Dny práva – 2009 – Days of Law: the Conference Proceedings, 1. edition.
Brno : Masaryk University, 2009, ISBN 978-80-210-4990-1

THE LEGAL NOTION OF LAW – EVOLUTION

ADELIN UNGUREANU

Faculty of Juridical Sciences University “Constantin Brancusi” of Targu-Jiu, Romania

Abstract in original language
From the first regulations to the present positive law, the society organization was based on certain predetermined rules, in whose limits subjective rights of each holder of rights must be exercised. The legislative evolution had a permanent basis over time. From custom to the present legal codes or from moral and religious rules to legal rules in all branches of law, the legislation has evolved immensely nowadays, including the extension of legislative typology.

Key words in original language
Law; positive law; legal rules; subjective rights.

I. Evolution and actuality

Being of Latin origin the word "law" has lasted over centuries and features in the common language of contemporaneity. World states (democratic or less democratic) are governed by certain rules presently in force, all of them forming the positive law of that state (e.g. Polish positive law, Colombian or the Indonesian positive law). In terms of their preparation, depending on the older particularities, laws are the legislative product of collective fora (Parliament, Assembly, Congress), but also the work of the executive or the chief of state as their lever.

State law requires the interception of older power excesses through legal rules. This means that the ultimate force in ensuring social order is held by law, any person in the state regardless of position, which he has or the influence or economic position, that is, shall not be allowed to overcome the limits of legislative rules. In Romania this is reflected explicitly in the Constitution, "nobody is above the law"1. But laws are made by people and depending on the evolution of society, of interstate relations, and the interests of society in general, or of those who lead the company at a time, the content of normative acts changes or even more a law is removed in whole, being replaced by other considered provisions, to be outdated or that regulate, in a more suitable area in question. Parliamentarians assert that a law is not perfect, but perfectible, and its effects are related not only to normative content, but also to its application in the territory. For instance, the reforms of agricultural order from the time of A.I. Cuza, found their

1 Romanian Constitution, art. 16, par. 2

applicability based on the Prime Minister's circular, and the results were placed on three components: peasants appropriation by law, persons who committed or benefited from the abuse of authorities and received land in areas more higher than they would be due and unappropriation peasants.

Law, in its wider meaning, has a triple semantics: the rule of law, religious or moral; law of nature and law in the sense of logic, normal rule. Following the lead of semantic division, legal law is used with a dual purpose: first as a legal instrument issued by a state legislative forum and then as sentences or phrases from the content of these laws, which establish certain behavior, to be followed (kept) by people2. For example, the Law 215/2001 is a normative act of the Romanian Parliament and regulates the public local administration, and the provisions, which establish the responsibilities of the Local Council representatives, normative propositions, covering the skills of deliberative body of a locality. Laws, strictly, are necessary and general regularities in the relations between entities3, are issued by the legislative institution, with the observance of the set procedure and in order to regularize some social relations4.

The conditions for a legal act to have the status of the law are these:

- to have normative content;

- to came from the state legislative body;

- to be developed and adopted by an exact procedure;

- to be issued by the legislative body, when exercising his responsibilities, like primary regulation of social relations.

In terms of its form, law can be divided into chapters, which consist of several sections, which in their turn consist of a number of articles, the latter being composed by one or more paragraphs. For a casual identification, but also for an accurate assessment of legal acts, law has a number expressed in principle to the entry into force (e.g., Law 1 / 2000), an adoption date (the day when it is adopted as final by the Parliament), a targeted and highlighted object (i.e. restitution of property) and a date of publication in the Official (Newsletter) Gazette, depending on which it depends upon the entry into force, unless the law itself provides an exact time of entry into force.

As it is known, law was separated from morality and customs, and the first written statutes meant a custom amount, general and frequently used. The exact origin of the first laws is hard to tell. Sophocles in Antigone said

---

2 Mihai C. Gheorghe – Theory of Law, 2nd edition, All Beck Press, Bucharest 2004, p. 56
3Idem, p. 57
4 Mihai Gheorghe – Law Fundamentals. Theory of Objective Law Origins, 3rd vol., All Beck Press, Bucharest, 2002, p.157

"nobody knows where the laws come from; they are eternal5." Over centuries, Montesquieu claimed that the laws "should be suited to individual conditions of the country, with the climate - cold, warm or temperate - soil quality, with the location, with the sheer size6." Considering that law is not a rigid science, like technical sciences, Jean Carbonnier insists on the evolution of the Law itself, this does not mean that in his opinion the permissible maximum threshold of the behavior, but it turned into a process of governance7, in a tool within the reach of the leaders, by which they guided the destinies of a country. Inhering trying to highlight the personality of one who is found in the legislative forum, and of those that had addressed a law entry into force, considered that the one who has legislative responsibilities should be an exceptional thinker, a deep analyst, a philosopher but simultaneously his mind, to be reflected in the content of the law translated by a clear and simple language, that law should be understood by anyone irrespective of the social stage8, which is located or the training and knowledge, that a person has acquired.

Knowing that law is the emanation of the general will, made through the body, which represents this will, it occupies the first position in the hierarchy of normative acts, and its provisions are mandatory for both the government and governance, are general and impersonal being likely for application for an unspecified number of people, in many similar situations, establish rules of social behavior, forcing the subject of law to act in one way or contrary to refrain from certain facts and unlike other laws, the regulations provide also a negative consequence against the person who violate the regulatory device, presented in the form of a penalty that shall be applied by the coercive power of the state, to that person (natural or legal), which had a different behavior than the one opposable by law9.

In the Declaration of human and citizens' rights from France in 1789, law was defined as "an expression of general will10". In an utopian way it would mean that the entire voting population of a country should participate directly in the development and approval of regulatory acts. This is practically impossible due to the high volume of issued legal acts, but also to inspect each individual, it was a solution by which the laws reflect in the content of the general will, precisely because, as those mandated to work on their preparation are elected by the people. For the population to have also

---

5 Popa Nicolae, Eremia Mihail-Constantin, Cristea Simona – General Theory of Law, 2nd edition, All Beck Press, Bucharest 2005; appeared initially as simple customs, their role was to regulate interhuman relations, a role they have today.

6 Montesquieu – On the Spirit of Laws, apud Popa Nicolae, Eremia Mihail-Constantin, Cristea Simona – General Theory of Law, p. 45; he claimed that it is applicable nowadays as well, and this is why we are able to talk of the positive law of a certain state.

7 Popa Nicolae, Eremia Mihail-Constantin, Cristea Simona – General Theory of Law, p. 192

8Idem, p. 191

9Draganu Tudor – Constitutional Law and Political Institutions, Elementary Treaty, 2nd vol, Lumina Lex Press, Bucharest, 1998, p. 98-99

10 The Declaration of human and citizens' rights, art. 6

direct access to the legislative process there is the possibility of initiation without intermediary, by citizens of some legislative proposals or the possibility of population pronouncement by referendum regarding the opportunity of some normative acts.

Legal norms should be formulated in an abstract way, so that should not be fixed before the appearance of laws, the people who apply to, but they are prepared for the implementation including those who form the majority in the legislative forum. In this sense those, who form the majority thinking that the legal regulation which they adopt is opposable, they will have the interest, that law be as close to reality and to the general objectives of the society11.

In conclusion, we say that law is "that act adopted by the state having the status of national representatives, which sets general and impersonal rules of social behavior, which may be mandatory and enforced to be sanctioned through the force of state coercion.12"

Types of laws

We have already said that laws are issued only by the Parliament, but the vastness of this term draws the idea that law is also an international treaty, which joined the Romanian state or a document prepared by a local deliberative body. Regarding the first situation, indeed international treaties are ratified by law by the legislative forum, so the above idea is not very far from reality, in the second case we cannot speak of a law but of a regulation of a collective body applicable at the level of an administrative unit (municipality or county).

Laws are classified according to several criteria as follows:

- depending on the formal modality proper to their adoption we have: constitutional, organic and ordinary laws;

- depending on the scope of application we get: general, special or exceptional laws;

- according to the content we forfeited: material laws and procedural laws, the latter subdividing into organization of courts laws, competence laws and procedures for carrying out the activity of judging the sake laws;

- depending on the authority that exercises the legislative function by the regulatory acts issued, we have: the Constitution, international treaties, Community laws, legislative acts;

---

11 Draganu Tudor – Constitutional Law and Political Institutions, p. 100
12 Idem, p.99; nobody except for the institutions holding the legislative position, may issue laws, and they have to comply with certain features

- by prescribing sanctions there are: perfect and imperfect laws;

- depending on the legal component of the text, we distinguish: direct regulatory laws, empowerment, control, framework-laws13.

A special category of laws are interpretation laws. Throughout the summary of this work as I have already made reference to them, when I analyzed the retroactivity of law highlighting the exception that they constitute from the non-retroactivity principle, we will only add that the interpretation law aims to eliminate the unclear, difficult interpretative or other ambiguities. "Interpretive law shall not be confused with the non-legal laws of interpretation of the legal law. Interpretive laws of legal law have methodological character, as the interpretation is the only method of application of legal rules, it can be used by various exponents.14"

Constitutional laws are those that involve the review of the fundamental law of the country. The initiators of such laws may be: the President of the country at the proposal of the Government, one fourth of the total number of parliamentarians, or 500,000 citizens voting15. The procedure of adopting such laws involves a minimum percentage of 66% of the total members of each Chamber, which was to agree with the content of constitutional laws. Such regulations come into force not by been simply adopted by the parliament even if it is a qualified majority of 2 / 3 of all officials, but it needs the opinion of all adult population of the country, which within 30 days of its adoption by Parliament, it is invited to a referendum to express their option by secret ballot16. In case of constitutional laws there is no Chamber of reflection or first Chamber, nor a decision Chamber. Only in this category of laws Romanian Constitution mentioned the possibility of mediation. If, two different Chambers adopt a project of constitutional law differently, a mediation committee is formed with the participation of mixed participation: deputies and senators. If the committee does not find any (common ground) in the final form of the law, it shall organize a joint session of both Chambers, and the decisions will be taken with a qualified majority of 3 / 4 of all parliamentarians.

It is perhaps important to clarify that customary, among constitutional laws, does not fit to the constitution, being the supreme law of the country, different from the rest of constitutional laws, that fact may be developed only with the compliance of the Constitution17.

---

13 Mihai Gheorghe – Law Fundamentals 3rd vol, p. 167-169

14Idem, p. 168 (footnotes); any law may be interpreted, but if we get this far, the role of lawmaking authority would not be to issue laws but indicate what their purpose is
15 Romanian Constitution, art. 150
16 Muraru Ioan, Tanasecu Simina – Constitutional Law and Political Institutions, p. 309
17 Zamfirescu Zoica – Constitutional Law p. 198

Organic laws are not defined by the legislator, as he adds only the domains that are regulated by these categories of laws. According to the constitutional text the organic law shall regulate: the electoral system; organization and operation of the Permanent Electoral Authority; organization, operation and financing of the political parties; the status of Deputies and Senators, the establishment of the emoluments and other rights; organization and holding of a referendum, organization of the government and of the Supreme Council of National Defense, the state of partial or total mobilization of the armed forces and the state of war, the state of siege and emergency; crimes, punishment and the execution thereof; the granting of amnesty or collective pardon; the status of magistrates; administrative court; organization and operation of the Superior Council of Magistracy; the courts, the Public Ministry and the Court of Auditors; the general system of property and inheritance; the general organization of education; the organization of local public administration; of the territory, as well as general state regarding local autonomy; the general state regarding work reports; unions, employers and social protection, the status of national minorities in Romania, the general state of cults; other fields for which the Constitution provides the adoption of organic laws18. This last provision of Article of the supreme law refers to: getting and losing the Romanian citizenship, the organization of the Constitutional Court, the role of the Legislative Council, functioning of institution Ombudsman or the election of emblem or seal of the country19.

Considering the regulatory scope covered by organic laws, we infer the importance of this category of laws.

The main areas of activity are regulated by laws – the organic law, whenever appropriate. Viewed hierarchically with the constitutional law and the ordinary one, the organic law is situated on an intermediate position between them. An organic law enacts with the absolute majority of votes, i.e. 50% plus one vote, of the total number of members of each Chamber20. With reference to the governed matter, the organic law is constitutional but if we refer to the steps taken in the preparation procedure, we find similarity with the adoption of ordinary laws. Professor Deleanu supported in the year of adoption of this Constitution of Romania that "organic laws should be enacted to deal with Constitutional matters, but after the usual procedure in which the ordinary laws are enacted21."

Both areas subject to regulation but also to the majority needed to adopt, the organic laws are proving their superiority over the ordinary ones. An

---

18Romanian Constitution, art. 73

19 Zamfirescu Zoica – Constitutional Law p. 199

20Idem, p. 199

21Official Gazette, part. 2, 2nd year, no. 9/29.03.1991, professor Ion Deleanu's opinion within the Constituent Meeting from 27.03.1991, apud Zamfirescu Zoica – Constitutional Law p. 199-200; in case of such an adoption procedure, the difference between the two categories of laws is reduced

organic law is adopted, with majority of votes of the present parliamentarians, obvious in the vote moment, within each Chamber. Areas for the regulation of which ordinary laws are elaborated are derived by reading those covered by the regulations for organic laws, those areas that are not retrieved at the organic law being to the competence of laws category, which shall be enacted by simple majority. However, if we look at the constitutional text, we see that the general state of cults is governable to regulation by organic law. This means that in the domain of cults, the ordinary laws can not contain legal rules. But it specifies that only the general state has the competence of an organic law, and this is looming the possibility that particular aspects of cults can be also regulate through ordinary laws.

It was a time not too distant in the history of Romania, when regulatory acts were enacted unanimously, by the institution that held the legislative function. Because unanimity among a collective body, comprising several hundred people is hard to believe that can be done only in terms of beliefs of these people but not by other means, the democratic regime has allowed the right to hold opinions and to support it by voting for representative people, unanimous vote belonging to the past.

Although ordinary laws are regarded as one of the 3 steps in terms of their importance, the Government may not be empowered by the Parliament to issue orders in certain fields of which regulation belongs to this category of laws22.

In the Romanian legal system previous to the current Constitution, the share of the ordinary laws was very high compared to other types. During this time an organic law was enacted, according to the same procedure used in case of ordinary laws, the mention of the organic law being only theoretical, because practical, their adoption was identical. Only after the introduction of majority voting criterion necessary for adoption, a clearer distinction between the two types of law were created23, and implicitly the need for precise delimitation of what the legislator should have in view, that initiates a legislative project.

If the Parliament adopts an ordinary law in a field, which belongs to the organic law, the Constitutional Court after the verification of this issue may declare a law as unconstitutional24. A body that constantly checks the constitutionality of laws gives them the possibility not to declare that the respective law is outside the limits set by the Constitution.

Both the Senate and the Chamber of Deputies debated and adopted it as being the first notified Chamber, or the decision Chamber, both organic and

---

22Ionescu Cristian – Constitutional Law and Political Institutions, 2nd vol, p. 286
23Muraru Ioan, Tanasecu Simina - Constitutional Law and Political Institutions, p. 509-510
24Mihai Gheorghe – Law Fundamentals, 3rd vol, p. 166

ordinary laws, neither being by exclusive competence to only one of the Chambers.

Nearby the constitution, it is subordinate to constitutional laws, the organic and the ordinary ones, according to their legal force and on the same line of laws decreasing, the acts emitted by executive power and those emitted by public county authorities and to the level of locality25 are subordinate to them. Differences between the three categories of laws vary depending on their commencement, on the areas reserved for them and not least by the majority of votes needed for enactment.

General laws are the common law and regulate the scope of social relations specific to branches of law. In the field of relations between individuals, a general law is precisely the Civil Code. Like the Constitution, codes contain general provisions, but a code of laws regulates only in a certain branch of law (civil, family, customs) and is below the fundamental law, both by content, by way of adoption and change, not least because of the requirement to harmonize the text with the one of supreme law.

Special laws have as the regulation object, only certain relationships within a branch of law. Through them the organization and operation of legal institutions may be determined, like that of marriage or only certain aspects of it. In case the general rules laid down some rules on social relationships, which are also regularized by a special law, but in a different way, the law applied is lex speciali derogat generale26.

Exceptional laws are adopted in some cases, in a special period, which crosses a state. One such case is that in which the occurred events invoke the installation of the condition of necessity. In such crisis situations quick and effective measures are required. Such measures cannot be arranged only in an already established legal framework. Because the normal elaboration of the laws also involved some deadlines for their entry into force, the State is unable to effectively solve rising problems. Release of exceptional laws allows the state organization to dispose the necessary measures for the resolution of situations, that have generated the establishment of the condition of necessity.

Material laws own in their content a provision, which regulates social relations from only one branch of law or related to sub-branches. There are material those laws which include legal rules from the sphere of civil law, criminal law, the commercial law27 and other fields of law. Unlike the material laws, the procedure ones do not contain provisions, that regulate individual behavior but other aspects of organizational nature. Law proceedings are organized for that matter of activities of the trial (the

25 Ionescu Cristian – Constitutional Law and Political Institutions, 2nd vol, p. 287
26Mihai Gheorghe – Law Fundamentals, 3rd vol, p. 167
27 Mihai C. Gheorghe – Theory of Law, p. 110

judicial process), territorial and material competence of courts are established, depending on the degree of jurisdiction and their territorial location and are given criteria and directions regarding the materialize of judgments decree, i.e. putting into execution28 of this city knowing that not everything the court decides is translated into practice by the parties, which were in dispute. Laws of organization of courts regulate the organization of the judiciary system, both the civil courts and of those with a military character. Competencies laws establish for each type of court, which are their responsibilities and what can spread their activities, and the laws regarding the procedures for carrying out on the activity of judging the reasons29 includes rules, that determine the details of the unfolding of a process including the early phase of the criminal action.

Constitution in its quality of supreme law in the state is also the general framework for all legislation in force or which shall come into force in the future. International treaties to which our country adheres become practical rules of internal law after the time of their ratification by the Parliament. Community laws have great importance both in the current period but from now on as well, because of the intentions of the country's integration into European structures. Among other criteria and conditions to be met, compatibility of domestic legislation with the European Community is impetuously necessary. Harmonization of laws is even a guarantee of the states desires, which join the European Union, about a full integration. To the level of all, EU is a legislative forum entitled by the European Parliament. In its content there are found elected euro-parliamentarians by an electoral system extended to all Member States, in each state, which has been integrated into the dramatic political and economic construction after the end of the Second World War.

Perfect laws are those that cancel their contrary effects, stipulated in other normative acts or simply disband those normative acts, while the imperfect ones30 do not contain any negative consequences for a law whose content would conflict with this.

Direct regulatory laws establish the deployment or the organization of some activities. The diplomatic laws are the acts of empowerment performed by a legislative authority. Such a situation is the empowerment of the Government by the Parliament to issue orders, during the parliamentary vacation. Control laws show the modality and the role of parliamentary observation and framework laws establish limits that cannot be overcome by other laws, which shall succeed.

Contact – email
adelin13ungureanu@yahoo.com

28 Idem, p. 110
29 Idem, p. 110
30 Mihai Gheorghe – Law Fundamentals, 3rd vol, p. 169