recused themselves in the case.

However, how then, could the objective truth be established in the absence of Russell's much-needed perceptual approach? According to him, we can have knowledge only of truths that constitute our own experience, which, in turn, is made up of all the terms to which we have had direct access. And although Russell believes that we are able to assimilate knowledge of terms through knowledge by description, he believes that this, while useful, still makes the knowledge thus acquired "mysterious and therefore uncertain" (Russell, 1999: 49). Therefore, when looking for the objective truth relating to a certain fact of the past, we must keep in mind that the conclusions made by the knowing subject can be true or false, i.e. "to correspond or not to correspond to the objective manifestation of the crime in the reality" (Manev, 2006: 69). This is because, as Russell puts it, "the truth or falsity of the statement does not depend on the person who judges it, but only on the facts he judges" (Russell, 1992: 10), i.e. the meaning of a sentence depends on the conditions for its truth, because it is established through the conclusions that a person makes when there are some prerequisites that ensure that the sentence is defined either true or false – the so-called principle of bivalence.

But it is the fact that this truth must be sought in past events that makes this process vulnerable to errors, as the realists accept that a large number of statements, including those related to the past, "have transcendent verification conditions of a truth" (Mollov, 2014: 354), which means that we could not establish with certainty their truth value.

If we accept the realistic thesis as indisputable, then we would conclude that it would be impossible for the court to decide any court case. However, as we know, this is not the case in practice. The judicial panels are constantly dealing with a variety of cases, some of which are extremely complex and intricate. This is necessary because denial of justice is unacceptable and even impossible. In addition, in the course of each criminal proceeding there is a complex transition from„ontological

to epistemological level and from epistemological to psychological level of cognitive activity" (Manev, 2006: 69).

At the ontological level, as a fact from the past, the criminal act, as we have already shown in the text above, allows to build a logical chain on the basis of which to draw conclusions and ultimately the case to be resolved successfully. "At the epistemological level, the knowing subject forms conclusions about the factual circumstances of the crime" (Ibid.), i.e. about the objective reality. As for the psychological level, it is related to the inner convictions of the court, which relate to the truth or falsity (the authenticity) of the knowledge acquired. This makes it possible for the court to assess the circumstances surrounding the resolution of the case and subsequently to issue a procedural act.

All this gives us reason to ask ourselves how is it possible to carry out this complex logical-cognitive process, provided that the judiciary, as we have already stated, should not have any direct perceptual access? Here we will offer a possible explanation, through the anti-realist alternative proposed by M. Dummett. In the literature we have studied, we have not encountered such an application of his theory for the analysis of the truth of legal norms, so we can consider this approach as a contribution in this area.

Dummett "rejects the principle of the bivalence" (Dummett, 1996: 462 – 478), because he believes that "a statement is true or false not by virtue of some conditions on which its truth value depends, but because of "conditions under which we are able to affirm it as true" (Ibid.). That is why, according to Dummett, the explanatory method of the realism faces two challenges – "the challenge of assimilation and the challenge of manifestation" (Dummett, 1978).

The challenge of learning requires realism to explain how the speakers of one language are able to learn, understand and use that language in its entirety. Such an explanation should clarify how people who speak a particular language understand the meaning of the sentences in particular field, which allows them to assess their truth, even though those sentences have truth conditions that transcend verification. But if it is possible to assimilate the knowledge of sentences of given area, then they do not have transcendent conditions. The challenge of manifestation, according to Dummett, formulates some of the most important gaps in the explanatory method of realism about the way in which our knowledge of the meaning of the sentences in a particular field manifests itself in our speech. When we understand the meaning of a sentence in principle, this knowledge is acquired through communication within the language community (this means, not only that the experiential basis of knowledge must consist in our experience, not in my experience, but that experience can be characterized only as the experience of a common world inhabited by others as well as me (Dummett, 1996: 471). Therefore, if we assume that we understand a particular language, the concept of "a truth" will contain all the explanatory knowledge we need to validate an utterance "(A is true) as equivalent

to the statement that (A is true – Ibid.1). However, according to Dummett, "this knowledge is in no way manifested in our linguistic abilities, which leads to the conclusion that we do not have knowledge of the truth conditions of the sentences relating to the corresponding field" (Ibid.). This gives Dummett a reason to look for an alternative method that would make it possible to successfully identify a sentence as true or false.

Dummett considers the intuitionistic approach to be the most acceptable, which explains the meanings of mathematical propositions, i.e. knowing that a statement A is true means having a proof of it. The meaning of a sentence depends on the way we use the sentence in question, and this ability is manifested in our linguistic practice, because when we use it, it means that we have knowledge of its meaning. In this sense, once we are able to use this sentence correctly, it means that we have grasped its meaning. When we look for the truth value of a sentence, it will depend not on any conditions that transcend verification, but on our ability to apply both our knowledge of the sentence itself and the conditions that contribute to its identification as true or false. This indicates the main weakness in Dummett's theory, namely the semanticization of truth.[4)] Our goal here, however, is not to point out shortcomings in his theory, but rather to check its applicability in the law enforcement process.

Such an intuitionistic approach (as that of Dummett) in resolving a legal case can be attributed to the court panel, as any decision relating to the establishment of the objective truth is directly related to "the formation of a certain inference, conclusion, or idea in the procedural body – the so-called subjective party" (Manev, 2006: 82). This inner conviction is formed on the basis of a set of different factors – the so-called „objective criteria for correctness" (Ibid.), on which depend the correct perception and understanding of the objective factual circumstances, the truth value of which must be confirmed. It is the fact that the court panel is able to establish this truth through objective knowledge of the evidences, shows that there is an opportunity both to learn the meaning of all evidences and to understand their truth conditions. This leads us to Dummett's point of view that our ability to understand a proposition consists "not in discovering, but in recognizing the evidences" for its validity. This means that such a proposal has conditions that assign it to the group of effectively solvable proposals. This means that such a proposition has conditions that assign it to the group of effectively solvable propositions. "A sentence is said to be effectively solvable in the presence of a generally applicable procedure to ensure that that sentence is defined as true or false" (Mollov, 2014: 360). If we go back to the example (2) X committed a theft, the truth value of this proposition can be confirmed after the court has objectively examined all the evidences and on the basis of their testimony it forms its inner conviction (here the court appliesanintuitionisticapproach), to draw the appropriate logical conclusions which lead to the resolution of the criminal proceedings.

That's why Dummett believes that the intuitionism is the most appropriate means of attributing truth value, as it will enable us to use the proof as a fulcrum – our ability to recognize what establishes the truth, and thus the truth or the untruth will be based on verification conditions.

But when we are faced with a proposition whose truth we cannot establish, it does not mean, according to Dummett, that it has conditions that transcend the verification of a truth. In order to be able to successfully solve such a proposition, the British philosopher believes, we must accept our knowledge of the truth as "epistemically limited", i.e. in order to reach the truth, it is necessary to consider it „in terms of a correct or reasonable validity" (Mollov, 2014: 361). In other words, accepting a proposition as true means that there are grounds for its affirmation or some other property of it, "constructed by a reasonable validity" (Mollov, 2014: 361).

In the criminal proceedings, such justification of the truth conditions can be found in the motivation of the decision that the court makes in the final procedural act, which ends the case. In this phase of the criminal proceedings, the court substantiates in writing its decisions, referring to the evidences (conditions) that underlie the internal conviction thus formed. In addition, the purpose of the reasons goes in two directions: „The possibility of the control procedural bodies to check the validity and the legality of the procedural act, the soundness and the correctness of the conclusions made in the act; self-control. When setting out in writing the reasons for the procedural act, the deciding body reconsiders the qualities of the acquired knowledge, the conclusions imposed by the set of evidences available in the case, the legal arguments of its position on the legal qualification and determination of punishment, etc." (Manev, 2006: 85).

4. Conclusion

In any judicial proceeding, regardless of the procedural act by which the case is terminated, the panel of judges should explicitly indicate the specific legal provisions that are applied in it. In this way, the truth of the respective legal norms from the prefixed context (the world of the due) is transferred to the un-prefixed one (the real social relations) through their realization. However, accepting this method of establishing the truth, here we are faced with the possibility that it leads to erroneous conclusions, as they are based mainly on the judgment that the subject makes about the facts of reality, i.e. there is a connection between actual facts and "human cognitive resources" (Mollov, 2014: 364). Therefore, such an approach may lead to incorrect validation of a proposal. Therefore, in order to avoid such undesirable end results in court proceedings, the legislator has provided various ways to re-examine the sentence passed by the court of first instance, such as the re-examination of the case by a duly seised and court of Appeal.

Assuming the thesis that the legal system builds an ideal world (a prefixed context) in which the content expressed by the legal norms is always true, we have

shown a possible way in which truth value can be attributed in the un-prefixed context also. In the course of the analysis we showed that this assessment could be achieved in law enforcement process, where the world of the factual (actual) meets that of the due or becomes expressed in the legal norms, transforming it according to their prescriptions. Therefore, in this way a sign of equality between factual and due can be placed, and the legal norm can be assessed and confirmed as truly realized in both worlds.

However, the question of the similarities and differences between the verificationist approach we adhere to and the coherent and pragmatic views on the theory of truth is beyond the scope of our study, so it has not been discussed here.

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NOTES

1. Legal norms do not tell us how things are in the world. They indicate what we can and can not do and therefore what the penalties for violating their prescriptions.
2. Although this is necessary rather exceptionally because, most of the legal relations are performed voluntarily - the so-called indisputable realization.
3. Legal norms are equally valid for X, Y and Z.
4. In modern epistemology, there are many attempts to view truth as independent of questions of meaning. For example, by applying neuroscientific data showing that truth is not a concept but a logical operator – J. Prince, Quine, Horwich and others.

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