

Short Notions and Institutions about the Subject: Introduction to the Right

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Abstract:

The need for the categories – institutes of law has been present for a long time. With the intention to fulfill this need I have drafted and systemized relevant categories of law, in that way that are dedicated to the standards of relevant texts from the field of law. In one way or another, these categories are unique, adapted to reformed educational programs.

With the occasion of drafting the relevant categories, I have tried to adjust them to certain principles of law in general. Therefore we believe that these categories – concepts of law will serve the students in the university studies of legal sciences, public administration, political science, diplomacy etc. about the phenomena, general notions of law, legal principles of state and law.

With the occasion of the conception and content of these categories-institutes of law, I have tried to save the main concepts and principles of the former authors in this field, although I have adjusted this treatise to democratic evolutions in this field.

Having in mind the legal terminology in this field, respectively the study of these categories, and the purpose of this treatise is to unbuckle and study general notions and categories in relevant fields of law. Therefore, because of the mention reasons above, this educational treatise is defined to be used up to the issuance of new legislations of countries that have passed or still are in the transition phase, for example the Republic of Kosovo, the Republic of Albania, the Republic of Macedonia, of students of these countries, to whom the study of these

categories is dedicated, in relevant universities where the law in general is studied.

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Key words: administrative acts, legal state, legal order

The appearance of state and right

State and the right are phenomena that were discussed in the oldest social sciences. Theoretical thinkers of these categories of state and the right, present them in the first phases of human society.

What studies state and the right?

What is the right? The right is a written set of rules of the organized society.

The object of study of Introduction to the right

The object of study of state and the right is the whole ideological structure of state action and the right, including state institutions, legal norms, legal reports, legal order, creation and implementation of law etc. In public law, the objects of study are general notions, law, general acts, higher legal acts such as the constitution, law and bylaws.

What do the notions represent?

Notions represent the recognition of an issue as it is, by summarizing all its main characteristics.

The notion of state and the right

State and the right can be discussed in the sociological sense as a 'natural living organism', as an evolution process, where according to some authors, the state is, in one way or another, a biological-social process, which arises and is developed in different periods, but by having in mind this and its development.

Natural laws

They determine what happens in society beyond the human will and awareness. Natural laws always act outside human's will.

Social norms

Always predict, appoint, order, ask, stop or guide people about what should they do. In social norms, human's will is always present.

The essential element of norm

The behavior of subjects in accordance with legal norms.

The essential element of sanction

When the norm is willingly not respected, the tools used against people – subjects of right, are called sanctions.

Technical norms

Based on contemporary conditions of technical and technological development, technical norms have an important place in the contemporary society, by using natural resources. These norms define human's behavior against nature.

Types of social norms in narrow sense

We can classify them in three groups:

- a. Social norms which constitute sanctions and these sanctions are used by the unorganized society;

- b. Social norms which constitute sanctions, which is used by some social organization, enterprise or similar;
- c. Social norms that are constituted by sanctions, which are used by a special social organization which is called state.

The norms that are applied by the unorganized society

They can be organized spontaneously, unorganized, and they are created slowly and for a long time. So, we are talking about rules we call mores, which rely on old tradition. These norms involve confined or conservative rules. The most important rules of this kind that are closely linked to the right are: mores and moral.

The norms that are applied by the state

Based on preliminary notions we can give the definition that the right is a set of norms applied by the state, and if they are not applied willingly, then the norm is applied through the apparatus of physical violence, as a competent state mechanism, which is called sanction.

The notion of state

The state is an organization of political rule, it is an organized power, which imposes its will to society and controls the apparatus for the implementation of this will.

State power and sovereignty

1. The notion of power is a social concept, which can only be understood as a relation between two subjects, two wills. The power is the ability to impose an order or a rule to others.
2. The notion of state sovereignty is linked to the word “sovereignty” which originates from the Latin “supremus”, “superanus”, supreme and from French right “Sovran”, sovereign from others. Sovereign is higher than others, independent, respectively

autonomous. Sovereignty represents the last political authority which is not subjected to any higher power about taking and implementing political decisions. The sovereignty of state power of the Republic of Kosovo is a legal expression of the monopoly of Kosovo's people will. Sovereignty represent the last political authority which is not subjected to any higher power about taking and implementing political decisions.

The independence of state power

State power is free from any outside interference in taking its decisions. That means that state power acts independently in relation with other states, if this power is exercised on the basis of international law.

The preponderance of state power

State power has preponderance and it extends over any other power (supremacy – dominance). So, the preponderance of state power within a state relies in the fact that it imposes its will to other powers, and it is dominant. In this context, all other powers are obliged to respect central power.

Popular and national sovereignty

1. With popular sovereignty we mean only a quality of people, in this context, this sovereignty is governed by the people. With people we mean the entirety of citizens that live in a state. Here we have to mention the principle of people's sovereignty according to which the whole power derives from the people. According to this principle, every action of state has to be legitimated by the people.
2. National sovereignty is when the nation itself defines its future, for example if it wants to join another state. Nation as a rule is a permanent communion of a considerable number of people that have lived together

for very long and have common features, a common language, culture etc. A special feature of sovereignty is that there is no state without sovereignty. National sovereignty means a state, where the nation is the sovereign.

The recess of sovereignty and the recognition of states

The recess of sovereignty happens when the monopoly of physical power doesn't exist anymore, and this monopoly is now in the hands of another organization, i.e. a new organization that is called state.

The territorial extension of state power

As a rule, the territorial extension of state power is a space that has three dimensions: land, sea-water and air surface. As a rule, the state territory is under the sovereignty of that state.

The institute of state extraterritoriality

According to international law the institute of extraterritoriality is related with the concept of the territory of another state, where we have to deal with diplomatic representations of a foreign country, the country of sending. According to international law, diplomatic representations buildings enjoy real-territorial immunity and the respective bodies of the host state don't exercise any government action. Extraterritoriality also means subjecting persons, cases and relations only according to laws of its state, respectively full immunity of the persons sent to the territory of the foreign country. In the past this notion was used for the special status of people with diplomatic passports (head of state, diplomatic representatives etc.) in the territory of another state, their diplomatic missions and property.

Citizenship

The institute of citizenship defines the legal status of one person in a certain country, from which the rights and obligations of that state in relation with him depend. The citizenship is a legal-political category of the affiliation of a certain person towards the concrete state. From this it follows that the citizenship is a legal connection of the citizen with the state. There are three ways of acquisition of citizenship: 1. acquisition of citizenship on the basis of blood-line (*ius sanguinis*); 2. Acquisition of citizenship by birth in the territory of birth, despite the blood-line (*ius soli*); and 3. Acquisition of citizenship by naturalization (*ius domicile*).

State's functions

State's functions are seen as state obligations. The state is an organization that has the monopoly of physical force. The state has its internal and external functions. It has legislative function, which is executed by the executive parliament or the government – public administration and the judicial one which is executed by the judiciary. The legislative power consists in the authorization of higher state bodies for the adoption of the Constitution as the highest legal-political act, laws etc. The constitutional and legal system of the state are built through this function, which provides the realization of the fundamental principle of democracy – the rule of law (the legal state). The constitutional and legislative power is usually executed by the representative bodies which are the carriers of people's sovereignty (the Parliament, Assembly, Senate, Congress etc.). The executive power is a form of state power that consists in the direct implementation of laws and other legal acts on one side and the certain state policy on the other side. The main carriers of the executive – administrative power are the government and the bodies of state administration. The judicial power is executed by competent courts and consists in dividing the right or in ensuring legality in a society. As a rule courts

execute this form of judicial power, as an independent power in the functional hierarchy. The main principle of judiciary stands in legality and in the principle of material truth, publicity of work, depoliticization and their autonomy from other state bodies, i.e. in rapport with the legislative and executive power.

The development of state and law

State and law are actually in an organized movement. They were created in a certain phase of social development. Within these changes we have the evolutionary changes (reform, coup, conspiracy etc.) and revolutionary. Revolutionary changes involve substantial and essential changes.

State organization and state apparatus

State organization can be identified in the narrow and wide meaning. 1. State organization presents a system of state bodies through which state power is realized and the role of leadership in society is ensured; 2. The state is defined as an organization of political power and legal regulation of society, political organization and carrier of the monopoly of physical force in society.

State body and state officials

The state body consists of a certain number of people which execute state power. A state official is a physical person who acts under the authority of the body he represents, while the state body is a group of people that execute the state power.

Competences of the central body

As a rule, the competence is a right, an obligation and responsibility of the respective state bodies. Within it we have the central competence. Such competence is the legislative one which is executed by the executive parliament and the government, and the judicial one, executed by the courts.

The position of an official towards the state

The official is the carrier of the rights and obligations towards the state. These persons work in the favor of state. The state, as a rule, is consisted by officials who work in the name and favor of state. With this we can understand that the entire activity of these people is distinguished from ordinary people, because it is executed in the name and favor of state.

The types of official persons

Employees and non-employees

1. Employees are official persons that perform state public services as a permanent profession.
2. Non-employees are persons that perform occasional work in the quality of professional associates for certain state bodies.

The types of state bodies

As a rule we recognize the structure of state bodies that are different with each-other. By their compound we divide state bodies in collective and individual:

1. The collective body is composed a certain number of people, for example the Assembly that is consisted by deputies, the government that is consisted by the council of ministers, assemblies, local governments etc.
2. The individual body is a monocratic-individual body, that is consisted by one official who represents the body, for example the head of state as an individual body, prosecutor etc.

The structure of state bodies

Democratic and bureaucratic bodies, armed and civil ones, the executive bodies, political and professional bodies, individual and collegial and individual bodies etc.

The bodies that decide and the executive ones

1. The bodies that decide are bodies that are chosen by the people. In this context we are talking about the representative democracy which is represented by the highest civil political body, as the highest body of democracy.
2. Executive organs are depended bodies that subordinate to civil political bodies. The bodies that decide are bodies that take decisions, laws, etc. but the second ones have to do deal with the concrete implementation of different social relations.

Political and professional bodies

1. Political bodies define the policy of the general direction of state action. But these organs are consisted by the representatives of citizens. As a rule, in the quality of political bodies we mention: representative bodies in forms of legislative bodies, political executive bodies, the highest bodies of state administration etc.
2. Professional bodies are consisted by experts in the field of state duties. From this it follow that political bodies are non-professional, while professional organs are composed of experts in certain fields.

Individual and collegial bodies

1. Individual bodies are the one that are composed of one person who performs the role of a single state body such as the president of the state (if we have to do with a simple state – unitary state), the public prosecutor, ombudsman, secretary of state, head of administration etc.
2. Collegial bodies are composed by a number of persons – groups of persons. These organs are collective – collegial groups, where in order to be valuable, the decisions they make have to be taken by the entire forum.

Legal state

The institute of legal state includes citizen's rights and freedoms and presents the most important legal institute. This institute defines the legal position of the citizen in a society. Linked to this are the guarantees for human rights and freedoms and the legal limitation of state power, i.e. in a state where law rules, every individual fully enjoys its fundamental rights and freedoms. The rule of law can also be understood as a universal standard justice, equality, impartiality etc.

The notion of the Head of State – Republic

The Head of State – Republic presents an electoral institution. He is chosen in two ways: directly by the electoral body in presidential elections and by the parliament. The Head of State as a rule represents the unity of the people of the Republic. According to this, he has two kinds of responsibilities:

1. Political responsibility, where as a rule, the head of the republic who leads the state, has to give account to the competent authority for the management of state and this kind of responsibility is set by the constitution.
2. Criminal responsibility, which means that if he/she commits a criminal offense, it is sanctioned with law. As a rule he/she must defend as an ordinary citizen, i.e. its criminal responsibility is interlinked with all the actions that are unlawful. Political responsibility is a special kind of responsibility which has nothing to do with crime, disciplinary offense or material damage, but it is only related with political responsibility and is different from criminal responsibility.

The Republic and its types

The term Republic entails public actions or general actions. The republic is a form of state's organization and functioning and one of the oldest forms of social organization. The republic entails the principles of people's sovereignty and the national

one. We have limited and unlimited republics, presidential, parliamentary republics and mixes ones.

Monarchy – the notion of monarchy

It is a form of rule in which the head of state is a person with extraordinary privileges who stands upon the citizens. The monarchy has these features: heritage, eternity, irresponsibility and inviolability.

Types of monarchy

Slave, feudal and bourgeois monarchy. Within them we have unlimited, absolute and limited monarchies.

The forms of regulation of political regime

1. Democracy is a form of political regime, where the power belongs to the people, the majority of people. The democracy as a political category, we first encounter its sparks with the formation and organization of state. In the etymological meaning, the word ‘democracy’ derives from the Greek work ‘demos’ – people and ‘cratia’ – governance. With other words we understand the governance of people in society, or, with other words, people’s sovereignty.
2. Autocracy, this kind of regulation of the state apparatus is composed by the minority of people. A characteristic of autocracy is that it is known as a totalitarian regime, authoritarianism, fascism, tyranny etc.

Democracy and its elements

Democracy has an etymological origin from the Greek word ‘demos’ – people and ‘cratia’ – governance, which means the governance of people. The main principle is for the state power to be in the hands of people and not in the hands of a privileged group. The culmination of democracy stands in the fact that we must have a responsible society, opened for all interests

(general and individual), problems and development. Some of democracy's elements are: people's will, as the carrier of state power, the will to achieve the set goals by submitting it to the state organization.

1. The internal element is the creation of political will of people and 2. The external element – the realization of that political will.

Direct and representative democracy

1. Direct democracy is one where the people take the decisions and it is a state body, i.e. the people itself take the crucial state decisions. In this context, the people itself execute the state power and control it through state mechanisms. Here we have to deal with the direct declaration of people for crucial decisions, such as: referendum, plebiscite, popular initiatives and other forms of declaration.
2. Representative democracy is another form of democracy, respectively a form of connecting the people with the state. Here we have to do with official persons, that compose the highest state body, in this context the parliament, assembly etc. The most advanced form of representative democracy is parliamentary democracy.

Real democracy

Here it is asked for the will of people, which depends on some factors: increasing the economic base that reflects in cultural and political activities, respectively the awareness of people. It requires a special will of people and its realization through formal democracy. The real democracy entails the economical and political democracy.

The notion of state regulation

Among the varieties of state regulation we distinguish the composed state consisted in a federal, confederative and union,

which can be real union or personal union, respectively protectorate.

Composed state

A composed state consists several states – unit of the composed state. In this context we talk about the state which consists several republics, respectively autonomous units. Here we have to do with the decentralized federal state. Some of the following are considered as composed states: UN, British Community of Nations, and EU. A composed state is a state that has connections between certain political entities. As a rule, the union of the composed state is done based on agreement.

The federation

It is a narrow communion which entails a connection between two or more states, which is constituted by the highest legal-political act, the constitution. Characteristics: it is formed by the highest legal-political act – the constitution, has a central body. The decisions of the central body are mandatory for the federal units, i.e. the federal units are depended on the central bodies. The federation has its mutual central bodies, in internal and external policy, army, issue of money, banking system etc. The autonomous units have some kind of independence, but they unify their individuality or relative independence in the main body. The federal units can be states, but only states in the internal right without international subjectivity. Only the federation has international subjectivity. As a rule, in federation, the states or autonomous units connected in this form are obliged to respect the decisions of the federation, so that the central body is the carrier of sovereignty.

Confederate state

The confederate doesn't entail the creation of a new state, but it is an organization of independent states, where every state preserves its sovereignty. The confederate is a contracting

report between sovereign states. The highest body is the diet. The confederate doesn't have a strong power such as the federation. The decisions of the confederative state are not mandatory. Characteristics: as a rule it is formed for economic, military and foreign policy interests. As a rule, universal and regional organizations function based on the confederate principle.

Union and its types

The similarity between union and confederate stands in the fact that they are created with international agreement. There are two types of union: real and personal. These unions belong to the past.

European Union

It is a special form nowadays, in one way or another it is a sui generis entity or hybrid that entails elements of confederate and federal state because we have to do with super nationality. In this case we are not talking about a state but about a communion of independent states which have acceded in European Union.

Protectorate

It is a complex form of regulation, which unifies with the right to protect a weak state from a more powerful one. The stronger state performs some functions in the internal and external policy. The sovereignty of the weaker state may not exist, i.e. it can cease being a state. The protectorate also binds agreements for the state under protectorate and has the responsibility for the unlawful actions of its authorities. The protectorate can be classified in the individual and collective one. The protectorate means the factual political dependency relationship of the weaker state from the stronger one, during which the depended state allows another state to execute its international policy and protect the country. In each case, the stronger state

guarantees the protection of the weaker one in case there is a threat from outside.

The forms of state power

State power is known for:

1. Separation in one side and
2. Interconnection which is known as state entirety. a) First, we have to do with the legislative power that is represented by the parliament, assembly, congress as a legislative, respectively constitutional power. This power as a rule is executed from the main carriers of state – people’s power. b) Secondly from the executive – administrative power, where as a rule it is attributed with bureaucracy and professionalism. Thus, the executive administrative activity is an activity that has to bring to life the acts that are approved by the legislative power. c) The judicial power is independent and is known as a power that protects human’s rights and freedoms. The judiciary unifies with activities that entail the implementation of judicial norms by concretizing them. Thus, in all governances, there are three main powers: the first one is the one that handles the issue of legislative power, the second is the executive power, and the third one is the judicial one. The unity of state power entails the advantage of the supremacy of the central body, the legislative with the executive one and the judicial power. the unity of state power also has to do with the application of two systems: the convention system and the assembly system.

The separation of powers and its characteristics

In the presidential system, parliamentary system and the mixes one as the convention system.

1. The presidential system – here the separation of powers is done through the president, who is chosen directly by

the people and part of which is the government. So, the head of state in the presidential system is the carrier of the executive power. the presidential system ensures the independence of administrative power.

2. In the parliamentary system, the parliament has a dominant role, as a civil political organ that takes decision. The parliamentary system has a huge impact in the state administration. This kind of system is known as a political axis.
3. The mixed system – the convention system is a combined system, and has a strong connection between the legislative power and the executive – administrative one. In one way or another, the legislative power also performs the administrative function. We encounter this kind of power in Swiss. The characteristic of this system is that we have to deal will the partial application of the rules of presidential and parliamentary systems. The presidential system is based in the strict separation of powers and in the principle of checks and balances between the legislative, executive and judicial powers. The presidential system in its initial form and content originates in the US, where the carrier of legislative power is the Congress which consists two chambers, the House of Representatives and the Senate. However, the president is the carrier of the executive power. the parliamentary system is a form of organization of power where the relations between the bodies of state power are based in the principle of a flexible allocation of powers, which is expressed in the equality of state bodies. The legislative power is in the hands of the parliament that is chosen by direct elections. This system was formed in England. The convention system is a form of organization of powers which is executed based on the principle of state unity, where the highest state body indirectly carries the executive function. For

the first time this system was applied in France, at the time of Jacobin government. Currently we have this kind of system in Swiss. In Swiss, the parliament is a body that besides the legislative function, also carries the executive functions which in the parliamentary system are carried by the government.

Centralization and decentralization

1. Centralization means the concentration of power in a mutual state center, as a central power. During the existence of centralization, the functional independence of lower territorial bodies or of the local administration was minimal or inexistent. The organs that perform the administrative functions in different territorial units are named by the central power, which performs hierarchical control against them. In systems with strong centralization, the administrative units have no rights for independent decisions. Centralization also entails the concentration of different financial tools, respectively there is no financial autonomy of lower state bodies.

2. Decentralization is a system of governance where the political, economic and legal organization is based in allocating the competences from the bodies of central power in the depended bodies of state power.

Legal order

The legal order is a set of legal norms sanctioned by the state. The unity of legal norms and the behavior of people according to these norms in the concrete society constitute the legal order. Legal order is a part of social order, but in a concrete and well-organized society. The legal order entails two categories: normative and factual.

1. The normative category is constituted by legal norms and the respective acts, i.e. psychic acts as an internal element.
2. The factual category is constituted by people's actions, respectively by the application of legal norms. But said otherwise the creation of legal norms and their realization in practice represents the legal order, i.e. the legal order is nothing but a form of social order. In conclusion, legal order is an organized order of social relations regulated with legal norms. It represents the union of legal norms and the relations of people to which the norms are applied.

Legal norms – notion and types

1. The legal norm is an essential part of the right and the right is constituted by legal norms that are sanctioned by the state. Their set represents the right. Legal norms represent rules of behavior for the subjects of the right, protected by the apparatus of state violence. The realization of the right is a constitutional part of the right without which law wouldn't have its impact and social meaning.
2. The norms can be general and special. The first ones are conditional, while the second ones are non-conditional.

Conditional and non-conditional norms

1. One condition for the implementation of legal norms is for the norm to be issued as soon as possible, before the situation for which it is created. The author of the norm can do this before the event happens. But for this norm to be implemented, that event has to happen.
2. As a rule, these are issued for a current situation in a certain moment. These can't be issued without the issuance of conditional norms. Here, these norms implement the conditional norms. Conditional norms are

issued by the civil political bodies by the parliament, while the non-conditional norms are issued by the administrative and judicial bodies. General norms as conditional norms is valid for a longer time, while the special norms as a non-conditional norm is only valid for the concrete situation and is dedicated to a certain – concrete subject.

The validity of legal norms seen from the territorial and spatial importance

As a rule, these norms are valid for a certain territory which means that they are valid only in that state territory. If we have to do with a federal state the norm, as a rule, is valid for the entire territory of the country, but if the norm is issued by a federal unit it can't produce legal effects for the other units.

The extraterritoriality of state power

In jurisprudence every rule has its exemption because the territorial importance is not always absolute. Even in this aspect there are exemptions when we have to do with the extraterritoriality of state power. Related to this we have to do with the diplomatic missionaries who are connected with the real and personal immunity, i.e. except that we have to deal with the validity of the legal norm for a certain territory of the state, in this context these kind of norms can also be valid outside a certain state territory. In this context we are talking about the extraterritoriality of state power.

The validity of legal norms seen from time importance

As a rule, the legal order has its effect based on legal norms, which are interconnected with time, by entailing the positive right. For the validity of legal norms there are two important moments:

1. The time when the norm starts being valid and
2. The time until the norm stops being valid.

The retroactive effect of legal norms

As a rule, after the subjects are familiar with the norm during a certain time, after this time the norms begin to produce legal effects for the subjects. The norm becomes effective immediately after its adoption, in case of floods, earthquakes etc. In jurisprudence the law doesn't have retroactive effect. By this it means that for every event, fact or relation, the law that is in force in that moment, that law applies. Therefore it is not preferable for the norm to have retroactive effect. While in the civil law the retroactive effect of the norm is permissible, in criminal law it is forbidden. But there are cases when the norm that becomes effective is compulsory for the relevant subjects even before it is created. These cases are known as the retroactive effect of legal norms. Even criminal norms can have retroactive effect and those norms that supersede the penalties for some criminal offenses or the ones that mitigate the penalties, i.e. when they are in the interest of citizens, otherwise they are forbidden in the criminal law. Only with law can it be defined if some of its dispositions can have retroactive effect when it is required for the general interest. Said otherwise the retroactive effect of the legal power of an act has the purpose of regulating legal relationships that have arisen before its adoption.

Positive law

With positive law or positive order we understand that law, that legal order which is implemented in a concrete society. The positive law is a law that is implemented in most cases and less in individual cases. Positive law is an applicable law, therefore the process of creating new legal norms is a process that changes continuously and this change entails the positive law which has to be implemented, because it is in force (*de lege lata*) and if we have to do with the future law – as a newer law (*de lege ferenda*) that has to do with the changing relations in a certain society.

Legal norms and their elements (the structure of legal norm)

The legal norm is a mandatory social norm for people's behavior, adopted by the state, respectively protected by the state by the state apparatus of violence. As a rule, the legal norm is constituted by two essential elements: clause and sanction, while the part of the norm that describes the factual situation about how it should be implemented is called the assumption – hypothesis of clause.

1. The clause is an essential element of legal norm and presents the behavior of the subjects. The clause has a normative character. As a rule we have the prescriptive, prohibitory and authorizing clause.
2. The sanction gives a full legal character to the legal norm. The sanction is a type of coercive measure against the violators of the clause. We can talk about sanctions against persons and against acts. We also have criminal, civil, administrative, disciplinary sanctions etc.

Offenses

In the contemporary law there are criminal, civil, administrative and legal offenses and disciplinary offenses. Taken as a whole, all offenses represent unlawful acts.

Restitutive and retributive sanctions

1. Restitutive sanctions intend to not only avoid the act, but to also avoid its consequences. With other words, the restitutive sanction intends return the previous situation, that existed before the unlawful act happened.
2. Retributive sanctions seek for retaliation against perpetrators and other subjects so that they won't break the law in the future.

Legal act

Legal act and legal norm constitute the normative part of legal order. The legal act is an expression of will and reason, which contains the legal norm. The legal act unites in itself the psychic act, and the psychic act is considered as the will of the creator of the norm. In this context, the legal act is seen as a general act. The general legal act is the act which contains the general legal norm, from which concrete legal acts derive from, respectively individual and special norms, such as: the constitution, law, bylaws etc. Said otherwise the legal act unites the expression of state bodies' will with the purpose to produce legal effects with which certain changes are made in a special legal order, i.e. it is a tool for the issuance of law.

The elements of legal act

The acts entail two essential elements:

1. The internal element, the will of the creator of the act (the psychic side of the act) and
2. The external element or the materialization of the psychic act. As a rule, the external element is only used to express – materialize the internal act.

The forms of legal act

As a rule, the forms of legal act are composed by three main elements: the competence of the subject for the issuance of the act, the procedure of issuance and its materialization.

1. The competence for the issuance of the act, for this there are authorized state bodies, where we mention the most important three: the legislative, administrative and judicial body.
2. The procedure for the issuance of acts is the only right way to issue acts, no matter if the act is issued by the legislative, executive or judicial bodies.
3. The materialization of the act unites the outside of the act. The outside of it presents its materialization.

The content – matter of legal act

The legal act is composed by two parts: the main part and the secondary one. The main part of legal act is the declaration of the will which creates the act. We classify it with the acts that issue legal norms and with the acts that provide the conditions for the appliance of legal norms. The secondary part of legal act is the description of the act, its place and activity, the procedure of issuance, the purpose of issuance etc.

The formal and material notion of legal act

Every act has two notions, its form and its internal part.

1. With the form of act we have to do with its formal side, i.e. the procedure of its issuance, for example the law seen from its form is a democratic act because the procedure of issuance makes an act democratic. The procedure provides the issuance of the act by the competence of the subject for the issuance of the legal act.
2. Here we have to do with the external part, respectively its materialization. But it is important for the act to be materialized based on its internal part.

Legal acts (sources of law)

Legal act can be classified in general and special acts. The general act can be seen in the formal and material concept.

1. The notion of the sources of law as formal sources is created from the general acts and then from concrete acts. The sources of law contain general rules and are formal sources of law.
2. The sources of law in the material concept point out social facts from where the rights and freedoms derive.

The types of formal sources of law and their hierarchy

In this direction there are two dominant categories in the international theory and practice, such as Continental European law and the Anglo-Saxon law.

1. The Continental European law – here rules the written law, first of all the law is a formal legal source and the main act of law.
2. The Anglo-Saxon law, where customary law and judicial precedent dominate.

Law

The right of people to express their political will becomes a law. The law unites one of the written forms of legal sources that have the highest legal power, an act of the highest power, which issued it according to the special procedure. The law unites in two meanings:

1. The law in its formal meaning is the highest legal act issued in a written form. Therefore, the law is the highest legal act issued from people's political will through the representative democracy.
2. The law in its material meaning is the highest legal act, which contains general norms, no matter what their form is. It can happen that a legal norm may not be a law if looked from its form because it hasn't gone through the legislative procedures, but by its content it is a law. In this context we have to do with a decree, when it is considered as a law by its content.

The Constitution

The constitution is the highest constitutive act. The constitutive roots of state and law are built based on this act. The constitution is the highest legal-political act of a country issued by the highest state body, in special procedure, which is known as a constitutional assembly.

1. The constitution in its formal meaning – we understand that the constitution as the highest legal-political act is issued in a written form by the special constitutional body and according to a special procedure. It can be issued by a) the highest body; b) the constitutional assembly; c) by referendum. The procedure of issuing the constitution is way slower than the procedure of issuing the law. But the procedure of the issuance of constitution ensures economic, political and legal stability for a longer time than law does.
2. The constitution in its material meaning – the constitution in its principled terms regulates the rapports of the organization and functioning of the highest state bodies. Said with other words, the constitution in the material meaning presents the set of legal norms that regulate and determine the basis of the state regulation of a state, the organization and state bodies, the form of state governance, individual and collective rights.

General legal state acts

These acts represent the non-democratic practice of the issuance of acts, if compared by the constitution and law. In this context we have to do with legal acts that are less powerful than laws that are issued by executive - administrative bodies. More than that we have to deal with the form of government's general acts such as the decree, commandments, instructions, and regulations, respectively different decisions, but these are called additional acts, if compared to the preliminary acts such as the constitution and laws.

1. The decree as a general and special act, as a rule, is issued by the government, and is issued in extraordinary circumstances. It is issued by the government with the authorization of the parliament based on the constitution. The procedure for issuing a decree is very

simple, if compared to the procedure for issuing laws. As a rule, the decree later on undergoes the procedure of verification by the highest civil-political body of parliament.

1.a. The decree can also be issued by the president of the state and has concrete character, for example the decree for the appointment and dismissal of high officials, to give decorations, for amnesty etc. The president can issue decrees to set the date of elections in the assembly, for arranging a referendum, for appointing ambassadors, the decree for promulgation of laws etc.

2. The ordinance is part of bylaws; it is an act of state administration that is issued for the relevant subjects to act in a certain way. The issuance of ordinances by the government, respectively by higher bodies of state administration always comes after the official authorization, released by the competent organs in hierarchy with the law.

3. Instructions are also part of bylaws. It has technical character and effect, by giving instructions about how higher state acts or other acts should be implemented.

4. The regulation is a bylaw issued by the bodies of state administration. The regulation has normative character, and in principle it is issued for two purposes: first, to set the internal organization of a certain body and second, to set its field of work.

5. Decisions are general legal acts issued by the democratic civil political bodies that take decisions. In this context we mention the municipalities as decision-making bodies, as bodies that are depended by central power. In order to implement the law, municipalities issue decisions.

Legislative procedure

In the modern parliamentary system the procedure for issuing laws starts by making a legal motion to initiate the procedure for issuing the law, i.e. this can be done by different groups of

interest, groups of people, relevant institutions of the central or local power, but by being directed towards the channels of government's departments. As a rule, every law undergoes these phases:

1. Legislative initiative
2. The discussion of the draft
3. The approval and authentication of the law
4. Promulgation of the law in the official journal

Codification of law

The systematization of laws that include two or more legal fields, respectively branches of law is called codification. Laws that include one or more similar legal fields are called codes, while the creation, systematization of norms based on fields within the fixed entirety, represents the codification, for example the codification in the field of property relations, codification in the criminal field etc. In order to be successful, the codification presents the level of economic, political and judicial development. In this context, the success of the codification is identified by the economic stability.

The acts of social organizations

These acts are issued by different social organizations and not state bodies. Competent for the issuance of these acts are: economic and non-economic enterprises, manufacturing and non-manufacturing enterprises etc. In this context the state authorizes other subjects to issue the relevant acts.

The contract or agreement

The contract – agreement is a legal act which is related with the reconciliation of the will of two or more contracting parties. The contract is a bilateral act, where other non-governmental subjects take part as well, in this context the contract can be a mixed type, semi-governmental, semi-non-governmental. The contract can be a general act and a special one as well. The

contract represents a source of law, especially international contracts have an important role in the internal right, which after its ratification from the competent bodies has a special role in forming and creating the constitutional law.

Customs as sources of law

Customs entail conservative tendencies, this is a rule that doesn't derive from state bodies, but it is created as an unwritten right, which is always applied for the cases and issues for which it was initially created spontaneously. In the question when does the custom become a source of law, the answer is simple: the custom becomes a source of law by being repeated for a long time in the same way, i.e. it is created with long and continuous exercise (*longa consuetude*), and when the state sanctions the custom, then it becomes a mandatory norm. The custom becomes source of law if it is not in contradiction with the positive law as an applicable right.

The judgment as a source of law (judicial precedent)

As a rule, special norms are created by judgments that solve a concrete case and which are only valid for one case. The judgment is a source of law when it when it becomes a general norm. We encounter this in legal gaps, when the special act is converted into a general norm. This kind of judgment is called precedent. When the norm is not full, it is completed by the precedent. In Anglo-Saxon countries where custom law dominates as unwritten law sometimes refers to judicial precedent. Taken in general, there are cases when judgment is taken as sources of law.

Judicial practice and the practice of other bodies

With judicial practice and the practice of other bodies we understand the same action of courts, respectively of other state bodies, such as administrative bodies which give the same judgment or the same administrative acts for identical court –

administrative cases. However, the practice of jurisprudence in general and especially the practice of the bodies of state administration is valid for the practice of other state bodies and in one way or another presents a source of law.

Legal science

As a rule, legal science processes the positive law; it perfects and completes the judicial system. The legal science has a great impact in the creation of written law, but it does not create the law of a country. Legal science does not directly represent a source of law, because legal opinions are not binding for anyone, but on the other side the scientific opinion is respected and applied for a long time, and they actually the norms that are created by legal science are very similar with legal sources. However in some legal systems it was a source of law. Here we have to do with the era of Romanian law.

Legal gaps

When the legal norm entails legal gaps, it is usually completed with special norms. We have two kinds of legal gaps: the initial legal gaps and subsequent legal gaps.

1. Initial legal gaps appear when the author of the norm in the moment of the issue of the norm has foreseen the legal gaps of the norm.
2. Subsequent legal gaps appear when new relations are created, which the author has not foreseen. They were formed by social developments. Legal gaps are completed with subsequent norms, as special norms.

Special legal act

As a rule, the special administrative act is a substantial concept of the administrative law. The special act represents the concretization of general norms. But, this kind of act as a concept includes all administrative measures and actions, by

including both public and private law, i.e. it is valid for physical and legal persons.

Types of special legal acts

We can classify them in two groups by which there are created norms with clauses and sanction and the ones only with clauses. In the first case we have to do with full individual acts that are created by two normative elements, the individual clause and the individual sanction. In the second case we have to do with partial acts that only have the individual clause without sanction or only with individual sanction.

Legal work

The legal work is an individual act of the non-governmental subject. Legal work represents a non-governmental rapport of the right and it does not entail carriers of state power. Legal work is work of expressing the will of people and we encounter this in the theory of civil law. We find cases like this in the testament, for example the testament is not obligatory for the successor. Here we have to deal with unilateral legal work.

Judgment and its types

It is a special legal act, which is issued by the court with the intention to realize the cases they are charged for by the judicial competences. The judgment in its formal and material meaning – the judgment in its formal meaning, is an act issued by the court based on the special judicial procedure. The judgment in its material meaning – is the act with which the sanction is defined.

The concept of legal relations

Legal relations represent social relations. Every social relation can't be a legal relation. Legal relations are social relations which are regulated with legal norms, based on which its subjects are carriers of rights and obligations. As a rule, legal

relations can be property relations through the relevant bodies of state, institutions, private enterprises, citizens. Legal conditional relations, legal administrative relations etc. They represent the necessary extent in the process of the realization of law.

The elements of legal relations

In this context, the legal relations for one party represent the right, and for the other party they represent the obligation. Legal relations entail two essential elements: the legal authorization and the legal obligation.

1. With legal authorization we understand the possibility of a certain behavior of the subject. By this we mean the legal power which is owned by the holder of the subjective right. Here lies the coercive force of power. The authorization entails the authorization that is called subjective right and the authorization that is called competence.
2. With legal obligation we understand that the subject of the right has to behave in accordance with the set requirements by their previous agreement with which they have entered into legal relations. But the legal obligation entails the realization of a certain action by acting or by refraining from acting if this has been foreseen in such relation.

The competence

The competence represents the type of authorization of the subject of right in which it has to protect a foreign interest and not its own, i.e. the interest of another subject, in the name of which it acts. The notion competence has different meanings and it is connected between two meanings, the subjective one and the objective one. According to the first meaning we have to do with a group of people through which the state executes its jobs. While in the second meaning, the competence is

understood with the volume of the activity of individuals or their groups through which state bodies execute their jobs. Related to this we have state bodies competence as legislative, executive and judicial competence. The competence of state bodies is set by law. The competence entails two legal relations; on one side it creates the authorization – the right, while on the other side it creates the obligation. Said otherwise, the competence is the right and obligation of a state body to execute its activity based on law enforcement, expressed in the entirety of acts and actions that it conducts. By the legal nature we have the territorial, personal and functional competence.

The right to sue

The notion of legal authorization itself shows that it is protected by the state apparatus, the apparatus of physical violence. In the essential meaning the right to sue entails the element of the civil subjective right, which unites with the notion ‘suit’ in the material meaning. The notion of authorization is connected with the notion of suit.

The misuse of authorization

This is connected with the misuse of the subjective right. Here we find two opinions, the subjective and the objective one. According to the subjective meaning it is necessary for the purpose to exist, i.e. the damage. The objective meaning says that the damage has to be huge.

The misuse of competence

The competence is a right and obligation of state bodies. But when the state body misuses the competence, it is exclusively related to responsibility. Taken on principled terms, the competence is interlinked with case competency and territorial competency.

1. Case competency entails the rights and duties of a body to decide for special administrative cases from certain

administrative fields or materials. The misuse of competence on the case entails the misuse of power.

2. Territorial competency includes the territory within which certain bodies execute administrative work and this has to do with the connection of administrative actions, by setting the territory. The misuse of territorial competency entails the misuse of power.

Legal obligation

The legal obligation means that the subject of the right has to definitely behave in accordance with the requirements of the legal norm, because otherwise the sanction against subjects will be used. The legal obligation entails the action or inaction of a certain case, based on what the legal norm requires.

The legal status

Every subject of law in every moment has rights and obligations, and their entirety is called legal status. Taken as a cumulative whole, the legal status is a complex category, entailing the creation, change and the termination of legal relations. Said otherwise the entirety of legal relations of the subjects of law to those who have authorization, rights or obligations is united with the legal status. In this context the one that benefits from the rights, also has duties. The authorization responds to obligation and the obligation to authorization – the right.

The creation, change and termination of legal relations

1. Legal relations are a changing process. Legal relations arise in the moment that the legal norm obliges them. As a rule, legal relations in a certain society have to be applicable, respectively in accordance with the positive law, in order not to be in contradiction with the legal order.

2. Legal relations also change, i.e. the old relations change, but there are no new ones. In this context we have to do with the development – change of the existing relations, as old relations, respectively when these relations are altered.
3. The termination of legal relations entails the event, the legal action, respectively the violation of law. Random events of life and people's behavior become legal facts only when a legal norm anticipates them in its hypothesis these events or actions, as legal facts in relevant legal relations, where based on them legal relations arise, develop and terminate.

Legal facts

Legal facts were anticipated in the assumption of conditional norms based on which legal relations arise, develop and terminate, and that's why they are called legal facts. Legal facts have effects in legal relations. All legal facts can be classified in three main types: events, legal actions and the violators of the right. All these entail the rise, development and termination of legal relations, that have legal facts.

The offense

The offense or the violation of law means a certain behavior of the subject of the right, with which the disposition of legal norm is violated, by being a precondition for implementing the sanction. The offense is conducted by action and inaction. We have criminal and civil offenses, administrative and disciplinary offenses. All of them are regulated by law and are considered as unlawful and therefore there are criminal, civil, administrative and disciplinary sanctions.

Prescription

The prescription is a legal institute and category that entails the passing of time. Based on this institute there is the positive

prescription and the negative prescription. We encounter this institute in the internal right, i.e. in the civil and international law. The prescription entails the termination of a right or the inability to realize it, because it was not used within the deadline set by the law.

The objects of law

With the object of law we understand the material side of the world that based on the rule is not any individual, but the thing – the object that is under individuals' power. As objects of law are the legal benefits upon which the holder has direct power. but, on the other hand, material goods are also seen as a part of the objects of law, such as the intellectual right, scientific or professional creativity, that are under the power of the respective subject.

The subjects of law

1. Every human being can be a subject of law, if they are considered as capable to carry their rights and duties by the subjective law. These are the physical persons. But, legal persons can also be subjects of law. To enter legal relations it is not enough for the subject of law to possess legal capacity, because this is correlatively connected with the capacity to act. The last one is connected with the ability to also undertake the obligations that arise from legal relations, respectively to have administrative capacity, constitutional capacity etc.
2. Legal persons are an artificial product, but carriers of legal rights and obligations, composed by one or more physical persons that are identified between them. These persons are artificial creatures of the society, but as a rule they have their individuality, by having their relevant rights and duties with third parties, respectively they have responsibility.

Legal consciousness

1. It is important for the subject of law to have legal consciousness to undertake actions, respectively to not take actions. Legal consciousness entails the recognition of legal order, respectively the recognition of law. The use of rights is depended on legal consciousness. The first element of legal consciousness is the recognition of rights and from legal consciousness people decide whether they want to respect or violate the laws. But, related to this last one, i.e. if the subject of law violates the law, the sanction is put to force through the state apparatus of physical force, respectively through competent state mechanisms.
2. In order to recognize legal norms, it has to be known by the consciousness of the subject. For this reason legal norms are promulgated in the Official Journal. Even if the subject of law is not familiar with the legal norm, it doesn't mean that he is free from his responsibility because of his lack of recognition. But, however, in case the subject was not familiar with the legal norm, this can be taken as a mitigation measure.

Representation

The representation is a legal relation where a physical or legal person performs a job or action based on the authorization for representation, in the name and account of another subject, actions from which usually new rights and obligations arise for the represented person. It may happen that the subject doesn't have the capacity to act, but anyway he/she is considered as a subject of law, i.e. he has his rights and duties. Taken as a whole the legal nature of the institute of representation is a transfer of will from physical or legal persons to relevant state bodies, respectively interstate (if we have to do with relations between the subjects of international law), where based on the

representation of will, legal relations arise, develop and terminate.

Legality and illegality

1. Legality entails that legal order which is consisted by many elements, legal acts, that as a rule have to be ordered based on the principle of hierarchy, i.e. legality is a legal category that in the legal doctrine unites the compliance of all legal material acts (the behavior of subjects) that are below the law in the formal legal meaning. Legality entails the guarantee, i.e. the part of legal order that present the entirety. legality comes to expression in the work of the bodies that issue special administrative and judicial acts, and in the work of the bodies with public authorizations. Taken as a whole, the authorized state bodies that exercise public authorizations have to be in accordance with this principle, i.e. the principle of legality.
2. Every act of the state administration bodies and justice bodies has to be in accordance with the law, but often these bodies issue unlawful acts. The legal theory and practice classifies these acts in these groups: incompetence, violation of rights in procedure, violation of material rights, wrong proof of factual situation and illegality in the opportunity or the purpose of act. Illegality represents the inconsistency between lower acts of state bodies and higher ones. The inconsistency of lower acts with higher ones brings two kinds of contradictions: formal and material.

Legal power

Every legal act has a certain legal power. The act with the highest legal power has the highest power against lower legal acts. Legal power is a legal action where a certain legal act impacts another legal act. The last act is depended by the first

one. Other laws and acts have to be in accordance with the constitution. Related to this we mention the principle of supremacy. Supremacy is linked to the preponderance of the law, especially in the countries with federal regulation. The preponderance of the federal law is upon the laws of federal units. Related to legality, respectively the legal power of acts we talk about the principle of supremacy. The supremacy of law against lower legal acts and all bylaws has to be in accordance with the law. If we talk about countries with federal regulation, the preponderance of federal law stands upon the laws of federal units. Regarding to supremacy, in this context we can notice the implementation of international law in the internal law. Here we have to do with international agreements if they are ratified in the internal law. Said concretely, ratified international agreements have priority against the laws of our country.

Legal means

As a rule, every legal act has to undergo the legality procedure and this can also be proved by appealing, respectively every legal act can be subjected to two levels, unless the law does not require it otherwise. Legal means entail the institute or the instrument of law for the realization of the rights of the relevant subjects, set by law. This procedure can be initiated by citizens and legal persons within the legal deadline. The appeal present a primary guarantee in the process of the realization of law. As a rule, the legality of the act in the first instance is done by the body or subject that has issued it, while in the second instance it is done by another competent body. In this context, the two-levels present one of the essential guarantees for the realization of its legal rights and interests. Except the appeal, we also have other legal means, the indictment, and other extraordinary means. The first ones are recognized as ordinary means, while the last ones as extraordinary. Within the extraordinary means we can mention: the request for the

renewal of the procedure, the request for the protection of legality, the request for the extraordinary review of the omnipotence of acts etc.

The sanctions against illegality

When the illegality of an act is noticed, then as a rule, relevant measures are taken for the act to be removed from the legal order. The sanctions are distinguished in restitutive and retributive ones. Restitutive sanctions intend to bring back the so-called previous condition, the condition that existed before the illegality appeared. Retributive sanctions are those sanctions that seek retribution, by causing something bad to the offender in order for him not to repeat such violations in the future.

Omnipotence

The omnipotence entails the evaluation of the legality of legal acts. When the respective act becomes omnipotent it cannot be cancelled with regular legal means. As a rule, the act becomes omnipotent by the body of the second level when its legality is proved. The body of the second level takes the form of the omnipotent act. The omnipotence of the act is related to a time deadline. When the act is put into force the subjects are obliged to behave in accordance with that act. Some acts can have legal power before they become omnipotent. In this context we have to deal with the constitution of a country, which in the moment of its issue – approval is omnipotent because it cannot be contested, but it doesn't mean that it immediately has legal power. said otherwise, only omnipotent acts undergo the phase of their realization.

Execution

As a rule, every legal acts must be executable, and the subjects have to behave in accordance with this act. We have to distinguish the moment when the execution starts and the

moment when the act is put into force. The execution of the act means that the subjects are obliged to behave in accordance with it, which means that it can be executed even through the relevant authorized body to implement it with violence, i.e. they have their final form and are counted as legal to be implemented.

The implementation of law

The implementation of law is an exclusive activity of authorized state bodies. In this context this activity belongs to the organs that have legislative, executive and judicial functions. If the legal norm is implemented voluntarily, i.e. if the subject of law adhere the disposition, where the norm is implemented voluntarily as the norm requires. If the implementation is done through physical violence we have to deal with the implementation of law through violence by respecting the sanction.

The actions on which the application of law depends

It is understood that the issuance of legal acts in essence is an act of intellect, it entails physical actions etc. If we take the example of contravention – administrative violence, it is done by acting and by not acting. It is considered that the contravention is done by acting when an action shouldn't have been done according to legal norms, for example drunk driving. It is considered that the contravention is done by not acting when the offender didn't take an action he had to take, for example the presentation of assets to the state tax authorities, not presenting the goods to the custom authorities, not presenting the residence etc.

The process of implementation of legal norms

For the norm to be implemented it first has to be recognized, but before its recognition, it has to undergo many phases until the final phase, which is its implementation in the general

practice of the society. As a rule, the legal norms undergo: the phase of the recognition of the legal norm, the phase of interpreting the legal norm, the phase of concrete qualification and the phase of the realization of the legal norm, through the actions of the subjects of law.

Proofs

For the right to be implemented, it exclusively relies in the authentication of facts from which its implementation is depended. In order for the existing norms to be implemented, they usually have to be authenticated with proofs. Proofs – facts are people’s materials or actions, where the means are called proofs. Proofs are known, clearly validated and accurate facts. There are direct and indirect proofs. Direct proofs are the existence of facts and their authentication in the crime scene. Indirect proofs are means that indirectly determine the fact that is a subject to verification.

Assumption and fictions

1. Assumptions are legal facts that are considered accurate even though they are not argumented. We have refutable and irrefutable assumptions. In refutable assumptions it is supposed that every accused person is innocent, until it is otherwise proved by the act of court. Irrefutable assumptions: every husband of the mother, who at a given time was married is the father of his children, if he claims the opposite he has to testify even though the reality can be different.
2. These are linked with imagination and can be considered as unreal. Here it is thought that something exists as real and it is allowed to do this, respectively it is not allowed to prove the opposite.

The interpretation of law

The notion of interpretation in general

The interpretation is a clarification of the meaning, respectively the definition of the meaning of the legal norm. In this case we have to deal with finding the will of the author of the legal norm. Said otherwise, the interpretation of law is an activity which clarifies the meaning of some material phenomenon, which is the purpose of the transmission. The clarification of the meaning of any law or other act of state power is called interpretation. As a rule, every act which is issued by certain state authorities is a subject of interpretation.

The interpretation of law and legal gaps

As a rule, only norms that are in force are subjects of interpretation. But let's use the legal maxim that in jurisprudence every rule has its exception, i.e. if the historical meaning of the legal norm is required, which has to do with the origin of the legal norm, they give an explanation of the legal norm in the historical aspect. In general, the interpretation of laws comes to life when there are legal gaps, when concrete cases were not foreseen with legal norms, cases which must be reviewed by courts, respectively other state bodies. As a rule, legal gaps are filled with analogous cases, but by not avoiding the law, respectively the positive law.

The importance of the interpretation of laws

The essence of interpretation stands in the recognition of laws. The norm can be interpreted only if it is previously known. All manners of interpretation have one purpose: to unbuckle the content and the purpose of the norm, in order for it to be implemented the way its author has created it. After the norm and its authentic (original) text is verified, respectively interpreted, state bodies intend to implement it the way it was

understood by its content, a content that is expressed in the norm.

The object of interpretation

Only the norms that are organized as norms, created by the state, respectively by their authorized bodies, have the responsibility for their protection, implementation and interpretation. By interpreting them, legal gaps are filled. In this context we mention two kinds of interpretations, in the narrow terms and in broad terms.

1. Interpretation in narrow terms has to do with legal norms, one or more legal norms connected with each other.
2. In broad terms, the object of interpretation is the whole legal system, i.e. all laws. Taken as a whole, all norms are objects of interpretation, the general and special ones, the conditional and non-conditional norms. An object of interpretation is also the legal activity with special elements of positive law. But, customary norms can also be objects of interpretation, especially in those countries where customs are sources of law. In the end, as objects of interpretation we can also mention: the interpretation of international agreements, the interpretation of civil contracts, the interpretation of judicial acts etc.

The types and manners of law interpretation

The interpretation of law is considered as an interpretation if it is exclusively exercised by state bodies. When talking about the interpretation that is exercised by state bodies, we can mention authentic – legal interpretation, which as a rule is interpreted by the author of the legal norm, respectively the parliament; the administrative interpretation which is exercised by the bodies of state administration and the judicial interpretation that is exercised by judicial bodies. Taken as a whole, when the

norms are interpreted by the relevant state bodies, this interpretation has a binding character – binding force for the subjects of law. The authentic interpretation of laws means the clarification of the meaning of special dispositions of the law or another normative act. From this principle derives the constitutional disposition according to which the Assembly is the only competent body to give authentic interpretations of the laws it has issued. In other cases we have to deal with administrative, respectively judicial interpretation.

Doctrinal interpretation

The doctrinal – scientific interpretation has a special importance in jurisprudence. This kind of interpretation has no legal effect for the bodies and persons that implement the law. While the interpretation of other state bodies have an obligation force for the subject to whom it is dedicated, this force is not present in the doctrinal – scientific interpretation. This interpretation has a special importance because it has to do with the processing of legal activity of different state bodies.

The means of interpretation

During the procedure of interpretation, the interpreter uses different means: the linguistic interpretation, the grammatical, logical, historical interpretation, the special legal interpretation, the systematic, purposeful interpretation etc.

The vague and nonsensical meaning of the legal norm

1. The vague meaning of legal norm – this appears when the legal norms shows nothing related to what it should, i.e. the norm has an unclear mission.
2. The nonsensical meaning of legal norm appears when the norm has no meaning, and it is required to reveal the psychic content – the internal element (the will) of the author of the legal norm.

The unclarity of legal norms

These norms are unclear, they don't have any normative content, i.e. they don't content behavior norms, they only describe legal facts.

The subjective and objective interpretation

1. The subjective interpretation is understood related to what the author of the norm has meant, i.e. it has to do with the so-called will of the author, the will of the legislative body.
2. The objective interpretation considers that the right meaning of the norm is the one that is set according to the code of meanings. According to the objective meaning the right meaning of the norm doesn't have to do with what the author of the norm wanted, but with what he expressed in it.

The static interpretation of the norm

This type of interpretation is related to the time period which entails the meaning in the moment of its issuance and its interpretation.

The evolutionary interpretation of the norm

The legal interpretation of the norm is given in an evolutionary manner, which entails the meaning of the norm that undergoes through changes – changes in the meaning of the norm.

The right meaning of the norm

We have to deal with this in the aspect of the linguistic, objective and evolutionary interpretations and with a clear interpretation of the norm when it is unclear. Related to this we mention the free interpretation and the connected interpretation.

The interpretation of the legal norm based on analogy and similarity

Analogy or similarity is a special tool in jurisprudence. The analogy presents the main manner of interpretation, with which legal gaps are filled. The analogy represents the interpretation through similarities, i.e. the fulfillment of legal gaps is done based on the similarity of cases. Related to this there are two types of analogy: legal analogy and judicial analogy.

The fulfillment of legal gaps with general principles

By general principles we mean norms that include a large number of concrete cases. We mentioned that there are initial legal gaps and subsequent legal gaps. The first case appears when the author of the norm intentionally left those gaps, in order for them to later fulfill with concrete acts, while in the second case, the subsequent legal gaps appear because of the changes that happen in society, which can be filled with special acts. These are conducted based on the broad terms interpretation.

The system of law

In the doctrine of law, when the system of law is put into context, than this entails a system of legal norms, i.e. a variety of entireties. The system of law is the communion of legal norms in special groups (branches), it is their communion in a single entirety. said otherwise the system of law is an entirety of legal norms with a systematization and their hierarchy, norms that are in force. The system of law, respectively the legal system is a summary of general legal norms, systemized based on certain rules in adequate groups, by forming special and harmonized entireties.

The elements of legal system

Based on different social relations that are regulated by legal norms, we distinguish three elements of the legal system: legal institutions, legal branches and legal fields.

1. Legal institutions, i.e. a communion of legal norms regulate only some parts that operate within the relevant branch. Taken as a whole the legal institutions present the entirety and harmony of legal norms that regulate the same or similar social relations. An institute of law in the civil law is the institute of property – contraction, in marital relations – marriage, in the family law – parental relations, parent-child, the institute of foster care – adoption etc.
2. Judicial branches present the set of institutions where all branches compose the legal system. As a rule, the system of law is formed by branches of law and in general it is distinguished in judicial branches and sub-branches. The main branches are: the constitutional law, administrative law, family law, criminal law, the right of criminal proceedings, civil law etc. Taken in general the sub-branch enjoys its rights within the branch. In this context, we talk about the right to vote within the constitutional law, the tax law within the financial law etc.
3. Within legal fields, the public and private international law has an important place that is not part of the law system of a certain state or of the internal right. The usual division of legal fields is:
 - a) National and international law;
 - b) Public and private law;
 - c) Material and formal law etc.

National law

The national law is an internal law. The relations that are created in the internal law are legal relations between: public

institutions, public institutions and citizens, and citizens of a country. The national law regulates different contests within the internal right. In this context we have to deal with civil law, criminal and judicial law etc. with the purpose to solve those cases as good as possible.

International law

As a rule, it regulates the relations between states, respectively between different international organizations. Undoubtedly, international law is part of the internal law.

Public international law

While in the public law the state, state bodies or public institutions are presented as subjects, in the private law private people are presented as subjects. The difference between public and private law lies in the fact that in the general law as a public law the legal relations of state are protected, while in the private law the private personal relations are protected. When we mention these notions, in the judicial literature they are known as: 'ius privatum and ius publicum'.

Material and formal law

1. Material rights – norms define the rights and obligations of the subjects, their behavior in society.
2. Formal right, as a procedural right, serves for the realization of material norms. The formal law is a result of material rights. Although the material law is represented as the primary law, in the formal right it represents the second law. Material norms gain their judicial power to be put into force only when the procedural formal law puts them in the relevant process. As parts of material law, we mention: criminal, civil, administrative law etc., parts of procedural – formal law are: the criminal procedure law, civil procedure law,

administrative procedure law etc. With other words the procedural law is known as a right of 'procedure' because it is a set of technical legal norms.

The main branches of law

The main branches of law are: constitutional law, administrative law, judicial law, personal and family law, civil law, economic law and the right to work, criminal law and international law.

Constitutional law

It is the main branch of the judicial system of a state. In principle, constitutional law regulates the most important social relations and through it, the most important principles of the whole legal system are expressed. The constitutional law is known as a set of legal norms that regulate the roots of state's organization and function, and of society in general.

Administrative law

The objects of administrative law are certain legal norms and the relations that arise through those norms or that are related to them. Only norms that regulate administrative organizations with administrative activities are considered as objects of the administrative law. But, public services that are executed through administrative organizations are also known as objects of administrative law. The legal norms of administrative law are mostly set by legal acts that are issued by administrative bodies, as bodies of central and local power, as delegated power that performs services.

Judicial law

Studies the organization and activity of judicial bodies. This activity includes a number of acts and their issuance is done with relevant procedures. This right is compiled by the rules of court's organization. The norms of judicial law intend to protect

the public interest in one side, but provide and help the protection of individual rights, of citizens that are part of relevant judicial procedures.

Personal family law

Includes the norms which regulate the position of the individual, the personality of family members, in the same time family law is an integral part of the judicial system of a state. As an integral part of a state, family law regulates marital family relations, the relations between parents and children, of adoption and guardianship, which are regulated with norms of positive behavior as a law that is applied within a state, as a national law.

Civil law

It is a very important branch because it regulates property relations. Related to this we have the definition of Ulpian: “publicium ius est quot at statum rei romanae specket, privatum quot singularum utilitatem perenit”. The inside of this definiton entails the fact that public law protects public interest, while private law protects the private interest. Civil law entails two meanings: the objective one and the subjective one.

1. The objective meaning presents a set of legal norms that regulate social relations that have to do with the circulation of goods and its use.
2. The subjective meaning presents the entirety of authorizations that are depended by the will of his interest.

Economic law

This law handles the organization and function of economic – legal subjects of their economis business. Otherwise this scientific discipline studies the status of commercial entitites,

the constitution, organization, legal relations and the termination of these economic entities.

Labor law

This branch includes legal relations in the field of the right to work, respectively it includes labor relations from the start, i.e. from the establishment of labor relations, its performance, progress, until the termination of the labor relation, respectively even after the relation has terminated that has to do with a special field of law which is the right of pension. As a rule, labor law regulates the relation between the employer and employees.

Criminal law

It is a set of legal-criminal norms and includes criminal offenses and sanctions against offenders. Criminal law, as a special branch of law, represents the systematization of legal norms as material norms that define citizens' behavior based on relevant norms. Criminal law presents a set of norms for criminal offenses and the penalties based on which relevant measures are taken. As a rule, criminal sanctions are distinguished in penalties and security measures.

International law

International law can be private or public law.

1. Public international law – represents the set of legal norms that regulate the relations between states as subjects of this law, where these relations can be built between states and between states and international organizations. But international law is the science about the rights between different states or nations and the obligations that respond to these rights. In this context, public international law has to do with a large number of rules about rights, obligations, respectively about the responsibility in inter-state relations.

2. Private international law – regulates private legal relations with external elements. Its object is the exact definition about the jurisdiction of the laws of certain states, while its subjects are citizens that are under the jurisdiction of two or more states at the same time. Private international law takes care of the private relations between foreign nationals, by always having in mind the foreign element.

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