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ON WHAT A PRESUMPTION IS. A PRAGMATIC APPROACH IN ROMANIAN LAW

Alina Gioroceanu

University of Craiova

Abstract

In this short think-piece, I propose a link between judicial presumptions and pragmatic inferences by reference to the already classical theory of implicatures and presuppositions. Important, however, from the point of view of legal reasoning, remains the act of presuming, which will be treated trough the grid of the theory initiated by Ch. Peirce, as a type of abduction. I argue, in fact, that a presumption is a hypothesis, not a conclusion, and it marks a stage of interpretation.

Keywords: Presumption, implicature, presupposition, abduction, pragmatic, law

1 Introduction

Pragmatic was comprehended in different ways (Patterson 1990, Smith 1990, Grey 1991, Warner 1993, Luban 1996, Wilson and Sperber 2012), including as methodological foundation for various disciplines (containing law - Marmor 2011) or as open scientific strategy (Maingueneau 2007). In contrast to the other disciplines, pragmatics is not organized by clear rules, but it is governed by principles imposing a rational direction to verbal exchanges. As Horn and Kecskes (2013) put it, ”several studies have distinguished “narrow pragmatics” and “wide pragmatics” (…) However, no new perspective on or research line of pragmatics can neglect the fact that all these branches have grown (directly or indirectly) out of classical pragmatics.”

From the very beginning, the English philosopher H.P. Grice stated that verbal activity is a manifestation of a rational behaviour and it aims to achieve some objectives or to produce some practical or phatic effects. Within the study ”Logic and Conversation” (1968), Grice introduced the Cooperative Principle, and then he reassumed and refined its definition in the next contributions (cf. Grice 1975, 1986, 1989). The Cooperative Principle is developed on four maxims, based on a Kantian taxonomy, which are, in fact, demands of coherence and balance applied to verbal changes. In Grice's expression, the avoidance of one maxim generates an implicature. Providing meaning to someone else’s message could be fulfilled only by trying to participate and cooperate in order to restore the balance between what it is said and what is understood.

2 The Main Pragmatic Inferences: Implicatures and Presuppositions

The established definition of an implicature is “a special type of pragmatic inferences whose validity is, in most cases, limited to a given communicative situation” (Ionescu-Ruxăndoiu 2003, 47). Typically, implicatures are posterior, proactive inferences, that is, they represent the consequences of an asserted fact, follow the assertion, and cannot exist in the event of its suppression. H.P. Grice introduced them by reporting a statement that generates the implication: *He is an Englishman; he is, therefore, brave* (Grice 1975, 44).

The connection is pragmatic because it does not require the verification of any condition of truth (Moeschler 2012), but both sentences (”He is an Englishman” and “He is brave”) should be true (they are supposedly true) to justify the use of “therefore.” Moreover, the difficulties of explaining the meaning of connectives with the help of classical logic will be highlighted by Jacques Moeschler in the same study, and these will be the incentive for Grice to initiate the series of analyses concerning the logic of conversation.

There is an entire literature regarding Grice's theory on implicatures. Several types of implicatures are treated by Grice, the first class being conventional (cf. Potts 2005), which do not contain a condition of truth and can be determined by the simple use of language. This is why it was considered that the real implicatures are conversational, contextually framed, those that depend on a certain communication situation. Therefore, there are two types: generalized and specialized implicatures. The generalized implications depend on the meaning that

a group or community ascribes to a word or expression in a particular use, not necessarily in a particular extralinguistic, empirical, physical context. But this is also a context that language creates, a linguistic context.

The typical example of Grice is:

John is meeting a woman this evening.

From here it can be inferred:

The woman John is meeting this evening is not his mother, his sister or his wife.

The subsequent studies analyse the contrast between the definition Grice gave and presuppositions, at-issue entailments, and intonational meanings. In recent years, an important number of papers have been preoccupied by the question of how the implicature mechanism is learned, the process of online implicatures, the implication of the tools from game theory and bidirectional optimality theory.

Deidre Wilson and Dan Sperber pointed out that both types of communication (verbal and non-verbal) are based on inferences. While non-verbal communication is based only on inferences (I bring the finger to the lips and it is deduced that it is necessary to be quiet), the verbal communication involves both the process of encoding/decoding and the process of ostension/inference (Wilson, Sperber 2012: 261).

Like implicatures, presuppositions are inferences, but unlike the latter, they are prior and pre-existing, and the one who operates with this type of inference is not the transmitter, but the receiver. For example, the statement "I received another yellow code warning" allows both types of pragmatic inferences: prior, latent, and posterior, respectively. The receiver can infer that this is not the first yellow code warning, there have been such messages, and the locator intends to say that steps must be taken following this warning (addressing, checking the surroundings, announcing the family). However, it does not mean that the "state" of the locator (impplicatum) cannot be inferred by the receiver.

The term was first used by the German logician Frege ("On Sense and Reference", 1892), who outlines a theory of presuppositions (Levinson 1983: 169, 173, Khaleel 2010: 523), but in a sense restricted to own names (Sander 2021: 12604). According to Levinson (1983: 169), elliptical discussions, which allowed a free interpretation, led to the formulation of the theory of presupposition in modern logic, a theory questioned by Bernard Russell, who formulates his own theory (theory of descriptions), to highlight the differences between the language of logic and the natural language[1].

Mandy Simons (2006, 2010) emphasizes the intuitive and empirical character of presuppositions, with various sources, warning on different subtypes, such as linguistic presuppositions and pragmatic presuppositions (pragmatic presupposition) in the context, in the absence of codifications. Diane Horton and Graeme Hirst (1988, 257) conceive presuppositions as the agent's beliefs, specifying the pre-existence of a framework in which the speaker's intention is not to resort to irony, sarcasm, or to attempt to fool the listener. Previously, Mey (1993, 203), quoting Caffi (1993), showed that pragmatic assumptions relate to the world in which the speakers live, to a knowledge in the sense of common "experience", extended even to the level of expectations, desires, interests, demands, attitudes, fears, etc.:

"These are all pragmatic presuppositions: they have to do with the world in which the language users and their cats live, conditions that can be subsumed under the label 'common' (or 'shared') knowledge, as it is often called in the literature. However, this 'nomer' is also a misnomer: the 'knowledge' we are speaking about has not just to do with 'knowing things', but should rather be understood in the broad sense in which the Bible talks about 'knowing' (as, e.g., in 'carnal knowledge'). In Caffi's words, '[p]ragmatic presuppositions not only concern knowledge, whether true or false: they concern expectations, desires, interests, claims, attitudes towards the world, fears, etc.' (1993, 14)".

However, it is precisely the idea of "common background" or "common experience" that defines them that links the existence of presuppositions to the participants in the dialogue/conversation and context.

3 Defining Presumptions. Presumption as a Type of Inference

In order to establish a link between legal presumptions and pragmatic inferences, it is essential to define them legally, in that they are the result of second-level reasoning. The definition contained in Article 327 of the Romanian Code of Civil Procedure establishes that presumptions are the consequences which the law or the judge derives from a known fact to establish an unknown fact. These consequences become manifested in the language code, but the law does not say anything if these consequences are pre-existing to the asserted, latent or

[1] In forming the theory of presuppositions, philosophers and logicians resorted to several concepts: meaning, reference, meaning, expression and use of expression. "But the first extended discussion of this type of implication appears in Strawson 1950, in his famous response to Russell's Theory of Descriptions (Russell 1905)..

subsequent fact, so it can be assumed that they are all kinds of inferences, being related both to the person of the issuing legislator and to the judge, who will use them in double hypotheses, as the transmitter of the act of jurisdiction and the receiver of the legal rule.

The (official) legal definition is neither new (legal doctrine of the Civil Code of 1865 confirms the same definition) nor, apparently, comprehensive to characterise presumptions precisely. An analysis on the nature of presumptions has been carried out by European theorists since the 16th century (cf. Douaren 1592, Domat 1722, Pothier 1761, Geny 1919, Dabin 1935, Decottignies 1950, Ionașcu 1969, Deleanu, Mărgineanu 1981, Deleanu 2005).

In fact, the current legal definition of the presumption does not depart much from Pothier's 18th century definition, for whom the presumption was not the consequence, but the entire judgment: a judgment that the law or man has on the verity of one thing by a consequence drawn from another thing.

The French Civil Code promulgated in 1804 (Article 1349) took over from Domat the definition also transmitted to the Romanian legislation:

Les présomptions sont des conséquences que la loi ou le magistrat tire d'un fait connu à un fait inconnu.
'Presumptions are the consequences that the law or magistrate draws from a known fact to an unknown fact.'

Although it does not refer to the purpose mentioned by Domat – *to serve as evidence* – the Romanian legislator's option to include presumption in the section dedicated to the evidences is part of the same vision.

Roman law used presumptions in the absence of evidence and they were retained in the case-law being subsequently established by the Calimah Code (1817 - the payment of capital established the legal presumption of payment of interest) and the Law of Caragea (1818), which consider presumption as 'wise evidence':

Thus, in the order of the legislative option, the presumptions are probative or indirect "truths" (Boroi, Stancu 2015, 490, Boroi, Stancu 2020, 602) subject to special legislative techniques. Together with legal fictions, also elements of legislative technique, presumptions are necessary elements of the law, inscribed in a legislative coherence.

Ion Deleanu and Vălean Mărgineanu emphasised in their Introduction of the book *Prezumțiile în drept* („The Presumptions in Law" - 1981: 9) that the presumption means "the constitution of an opinion based on apparent facts, hypotheses, deductions", "is an assumption, the recognition of a fact as authentic until evidence to the contrary." It "should be inscribed in the semantic field of presupposition, assumption, hypothesis, induction, deduction", being "something of each" (cf. Roberts 1959). The significance of the presumption would be "the probable and provisional admission that something is possible, real, true; the statement taken as a prerequisite for the establishment of other statements; statement made on the basis of known facts concerning certain phenomena or connections between them which cannot be directly observed, or the essence of the phenomena, the internal cause or mechanism that produces them; provisional assumption, made on the basis of experimental data existing at a given time or intuition; the ability of consciousness to rationally discover the essence, meaning of a problem, an object (…)";

Framing presumptions, as well as their exact definition, is, however, quite difficult to make, as legal theorists refer to them either as *rules of law* or as *techniques of interpretation*, the legislature indicating them as *evidence*. Because they are both codified by the legislator and deduced by the judge, i.e. entities sitting at opposite poles of a virtual communication framework, in the absence of emphasis on the perspective from which the definition is made, the exact understanding of the presumption as evidence remains difficult.

Unlike the prescriptive legal norms, which fall within the sphere of deontic (necessary), the presumption is an epistemic way (modality of knowledge), inscribed, to varying degrees, in the horizon of probability (cf. Deleanu 2005, 82). Moreover, the legislative consecration itself recognises the epistemic value of judicial presumptions. Article 329 of the Romanian Code of Civil Procedure allows the judge to rely on them only if they have the weight and the power to give rise to the probability of the alleged fact.

As probability or as the value of the epistemic modality has different degrees, the boundary between possibility and legal certainty is quite difficult to establish, and the number of facts on which the presumption and perception of these facts is based becomes decisive. Thus, in accordance with that article, in Romanian law, the judicial presumption may be used only if the testimonial test is admissible.

In defining presumptions, reference is made to judgments, reasoning, assumptions (cf. Boroi, Stancu 2015, Zidaru, Pop 2020) or, explicitly, to statements (Deleanu, Mărgineanu 1981, 9), which presupposes that it is the linguistic expression that allows the formation and formulation of presumptions. The legal presumption is linguistically codified and stated.

At the same time, while it does not explain all the stages of the presumption's birth, the "intuition" leading to the presumptive anticipation of the presumption was highlighted in the Romanian legal theory the mechanism of double reasoning, establishing that the first link is the knowledge of direct evidence, from which "the judge induces the existence in the past of a fact, which close and related to the event giving rise to rights", and the second link is related to the deduction of the main fact, due to the "connection between these two facts" (Boroi, Stancu 2015, 490).

The existence "in the past" of a rights-generating fact, i.e. the establishment of a logical relationship with an earlier fact, highlights the similarity of the presumption with the pragmatic presupposition, defined as "latent deduction" and which can be either imposed by law (a reasoning established by the legislative technique) or extracted by the magistrate from his own experience of the world. The latter is the fact to prove.

The explanation of the reasoning of the presumption is nuanced by Ion Deleanu: the presumption involves a "double displacement of the object of the sample; once from the event giving rise to rights – hard or impossible to prove – to a fact close and related to it – also unknown, but easy or easier to prove – and once from this close fact and related to a probative fact. From the knowledge of the evidentiary fact, the conclusion is drawn first from the existence of the related event and then, from its knowledge, the conclusion is drawn from the existence of the event giving rise to rights" (2005, 97).

The classification applied to presumptions by legal doctrine distinguishes between legal presumptions (or *iuris tantum*), those imposed by law (cf. Article 328 of the Code of Civil Procedure) and judicial or simple presumptions "leaved to the lights and wisdom of the judge" (cf. Article 329 of the Code of Civil Procedure). The legal presumption is established by the legislator and it is applicable only in the context circumscribed by the rule. It is important at this point to draw the observation that this class of presumption is clearly stated in the text, it is reproduced by a statement, unlike the simple presumptions which must be codified in the statement by the magistrate.

Considering the same criteria, Kaiser states that courts speak of "presumptions of law" and of "presumptions of fact" (1955, 253). According to Otis Fisk „an inference is involved in every presumption" (1925, 24).

Otis Fisk identifies two types and asserts that "*presumptio juris* is a presumption in which an inference of fact is made; *presumptio hominis* is also a presumption in which an inference of fact is made. In each of them the inference is made by man - the homo figures in each of them. But in the *presumptio juris* the law says the inference must be made - the homo has no discretion, he involuntarily makes the inference; while in the *presumptio hominis* the law says the inference may be made - the homo has a discretion." Presumptions "may be grounded on general experience, or probability of any kind; or merely on policy and convenience." (Thayer in Roberts 1959, 483).

Both the Romanian Civil Code and the Romanian Code of Civil Procedure regulate several legal presumptions[2], which are essentially relative, since they can, in principle, be rebutted by any means of proof. Only in the case of a few of them is proof allowed to the contrary by appealing to certain means of proof (affiliation to the mother resulting from state possession can be rebutted only by a court decision establishing that there has been a substitution of child – Art. 411 Romanian Civil Code) or persons (the denial of paternity, i.e. rebutting the presumption that the father of the child is the mother's spouse, can only be made by the spouse, the child or the biological father or by their heirs) or under certain conditions (only the evidence of the fortuitous case overturns the presumption of responsibility of the lessee for fire – Art. 1822 para. 1 Romanian Civil Code).

In other cases, presumptions may be removed by any means of proof. Thus, unlike the previous provision of Article 1202(2) of the Romanian Civil Code of 1864, the category of absolute legal presumptions (Briciu 2013) was excluded from the current legislation, which did not allow any evidence to the contrary and which Ion Deleanu had already treated as legal fiction (Zidaru, Pop 2020: 211), being true rules (Deleanu 2005: 92).

In the case of legal presumptions, according to Article 328(1) of the Romanian Code of Civil Procedure, the only obligation on the party to bear the burden of proof is to prove 'the fact connected and related to the event giving rise to rights'.

At the judicial level, the distinction between simple and legal presumptions is therefore relevant, since it determines the burden of proof, the person responsible for proving, demonstrating the correspondence between what it alleges and the objective fact: the simple presumption, unlike the legal one, does not lead to a reversal of the burden of proof, so that, in order for the judge to make the reasoning on which the simple presumption is

[2] Gheorghe-Liviu Zidaru and Paul Pop considered that even those presumptions which the law recommends, and does not impose, are legal, not judicial presumptions, being already contained in the text of the law, the common element with the legal presumptions being that it does not operate the prohibition applicable to simple presumptions of being admissible proof with witnesses (Zidaru, Pop 2020, 211)

based, the party making the proposal before the trial must prove his claims. Unlike legal presumptions, judicial or simple presumptions are not determined by law and are logical consequences that the magistrate derives from the analysis of the proven facts. In identifying and using judicial presumptions, the ability to use logical reasoning developed by the subject of proof, that is, by the mind that decides, is essential.

In order to establish the relationship between legal and simple presumptions, the High Court of Cassation and Justice was asked to give a ruling in court for the resolution of certain points of law on the following issue encountered in judicial practice:

If, pursuant to Article 329 of the Romanian Code of Civil Procedure, read in conjunction with Article 103 of the Civil Code, in an action for a declaration of acquisition of ownership by usucaption, in which it is established that the defendant should have been between 110 and 130 years of age at the time of registration, the court may hold on the basis of a judicial presumption that he is deceased (that it is biologically impossible for him to be alive);

If, in interpreting Article 53 of the Romanian Civil Code in conjunction with Article 328(2) of the Code of Civil Procedure, in such an action the court may disapprove, on the basis of the proven fact, that the defendant was between 110 and 130 years of age at the time of registration of the action, the legal presumption that the missing person is deemed to be alive unless a declaratory death order has been made (there are no documents relating to death and the assumptions listed in Article 103(a) to (d) of the Civil Code cannot be accepted);

If between the two presumptions – the judicial presumption inferred by the court that it is biologically impossible for the defendant to be alive and the legal one provided for in Article 53 of the Civil Code – the court may give precedence to the former;

If, in conclusion, the court can retain the defendant's legal capacity to use strictly on the ground that there is no declaratory judgment on death, giving no legal relevance to the fact that it follows from the evidence (land register registrations) that he should be of an age that cannot be reached biologically.

Although the referral was dismissed as inadmissible, in Decision No 5 of 22 January 2018, the Romanian High Court of Cassation and Justice provided clarification to the referring court, classifying the presumption as evidence and focusing on the principle of free assessment of evidence by the judge; it also used the argument of consistency, taking the view that, in both cases, 'it is a question of proof, whether the rational hypothesis of the edict of Article 53 of the Romanian Civil Code is verified or whether a simple, judicial presumption operates':

44. In both the previous legislation (Art. 1199-1203 of the Civil Code of 1864) and the present one (Art. 327-329 of the Code of Civil Procedure), presumptions are regarded as proof of the existence of an unknown fact, which the law or the judge derives from a known fact, given the connection between the two facts.

45. While, in the case of simple (judicial) presumptions, the transfer of the subject-matter of the proof from the fact of proof to facts connected with it is made by the judge, who has full discretion over the probative power, in the case of lawful presumptions, the shift of the subject-matter of the proof is made by the legislature, who, by means of the enshrined rules, also establishes the probative power of presumptions.

46. Presumptions are therefore logical conclusions, based on the legal process of moving the object, drawing their power from the reasoning of the judge or the legislature.

47. Therefore, since both types of presumptions are based on logical reasoning, the court must also verify in the case of a legal presumption (where the power of proof is assumed by the legislature) the rational limits of its application, the existence of the hypothesis giving rise to its impact.

48. In other words, in the presence of a legal presumption such as that governed by Article 53 of the Civil Code, the court has to verify, in the light of the specific facts of the case (which would indicate a biological age of the defendant, impossible to reach), whether the rationale of the text of the law establishing a presumption of capacity to use in favour of the missing person, considered to be alive if no final declaratory decision has been taken, has remained.

49. This is because a legal rule, in order to produce its effects, cannot have as its object to regulate impossible and unreasonable situations. It corresponds to an abstract model, which is not ordained for what can happen by chance, in an isolated case, but rather takes into account a generality of relationships and an average of behaviour.

50. Therefore, the provision of the rule of law (which forms its content) takes shape from an experience of the legislator, representing the rational element, that is, the conscious representation of the legislator in relation to the requirements of life.

51. With specific reference to legal presumptions, they are based on the observation, more or less precise, of social facts, because, in reality, all legal presumptions are mere presumptions of man, verified in practice and, by the will of the legislature, generalised, systematised and imposed on the judge, so that they cannot regulate or induce the existence of unverifiable states in social reality.

52. Depending on the manner in which, in accordance with the requirements and reasons for the edict of the legal rule, the court resolves the applicability of the legal presumption to the specific dates of the case in which it

is vested, it will give effect to the text of the law (with the power of proof established by the legislator) or, on the contrary, to apply a simple (judicial) presumption, with the evidentiary power left "to the judges' lights and wisdom".

53. In both cases, however, it is a question of proof, whether the rational hypothesis of the edict of Article 53 of the Civil Code is verified, or whether a simple, judicial presumption, left to the discretion of the judge, operates, and not a determination in principle of a question of law capable of appealing to the mechanism of a preliminary ruling.

Thus, in essence, originally, legal presumptions are simple presumptions of man, verified in practice and, by the will of the legislator, generalised, systematised, and imposed on the judge, so that they cannot regulate and induce the existence of unverifiable states in social reality.

As with the formation of presuppositions, both simple presumptions and legal presumptions have been established by experience and, as in the case of presuppositions, the link is made with an earlier fact which, once proven, can lead, even supported by other evidence, to the establishment of other inferences. Like presuppositions, they are formed, as the previous example shows (it is biologically impossible for a 110-130-year-old to be alive) from one's own observations, as a result of experience, which transforms them into beliefs (cf. Horton, Hirst 1988, 257) or intentional states, in the expression of J. Searle, which do not exist in isolation, but are part of a system in which he relates to other intentional states.

It is worth pointing out that pragmatic theory does not link presupposition or implication to the truth of what is stated (by establishing correspondence with facts), because the concern of linguistics or linguistic pragmatics remains formally circumscribed to the universe of language and its use, not to extralinguistic causality.

In the practice of law, a statement must be proven by the evidence permitted by law, by reconnecting with reality or with the extralinguistic context. The above-mentioned presumption, although previously obtained through inferences and questionably defined by the High Court as a conclusion, remains initially and formally a claim, used in conditional relation in legal reasoning. The elements to which they relate are parts of a causal report: "the social relationship and, implicitly, the legal relationship being a relationship that is concluded between people, the bearers of conscience and volitions, the causal relationship is expressed by the interaction between the facts and their results" (Deleanu, Mărgineanu 1981, 78).

In the case which led to the referral of the High Court of Cassation and Justice the simple presumption is based on the observation that it is biologically impossible for a person aged 110-130 years to be alive, the judge being obliged to verify the applicant's age, and the conclusion is to be proven, the fact that the "generator of rights", i.e. the applicant is dead or not. In this case, it is the magistrate who "finds" the condition and develops the mechanism of presumption, he is the *speaker* (an important person in the pragmatic order), the one who "presumes", makes the reasoning, the judgment, in order to reach to a conclusion.

In the codification of the legal presumption, the hypothesis is linked to the conclusion and already provides judicial reasoning: the missing person is deemed to be alive if a declaratory death order has not been issued and the judge must verify whether a declaratory death order has been issued and can conclude that the plaintiff is alive or not. In this case, the presumption is provided by the issuing legislator, in the text, and imposed on the receiver judge who must verify it and obtain the conclusion: in the absence of a death certificate, a declaratory death order governed by the special procedure of Articles 944 to 951 of the Code of Civil Procedure is required, in order to prove death.

3 Presuming Process

Codrin Codrea treats the presumption as a legal application of inductive inference. More specifically, the author points out that, from a logical point of view, the method of drafting the legal rule by which a certain presumption is introduced follows the path of a syllogism, namely a "legislative syllogism which presupposes as a minor premiss a state of affairs given by a multitude of particular cases likely to change to the general" (2023, 209-210):

However, this dynamic of syllogism is formed in a pragmatic, interacting setting. The magistrate, as the addressee of the text of the law, will initiate the investigation from the probable conclusion or major premise. As the "author" of the simple presumption, the magistrate will be conditioned by the training, knowledge and personal experience that enable him to observe peculiar situations and to form convictions, which will be translated into statements. A logical-semantic ratio is given in the linguistic codification of the presumption: the factual situation or the process to which the conclusion refers is fulfilled in the conditional circumstance. Therefore, the presumption within the meaning of the legal texts is the result of the presumption, the relationship of inference or the implication established by the magistrate or the law between the condition and the result of its fulfilment, not the way in which that result is reached.

The path to legal codification of the presumption is not strictly formal, presumptions are not general (pre-established) judgments, but results of empirical and concrete ways of experience with the world. The way in which the presumption is established is described by John Dewey in the study "Logical Method and Law" (2022, 2): people first use certain ways of investigating and collecting, recording, and using data in reaching conclusions, making decisions; they perform inferences and perform their checks and tests in various ways.

In the way it is described, how to obtain and use presumptions refers to what J.P. Peirce called *abductions*. Although the concept seems undefined in Pierce's early studies, abduction is regarded as the first stage of the investigation (Bellucci, Pietarinen 2020). Originally called hypothesis ("hypothesis"), is an argument in which the premises represent an "icon" of the conclusion, an anticipation (Peirce 1878, Bellucci 2018). Later, his vision changes, and the abduction is correlated with induction and deduction. Bellucci argues in the article "Eco and Peirce on the Abduction" (2018) that, in the 1878 study, Peirce brought together in the term abduction – proper abduction and qualitative induction ("qualitative induction"), an induction of experience, of "signs" ("an induction about characters") rather than reality or objects. Abduction itself is a working hypothesis, not an induction from part to whole, but an explanatory hypothesis.

In the 1901 article, "On the Logic of Drawing History from Ancient Documents" (Peirce 1998: 75-114), abduction is even more clearly described as an explanation formulated to confront facts that conflict with our expectations:

"the explanation must be such a proposition as would lead to the prediction of the observed facts, either as necessary consequences or at least as very probable under the circumstances. A hypothesis, then, has to be adopted, which is likely in itself, and renders the facts likely. This step of adopting a hypothesis as being suggested by the facts, is what I call abduction. I reckon it as a form of inference, however problematical the hypothesis may be held." (Peirce 1998, 94-95)

The next step in the investigation is the induction: the first thing that will be done, as soon as a hypothesis has been adopted, will be to trace out its necessary and probable experiential consequences. By the formulation of abduction, it is assumed that there are reasons to believe true a sentence or some fact. With the help of deduction, the necessary consequences, which are experimental predictions of the hypothesis, are inferred. Bellucci (2018) states that the hypothesis must respect the maxims of pragmatics in order to be experimentally verifiable.

The third stage of the investigation is the testing of the hypothesis, the inferred predictions with the help of deductions. The testing operation is represented by induction and consists of observing the predictions that the hypothesis imposes, conditions that must be satisfied in order for them to be fulfilled experimentally. If the test confirms the predictions, inductively, the hypothesis becomes credible. The prediction to be tested is a proof of the veracity of predictions derived from the same hypothesis:

"Induction is an argument that starts out from a hypothesis, resulting from a previous abduction, and from virtual predictions, drawn by deduction, of the results of possible experiments, concludes that the hypothesis is true, in the measure in which these predictions are verified" (Peirce 1998, 96).

Again, Bellucci synthesises the steps in an order. With the help of abduction, the hypothesis is suggested. The conclusion of the abduction, which contains the hypothesis, is not formulated affirmatively, but interrogatively, and advances the hypothesis not as a truth, but as an idea to be investigated, in order to determine its truth. As such, abduction is not a single, sufficient form of reasoning, but is inscribed within a broader investigation horizon, verifiable by induction. Finally, rational investigation presupposes a dialectic between abduction and induction, which is initially hypothetical thinking, and which allows access to the formation of deduction.

"By abduction a hypothesis is suggested. The conclusion of abduction, which contains the hypothesis, is not in the indicative but in the interrogative mood: it advances the hypothesis not as true, nor as a mere idea, but as an idea worth investigating in order to determine its truth. Abduction is not an isolated form of reasoning, but is embedded within the larger horizon of inquiry, because a hypothesis is first put forth by abduction, and then verified by induction (through verification of its observable deductive consequences). Scientific inquiry is a "dialectic" between abduction and induction, which are the beginning and the end of hypothetical thinking, and which are connected by the gateway of deduction." (2018)

By means of examples, Paul Austin Murphy (2022) differentiates between deduction and induction, on the one hand, and abduction, on the other hand. The essential difference lies in the fact that abduction, as the legal

presumption, presents itself as probability (not as truth) and comes to be applied to a particular situation, the observation which is, moreover, the first step in the inductive process, in order to finally break a rule. While deduction begins with a statement of truth or fact (all the grains in the bag are white), and induction records a phenomenon (these grains come from the bag), abduction is not a statement about a fact, but a hypothesis – *perhaps* (all the grains in the bag are white). Finally, if the result shows that the grains are white, the hypothesis is confirmed, then (in this case) they come from that bag, i.e. they validate a particular situation.

Deduction:

Rule: All the beans from this bag are white.
Case: These beans are beans from this bag.
Result: Therefore these beans are white.

Induction:

Case: These beans are [randomly selected] from this bag.
Result: These beans are white.
Rule: Therefore all the beans from this bag are white.

Abduction:

Rule: All the beans from this bag are white.
Result: These beans [oddly] are white.
Case: These beans are from this bag.

To quickly sum up the formalisations above.

The deduction begins with a statement of a truth or a fact. ("All the beans from this bag are white.") The induction simply notes a phenomenon. ("These beans are [randomly selected] from this bag.") And the abduction (which has the same wording as the deduction) is not a statement of a truth or a fact (despite the wording): it's a hypothesis. ("All the beans from this bag are white.")

The abduction is stating that it *may* be the case that all the beans from the bag are white. The deduction states that all the beans from the bag *are* white.)

What Peirce describes is the way in which a hypothesis is formed and verified, that passes the boundary of probability and becomes certainty, that is, the exact way in which presumptions arise and are used. As Bellucci points out in the case of abductions, presumptions are imposed on the judge not as truths, but as approximations, as creative intuitions, as interrogations; the conclusion that contains the hypothesis does not put into words a predetermined truth, but a probability to be verified, investigated, in order to determine the truth. In probative dialectics, it is only an initial link that must be correlated with other probative "evidence".

According to the case referred to the Romanian High Court, a simple presumption (I) or a legal presumption (II) must use the next steps:

(I) *Rule or hypothesis: All men over 110 years old are dead / could not be alive.*
Result: This man is a dead one / could not be alive.
Case: This man is supposed to be over 110 years old.

(II) *Rule or hypothesis: Any missing person is deemed to be alive unless a declaratory death order.*
Result: This missing person is alive.
Case: This missing person has no declaratory death order.

As it can be seen, in case (II), the Rule or Hypothesis is already stated by the law, but in case (I), a judge must codify it to reveal the link. Both examples show that "the fact connected and related to the event giving rise to rights" (person dead or alive), i.e. the presumption, is the Rule or Hypothesis. Another observation that can be drawn is the possibility to use both types of presumptions within the same interpretation, given the opposite Result.

If the speaker skips the Rule and says *This man is supposed to be over 110 years old, therefore this man is not alive.,* then we have an inference, a conventional implicature, as Grice named it initially, because the implication is not codified, but it exists in our minds.

Uwe Wirth (2001) goes on and argues that abduction is a stage of interpretation, it is an inference, in line with Peirce's assertion that the process of thinking and reasoning is based on inferences in order to extract regularities, habits and beliefs (according to Peirce, the process of interpretation is structured as Argumentation. The "mind is a sign developing according to the laws of inference". The process of thinking and reasoning is based on inferences, aiming at establishing regularities, habits and beliefs.).

The process of interpretation proves extremely important, because during this process the inferences become certain, that is, they are more precise, they are formed and transformed. Abductive anticipation becomes the best

explanation, which ends with the establishment of a conviction, which will ultimately determine the actions, in this case, being the activity of judgment, the decisions:

„Only during the process of interpretation "it becomes more precise, general, and full, without limit. The process of this development (…) is called thought". Hereby judgments are formed and transformed. The transformation of these judgements is caused by inference: "the antecedent judgement is called the premise; the consequent judgement, the conclusion" (CP 3.160). In this model Abduction is the "first stage" of interpretation (followed by deduction and induction), since it is searching for plausible premises by "forming explanatory hypotheses" (CP 5.171). The abductive anticipation of the "best explanation" ends up in the dynamical "fixation of belief".

The same mechanisms of thought work with ordinary, daily interpretations (Harman 1965, Wirth 2001, Marmor 2011). With the help of pragmatic inferences, presuppositions and implicatures, the mind proceeds to the inferential reconstruction of the causes and intentions that made a certain statement possible, and, if it needs clarification, checks the assumptions it builds by asking for additional information. In the previous article cited (2001), Wirth highlights the creative construction of abduction, which provides new ideas, equivalent to the type of inference on which the philosopher D. Davidson (1986) based his concept of *interpretation*.

For instance, bankruptcy proceedings make use of a legal presumption of fault under certain conditions in terms of incurring the financial liability of the administrator, the members of the management body or another person who contributed to the debtor's insolvency. Article 169 of the Romania Law 85/2014 on insolvency prevention and insolvency proceedings establishes that personal liability may be incurred at the request of the insolvency administrator or liquidator, and the syndic judge may order that part or all of the liability of the debtor, legal person, which has become insolvent, without exceeding the damage related to the cause of that act, to be borne by the members of the management and/or supervisory bodies of the company, as well as by any other persons who contributed to the debtor's insolvency […]. The presumption is relative.

In that expression, it would be difficult to determine whether 'presumed' is the equivalent of 'supposed' or 'concluded'. However, the adage transmitted to the receiver of the legal text 'presumption is relative' can be overturned, removed from other evidence. Therefore, re-establishing the communicational framework required by the text, it can be observed that, for the author of the norm, that is to say the legislator, it proves a 'conclusion', in the sense of dictating it as a rule assumed and imposed on the algorithm followed by judicial reasoning; for the judge, as the receiver of the norm, it becomes a hypothesis (pre-date/pre-formulated), an assumption or probability that may prove true, but may as well be removed from other evidence.

In order to certify this presumption, the High Court of Cassation and Justice, in Decision No 14/2022, established that 'if the defendant does not hand over the accounting documents to the insolvency practitioner, after prior notification, it shall be presumed that all the conditions necessary to incur financial liability for the act referred to in Article 169(1)(d) of the same law have been met.'

In the same line, in Decision No 370 of 2021, on the rejection of the exception of unconstitutionality of the provisions of Article 169(1)(d) of Law No 85/2014 on insolvency prevention and insolvency procedures, the Romanian Constitutional Court, in giving reasons for rejecting the plea of unconstitutionality, captures the course of the formation of the legal presumption, stating that, at its origin, this is a simple, judicial presumption, used by the courts under the old insolvency law, subsequently taken over and established by law:

27.The Court also notes that in any insolvency proceedings, the analysis of accounting documents is essential for determining the cases and circumstances of insolvency. For this reason, the law establishes the obligation to submit these documents from the time of the opening of insolvency proceedings, and this obligation lies with the debtor through his or her bodies. With regard to the consequences arising in those cases where these documents do not end up being made available to the insolvency practitioner appointed in the proceedings, the Court considers that by supplementing the legislative solution contained in Article 138(1)(d) of Law No 85/2006, as currently found in Article 169(1)(d) of Law No 85/2014, the legislature aimed at eliminating a conflicting judicial practice with regard to incurring liability for failure to keep accounts where the social administrator has not handed over the accounting documents. That is because, even if, in the old legislation, the majority view was in the sense of giving rise to liability, the conclusion was, however, based on a judicial presumption. In the new regulation, the presumption is legal, so that, in the event of failure to hand over accounting documents to the insolvency administrator or liquidator, both fault and causal link between the act and the damage are presumed. The presumption is relative, so that the perpetrator of the act can rebut it by handing over accounting.

4. Conclusion

As any inference or rule, presumptions can only be achieved by means of the language and its signs, with all efforts and effects presupposing concrete use in certain communication frameworks.

As elements necessary for carrying out legal reasoning during the trials or the lawsuits, simple presumptions (which have as their source the judge's mind), like the legal ones, must become "visible", must be expressed, linguistically codified. Within the assembly of evidence needed to solve a process, just like pragmatic implicatures or presumptions in ordinary communication, they are products of knowledge and reasoning, links of legal calculation. However, there is a difference in level between pragmatic inferences and legal presumptions: unlike implicatures or presumptions, which have a semantic-pragmatic nature, implying linguistic competence and cooperation, presumptions, as complex inferences, have a primal pragmatic-legal status, and are uses as abductions that require verification and use in a process combining different types of reasoning. They establish the correspondence between the plan built coherently by pragmatic inferences and the corresponding factual framework, with legal relevance.

Being creations, but also forms of application of law, presumptions, especially the simple ones, like pragmatic inferences, represent the manifestation of thought and reflect the limits of that thought, the beliefs that define it, how it is structured and how it is exposed in linguistic expression. Therefore, I affirm once again that, in all this plane, the "individual" mind which analyses, formed by knowledge acquired not only theoretically, but in experience with the world, remains central.

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