

Objective interpretation as conforming interpretation

LIDIA RODAK*

Abstract

The practical discourse willingly uses the formula of “objective interpretation”, with no regards to its controversial nature that has been discussed in literature.

The main aim of the article is to investigate what “objective interpretation” could mean and how it could be understood in the practical discourse, focusing on the understanding offered by judicature.

The thesis of the article is that objective interpretation, as identified with textualists’ position, is not possible to uphold, and should be rather linked with conforming interpretation. And what this actually implies is that it is not the virtue of certainty and predictability – which are usually associated with objectivity- but coherence that makes the foundation of applicability of objectivity in law.

What could be observed from the analyses, is that both the phenomenon of conforming interpretation and objective interpretation play the role of arguments in the interpretive discourse, arguments that provide justification that interpretation is not arbitrary or subjective. With regards to the important part of the ideology of legal application which is the conviction that decisions should be taken on the basis of law in order to exclude arbitrariness, objective interpretation could be read as a question “*what kind of authority “supports” certain interpretation*”? that is almost never free of judicial creativity and judicial activism.

One can say that, objective and conforming interpretation are just another arguments used in legal discourse.

Key words

Conforming interpretation; objective interpretation; objectivity in legal discourse.

* Department of Legal Theory and Legal Philosophy, Faculty of Law and Administration, University of Silesia, Katowice, lidkarodak@gmail.com

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Introduction

The concept of objective interpretation is a hot topic both in the theoretical and practical discourse. The philosophical literature deals with the issue, because of its controversial nature, the effect of different approaches and different ideas regarding both objectivity and the process of interpretation. On the other hand, the practical discourse willingly uses the formula of "objective interpretation" because of its pragmatic effectiveness in successful argumentation. At the outset, legal hermeneutics demystifies law and its application, stressing that it is not possible to provide objective interpretation and reach the most desirable values for law in an absolute way, such as: certainty, stability, applicability of formal rules. Hermeneutics is an attempt to identify the irreducible conditions of human understanding and by means of this to overcome the thesis that law is a set of formal rules exclusively (Leyh 2000, p. xii), and show that every interpretation is based on the pre-understanding. But still the concept of objective interpretation is a hot topic both in the theoretical and practical discourse. Philosophical literature deals with the issue, because of its controversial nature, that is the effect of different approaches and different ideas concerning both objectivity and the process of interpretation. On the other hand, the practical discourse seems eager to use the formula of "objective interpretation" because of its pragmatic effectiveness in successful argumentation.

There are numerous opinions that both law and its interpretation should be objectified. They are both popular among legal theorists or philosophers, as among representatives of legal doctrine (Sójka Zielińska 2005, p. 73; Giaro 2005, p. 14). In a broader context, one can say that objectification of law becomes the central and fundamental aim of modern legal theory and at the same time the specific element that legitimizes law itself and reflection on it (Sulikowski 2008, p. 63). However in legal interpretation, which is argumentative activity, it has a special dimension. On the one hand, as the legal hermeneutic movement points out, interpretation is always at least partly subjective. On the other hand, the important part of the ideology of legal application is the conviction that decisions should be taken on the basis of law in order to exclude arbitrariness (Gizbert-Studnicki 1995). That is the place where objectivity appears – to provide justification that interpretation is not arbitrary or subjective but ...as often has been claimed- objective. But what exactly could this mean?

All the reason mentioned above inclined me investigate what "objective interpretation" could mean and how it could be understood in the practical discourse, focusing on the understanding offered by judicature. That is why I shall analyze to what extent claims about objective interpretation are justified in the light of strong and soft conceptions of objectivity and try to provide an explanation what they might mean in different contexts.

In order to find the answer to the question how "the ideology of objectivity" can be defined or described, or in other words what legal objectivity means and how it works in the in the context of legal interpretation I am going to provide very briefly the puzzles of different (1) *understandings of objectivity* proposed on the theoretical level. Then, I am going to analyze (2) *how lawyers* understand objective interpretation and how it is used in practice in the legal world, especially from the point of view of legal objectivism. (3) At the next step of the analysis, I will try to support the thesis that objective interpretation, as identified with textualists' position, is not possible to uphold, and should be rather linked with conforming interpretation. And what this actually implies is that it is not the virtue of certainty and predictability – which are usually associated with objectivity- but coherence that makes the foundation of applicability of objectivity in law.

1. Some puzzles about objectivity

At the very basic level of **expectations concerning law**, objectivity provides values that constitute law, like public and positive character of the law, its universality and generality, its autonomy¹, legitimacy, methods of legal justification, coherence and its power of authority. In this sense objectivity could be perceived as a necessity in law.

Legal scholars' books are crammed with different concepts of objectivity. The numerous publications dealing with this problem show that there are defenders and critics both of the concept of objectivity in general and legal objectivity in particular. Objectivity is used in many different senses and meanings. I would like to assume one of the many approaches to this topic. In jurisprudential literature, it is possible to find examples of **strong, modest and minimal objectivity**. If we divide the spectrum into two groups according to the activity of subject, the first group will be entirely connected with the object, namely the strong version of objectivity, and the second connected with an increasing role of the subject, namely the modest and minimal version of objectivity. **Strong objectivity** as completely independent of the subject is characterized as purely objective stance. Strong objectivity is the manifestation of the theory of realism, which rejects the dependence on the subject in regard to existence and perception. For example, a stone which exists completely independently from the subject or any of activity of this person, no matter whether the subject perceives it or not. The other two approaches of objectivity are connected with the activity of the subject, which is necessary and impossible to eliminate. **The modest version** of objectivity is characterized by reference to a subject determined by the ideal epistemological conditions. These conditions have to be fulfilled to make it possible to think about objectivity as in some way independent of any personal bias. In this sense, for example, the activity of measuring could be objective. The effects of measuring would be the same regardless of the person who does it under the same conditions. One can observe that within the same group of notions it is possible to find different extensions of the subject's indeterminacy. This is possible because the minimization of the subject's intervention is not always possible to the same degree and there are situations where objectivity is desirable. The example of measuring is one of the strongest, but there are practically lots of situations in which it is impossible to eliminate the subject's impact to a large extent. All these cases could be situated between the minimal version of objectivity and the strongest possible modest version. **The minimal version** of objectivity is based on the acceptance of majority in a certain group. Take fashion as an example. What is fashionable in a certain society or group is accepted by the majority of that group (Rossati 2004, p. 275). Both modest and minimal versions of objectivity could be characterized as an attempt to minimize subjective elements, but with the reservation that subjective elements are not excluded entirely. It is important to point out that on the semantic, epistemological and ontological levels, there exist these three kinds of objectivity.

The ideas that represent objectivity are necessary for law and they fulfill the main aims of law, namely its certainty, but at the same time also law's coherence. When we apply the typology introduced above, one can say that objectivity in a strong sense is the guarantee of certainty while objectivity in a soft sense safeguards the value of coherence.

2. Examples from judicature (Polish, Spanish, ECJ)

In a body of judicial rulings it is possible to find arguments formulated on the basis on objective interpretation. However, while the dominant understanding of

¹ The features that constitute legal order, rules of law, according R. Unger in *Law in Modern Societies*.

"objective interpretation" is mostly identified with the textualist position, the practice of the judiciary does not express such a totally homogenous standpoint.

The position held by **textualists** is that judges should consider only the public meaning (the ordinary meaning of language) of the statutory text. This is opposed to the intentional approach to the process of interpretation. A very rough characterization of textualism displays that adherents of this doctrine "look at the statutory structure and hear the words as they would sound to the mind of a skilled, objectively reasonable user of words" (Easterbrook 1988, p. 65).

1. The most common are cases where objective interpretation is identified directly with the **textual position**: it happens where courts directly name their interpretation as "objective interpretation"², or report "objective interpretative doubts"³ or "subjective interpretative doubts"⁴ presented by one of the party. In discussing this context, I will deliver some examples where courts build up their justification around the argument of linguistic objective interpretation. It is also possible to quote fragments referring to both the "*subjective meaning of legal norms*"⁵ and the "*objective meaning of legal norms*"⁶. How could it be understood?

To grasp the essence of the problem, let us consider an example where the Polish Supreme Court prescribed as follows, "(...) *the object of interpretation is the reading of a legal norm which is the most certain, which makes objective verification possible, and is accessible to common understanding at the same time. Words (language) are quite an obvious way of expressing legal norms by the entitled organs and at the same time there have to be certain grounds that allow the legal substance to be understood by the addressees.*"⁷. In another judgment one can read, "*The opinion of The Supreme Court interpreting the term "reveal" is that in the objective theory of interpretation, which assures the correct reading of the meaning of concrete legal norms and decoding of legal norms, the essence lies in decoding, not the intention or will of legislator. Making an extreme simplification, the decisive role should be attached to what the legislator has written in the legal text, and not what he wanted to write*"⁸. In these fragments the Court not only explained what objective interpretation means but also expressed a manifesto of the textual position.

One of the very popular method used by textualists is the application of the plain, common or public meaning reconstructed on the basis of dictionaries. It is well illustrated by the following example, where the Court claims that it has performed objective interpretation because the judges followed the meaning presented in a dictionary entry⁹. The Court applied the general clause of "stable ties" and resorted to dictionaries, however the judges failed to justify why they had chosen a certain meaning out of many other dictionary entries (Solan 1993). The Polish Administrative Court wanted to find out if a foreigner had established an economic connection with Poland. The Court claimed it was possible to make an objective evaluation based on different criteria. The understanding delivered by the foreigner, the party in this case, is only one of the elements that have to be taken into account. They found the expression "*stable economic ties*" unclear and decided that

² Wyrok z dnia 30 września 2004 r. Sąd Najwyższy IV CK 713/03 (Judgement of Polish Supreme Court 30.09.2004.)

³ Wyrok z dnia 16 stycznia 2006 r. Trybunał Konstytucyjny SK 30/05 (Judgement of Polish Constitutional Tribunal, 16.01.2006)

⁴ Postanowienie z dnia 25 maja 2005 r. Trybunał Konstytucyjny SK1/4 (Resolution of Polish Constitutional Tribunal, 25. 05. 2005)

⁵ Wyrok z dnia 27 kwietnia 2007 r. Wojewódzki Sąd Administracyjny w Warszawie VI SA/Wa 319/07, LEX nr 339031, (Judgement of Voivodship Administrative Court in Warsaw 27.04.2007.)

⁶ Wyrok Sąd Apelacyjny w Katowicach z dnia 15 maja 2008 roku, II AKa 13/08LEX nr 447031, Biul.SAKa 2008/3/4, KZS 2008/9/41, KZS 2008/9/42 (Judgement of Appealed Court in Katowice 15.05.2008)

⁷ SN III RN 145/00 OSNP 2002/19450, 2001.11.09. (Judgement of Polish Supreme Court)

⁸ Uchwała z dnia 29 października 2004 r. Sąd Najwyższy I KZP 24/04 (Resolution of Supreme Court)

⁹ Wyrok z dnia 6 marca 2003 r. Naczelny Sąd Administracyjny (do 2003.12.31) w Warszawie V SA 1923/02 (Judgement of Administrative Supreme Court in Warsaw)

it had to be made precise in these particular circumstances. The Court could have evaluated this in a number of ways but chose to start with literal interpretation. The Court used a Polish dictionary to define "stable" as something that is "*resistant and durable, long lasting, firm and gives hope for the future.*" These chosen fragments from the dictionary disqualified the plaintiff's view because in the period of 4 years of doing business, he had not achieved serious financial success. At some point he had even suffered loss, though he was still able to support his family with his earnings. However, another Polish dictionary¹⁰ defines "stable" as "*firmly connected/linked with the place or the person*" or "*to be somewhere very often*" or "*to occur with regularity*". It seems that by invoking these meanings it could be possible to justify exactly the opposite decision, not the one delivered by the court.

As critics of textualism indicate, dictionaries are only indexes of meanings that appear in an exemplary context in which a certain world may appear. It means that we cannot find one right definition nor stable non-contextual sense in the dictionaries – that is expected to have the value of objectivity.¹¹ However, one has also to consider another line of criticism against textualism (Solan 1997, p. 2; Eskridge, Frickey 1990), particularly the possibility of its "objective" status. Many authors stress that interpretation always refers to the supposed intention of the legislator (Fish 2005, p. 629).

Three main arguments support this thesis:

- The view stressed by linguists, who argue that the meaning of the text and meaning of the utterance cannot be opposed. That is to say, sentence meaning makes a combination of the meaning of particular expressions and syntactic rules and the intention of the author who wishes to achieve certain ends. Analyzing sentences without any contextualization is a complete fallacy in terms of language.
- The argument from court rulings, when courts expressly state that the literal interpretation is not enough to determine the meaning, and that the intention of the legislator, the aim of the statute must be taken into account¹².
- An additional argument comes from the examination of the judgments by Justice Scalia, a key follower of the textual approach to interpretation. The analysis of his judgments clearly shows that interpretation has an intentional character (MacGowan 2008, p. 129)

That is why it is justified to say that the textualists' position could be approached in two ways: as a method of determining intentional meaning, as hinted above, or as a method of following rules and understanding their meaning. The second alternative is based on Wittgenstein's distinction between understanding and interpretation.

For Wittgenstein, meaning is treated as the core of the notion that could be objective; interpretation is the next level, which is dependent on individual elements, and so the product of interpretation could be variable in different cases. Meaning is a necessary introduction to interpretation, so following this idea, meaning appears as something that has a firm core, which gives the possibility for interpretation, because without understanding there is no room for interpretation at all. As a consequence, the most important question is what makes certain interpretations objective? What kind of justification gives the right to claim that an interpretation is objective? One answer proposed by the semantic antirealists is

¹⁰ PWN Dictionary of Polish Language, on line: <http://sjp.pwn.pl/>

¹¹ See more Weinstein (2005).

¹² Uchwała NSA z 20 marca 2000 r., sygn. FPS 14/99, ONSA 2000/3/92. (Resolution of Administrative Supreme Court in Warsaw) or Wyrok z dnia 31 stycznia 2006 r. Naczelny Sąd Administracyjny w Warszawie I FSK450/05 (Judgment Resolution of Administrative Supreme Court in Warsaw)

that common acceptance of a certain community provides the justification for treating an interpretation as objectively valid.

Wittgenstein's thoughts represent a skeptical position, but it is not necessary to reject the possibility of objectivity in a stronger sense. Meanings of terms are not determined by facts, but this does not exclude the possibility of making claims about objectivity or make it necessary to consider it only in a minimal sense (a meaning that is applied and accepted by the majority in the interpreting community).

Considering the problem of dependency between facts and interpretation, one conclusion is that the meaning of facts is determined by a paradigm of interpretation and the conditions that are formulated by this paradigm. So the next problem that has to be considered is how this meaning is determined, and how the meaning of legal facts is settled in the context of normative legal reality, because the theory that determines meaning is also the part of the necessary paradigm. I will come back to this question at the end of the paper.

3. Other puzzles of objective legal interpretation

- A. A specific formation based on reference to the objective theory of interpretation has been established in the **doctrine of law**¹³. According to it, the feature of objectivity is assigned to the certain categories that are provided and widely accepted by legal doctrine. In one of the ECJ rulings one can read "according to judicature, the notion of serious difficulties is an objective one."¹⁴ It means that there is a commonly accepted way of evaluating, of exercising judicial discretion based on the same method applied in similar situations. It is exercised in conformity with the tendencies in the judicature.
- B. *In ECJ case law* one may find exactly the opposite understanding of objective interpretation, which says that objective interpretation of legal rules or a piece of legislation is identified on the base of **its aim**¹⁵. All this means that not literal meaning but the aim of the legal regulation has been associated with objective interpretation. Such an understanding could be justified by the teleological character of European law and necessity of its translation into many languages of the Union.¹⁶
- C. Objective interpretation **as performed by the judge or required by law itself** - some examples extracted from Spanish judicature
Some extracts from Spanish courts judgments state that "*objective*

¹³ Wyrok Sądu Apelacyjnego w Katowicach z dnia 5 marca 2009 r. V ACa 484/08, LEX nr 508538 (Judgment of Appealed Court in Katowice)

¹⁴ JUDGMENT OF THE GENERAL COURT (Fourth Chamber) 3 March 2010 "It must also be borne in mind, however, that, according to the case-law, the notion of serious difficulties is an objective one. Whether or not such difficulties exist requires investigation of both the circumstances under which the contested measure was adopted and its content. That investigation must be conducted objectively, comparing the grounds of the decision with the information available to the Commission when it took a decision on the compatibility of the disputed aid with the common market. (...) (*Prayon-Rupel v Commission*, cited in paragraph 126 above, paragraph 47; see, to that effect, Case T-49/93 *SIDE v Commission* [1995] ECR II-2501, paragraph 60). The applicant bears the burden of proving the existence of serious difficulties and may discharge that burden of proof by reference to a body of consistent evidence, concerning, first, **the circumstances and the length of the preliminary examination procedure and, second, the content of the contested decision.**

¹⁵ Judgment of the Tribunal, (Grand Chamber), 12.01.2010, C-341/08.

¹⁶ OPINION 2/00 OF THE COURT 6 December 2001 „It points out that, in accordance with the Court's case-law, the choice of the legal basis for a measure must rest on objective factors amenable to judicial review, which include the aim and content of the measure as a whole (see Case C-84/94 *United Kingdom v Council* [1996] ECR I-5755, paragraph 25, and Case C-268/94 *Portugal v Council* [1996] ECR I-6177). The mere presence of commercial policy elements in an environmental agreement cannot have the effect of transforming it into a trade agreement, just as the presence of environmental factors in an agreement which is essentially a trade agreement does not alter the agreement's commercial character”.

interpretation of a legal text refers to "voluntas legis" ¹⁷ or that "The interpretation performed by the claimant contradicts the objective interpretation, that is, the interpretation performed by the judge, ¹⁸ Here, objective means "correct" interpretation. The phrase "objective interpretation" appears also as a party allegation, in which the party affirms that within the challenged decision, the Supreme Court interpreted objectively the applicable rule¹⁹. In a different case the Court defines its own interpretation as objective to indicate that such interpretation is the correct one.²⁰

Other°objective°interpretation:

There are also different meanings of "objective interpretation" that cannot be classified within one coherent group. That is why I list some senses that appeared during the research:

1. In one of its ruling the court characterizes objective interpretation as "logical" interpretation. It is used to indicate that an interpretation which does not lead to a logical error should be considered objective²¹.
2. Objective interpretation of statutes implies not only grammatical arguments but also **sociological –ideological, moral and economic–**arguments revealing the spirit of the community in every single historical moment. Objective interpretation means aim-addressed interpretation.²²

All the introduced examples in section B introduced the process of how to conform, adjust the interpretation of certain legal rules to the legal system and legal reality, that have to be objective.

4. Other arguments against objective interpretation

There are many arguments indicating that the theory of objectivity of textual interpretation hides different, very often non-objective, values and processes behind its quite innocent thesis. I would say that this theory plays completely opposite role from the one we might expect. I would claim that the misleading power of the theory of objective interpretation plays the role of institutionalized uncertainty. Let me offer few arguments to support this claim. Biblical tradition of interpretation gives examples indicating that oral tradition delivered more faithful transmission and is closer to the original version than written interpretation (Jackson 2000). Biblical interpretation shows that oral tradition is based on pictures and is potentially more objective. The law focuses on written tradition and on literal meaning, and what I would like to prove is that these are less objective factors than the oral tradition. Contemporary socio-linguist Basil Bernstein makes a distinction between oral and written traditions and assesses them by different types of codes, which influence the meaning of expressions. Oral tradition is based on a restricted code and written tradition on an elaborated code. Non-written social knowledge and rules operating as unspoken code have the function of contextualization and determination of meanings. Elaborated codes arise out of context and that is why they have a greater need to be explained (Jackson 2000, p. 447). When we consider the code of Western lawyers, we have the rules expressed by the legislator in advance, on top of which rules of logic and different types of legal reasoning are to be applied before the judgment can be made. So one can draw the conclusion that this unspoken code applied by lawyers is the last instance of deciding about the final interpretation. It is determining what the rule actually means when taking the final decision.

¹⁷ Criminal chamber, (8/V/02) (16/X/01).

¹⁸ Labour chamber, (9/XII/99)

¹⁹ Constitutional Court, (27/X/94).

²⁰ Constitutional Court, (31/III/82).

²¹ Labour chamber, (2/II/95).

²² Administrative chamber, (25/IV/96, 26/III/96, 12/I/96)

From one side, exactly from the top, objectivity is assessed as one of the premises of law. Law has to be objective, both on the level of abstract rules and on the level of their application. A clear example of this has been shown in the group of understandings of objectivity explained by creation on the part of competent authorities, their power of authority. Objectivity is assessed from the bottom to all the legal creation in an institutional way, and it holds the power of law's authority. This accords with the Kelsenian picture of law, as a pyramid.

There is also a style of argumentation and a way of proceeding that binds lawyers to a certain form. But behind this form, the content is not necessarily objective. Actually, following legal hermeneutics, one could even say that it is never objective because, in grasping the law as tool that needs to be employed in a situation of conflict, the objective solution can be only be applied in a very weak sense. This is why I think the only sensible claim about the objectivity of law is from the formal point of view: as one of the assessment criteria required by law and administration of justice.

On the other hand, there is this kind of objectivity that has to be employed from the bottom up, and this type is realized according to the principle based on the acceptance of a group of reference. And, as it is known, there is a pattern of successive argumentation and justification, imitating a quasi-scientific style of presenting arguments of different kinds. As critics of objectivity stress, law is the tool of implementation of justice according to the interests of certain groups of people and it uses the category of objectivity to represent their way of thinking as the best possible way. But, as it becomes just a style based on formal conditions, objectivity changes its character and becomes a tool of rhetoric. I see the postmodern explanation of the definition of objectivity in a weak sense, so-called minimal objectivity, as compatible with what was presented above. This definition is based on common acceptance by majority and a style of juridical argumentation that is aimed at convincing the auditorium that "this solution is objective" and realizing a "perceived objective justice". This formula sounds the same in the lips of the parties, their defendants, and the judges representing the court when delivering their justifications of the final decisions. However objectivity is a tool of successful argumentation because of its rhetoric power, I would not narrow down its role only to this. There are also certain conditions that have to be fulfilled. Judges necessarily have to take decisions and gain the acceptance of an audience or the system of higher instance. To fulfill these conditions, elucidation has to be convincing, and objective argumentation is the way to provide an acceptance and common validity of the delivered decision. This version of objectivity shows it both as necessary for the official discourse and external argumentation.

"Biblical law implies that the linguistic rules are not to be identified with the notion of literal meaning, but rather with their narrative contextual sense" (Jackson 2000, p. 434). That is why it is highly controversial to link objectivity to textual interpretation. There are many situations in law where the variable context can modify "the literal meaning". That is why meanings taken from the dictionary could be objective, as one court ruling states, but cannot be identified with objective truth or correctness per se. It is the beginning of the process of interpretation, because if somebody looks up dictionary entries, it means that he/she does not understand and starts to interpret.

5. Conclusions

In the light of all arguments introduced above, the main thesis of this text states that:

Objective interpretation in a strong sense, as identified with textualist positions, is not possible to uphold, that is why it should be abandoned. What is also revealed by the present analysis is that textualist interpretation should not be identified with objectivity. Rather than that, objectivity of certain interpretations should be sought

outside language itself. Ronald Dworkin described this problem and named it as "semantic sting", which indicates that meaning of certain interpreted expression could be found outside language.

All the other examples I have shown refer to objective interpretation in a soft sense. This means that they should be rather linked with the concept of conforming interpretation. But what it also means is that such an interpretation in order to be objective in a weak sense has to be justified anyhow. As opposed to the strong objectivity of interpretation, which is based on authority mainly (dictionaries), the soft objectivity needs justification. So there is a direct link between objectivity and authority in the body of question: "*what kind of authority "supports" certain interpretation*"? That is why the question about objective interpretation is the question about objective validity of certain interpretation. One of the possible answers could be that the interpretative community shaped by legal culture should decide about the rules of interpretation.²³

Although it is very controversial to link textualism with objectivity this is a very common practice in judicial decisions. The arguments about strong objective interpretation (textualist) are mainly linked with the value of certainty, although they are not possible to be upheld. The rest of the meaning of the concept of objective interpretation represents the idea of soft – minimal understanding of objectivity that foster the value of coherence. All above arguments support the thesis that objective interpretation does not fulfill aims that it "should" realize, those of certainty, predictability, and transparency. However, if one looks at the phenomenon of "objective interpretation" from the point of view of soft conceptions of objectivity, one may learn that "objective interpretation" could play the role slightly different from the one that could be expected, but not less important. It is possible to observe that argument based on objectivity implements the virtue of *legal coherence*. It is used as an argument that provides justification in accordance with the necessary assumption of objectivity of law. In all the presented cases weak a sense of the objective plays the role of an argument that allows to conform and justify a certain decision. The only question is how the conform interpretation should be justified, how does it come that certain interpretations are objectively valid?

This could be demonstrated for example by applying different argumentative models offered by Ch. Perelman, J. Habermas or R. Alexy. For Perelman - acceptance of universal authority, for Habermas -justified consensus, for Alexy- results of the procedure of rational discourse, will deliver objective validity of justification of certain interpretation. But this is a topic for the next article.

One can say, that soft conceptions of objectivity are so weak, that this is kind of abuse to apply this concept to legal discourse. However, what should be stressed here is that our perception of social reality has changed as well - we don't apply strong scientific concepts to the legal or social reality anymore. Modernity or the postmodern approach offer us a sense of perception expressed in soft terms. The transition from the doctrine of realism to antirealism clearly shows the process of change of the paradigm of interpretation of reality. The concept of objectivity has changed and instead of its semantic aspects, which may be very often misleading, one should consider it in accordance with the factual role it plays in the legal or social discourse.

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²³ For example in Polish legal system one of the most important directives of interpretation is binding by the legal definition. What means that the interpreter must apply certain definition if the legislator place it in legal act. The next example could be priority of linguistic interpretation.

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