Legal order and the principles of law: Case of the Republic of Slovenia

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Abstrakt

In this article author defines law a system of rules and principles that regulate, within the boundaries of legal regularity, the vitally important external conduct and behavior of the subjects in a state-organized society. In this context he upgrades rethinking of law with definition of legal order. A legal system or legal order author see as an integrated whole of the hierarchically regulated principles of law, rules, and general legal acts which apply in a certain country, are published, and enter into effect from a certain date following adoption.

In central part of the article author explains the case of legal regulation in Slovenia. He describes which legal acts are adopted in Slovenia and how is it done in the context of EU regulation.

Author concludes the article with an idea that legal theoreticians have still not agreed on a uniform definition of the essence of law. Author thinks that law can be understood instrumentally. Instrumental law is a tool prescribed in advance which is composed of rules that are suitable for preventing and resolving conflicts between subjects in society.

Key words: *law, legal order, legal principles, lex specialis, lex generalis*

1. Introduction

Law is a system of rules and principles that regulate, within the boundaries of legal regularity, the vitally important external conduct and behavior of the subjects in a state-organized society.[1]

[1] Leksikon Cankarjeve založbe. Pravo. L. CZ (2003); Editor: PAVC□NIK M., Cankarjeva založba, Ljubljana, p. 284. The definition only refers to natural persons, i.e. human beings. However, legal entities are also legal subjects, therefore, the definition was changed to […] conduct and behavior of the subjects […], which

The science which deals with law is legal science. Legal science comprises several fields. Legal history, for instance, deals with the applicable law of the past, whereas the focus of interest of the science of positive law is the currently applicable law. Legal science is divided into the legal sciences of individual fields of law or legal disciplines. Legal science studies various levels of law: e.g. legal dogmatic deals with its normative structure, the sociology of law observes law as a social phenomenon, the politics of law evaluates its normative elements, and legal theory determines what the general legal terms and general rules are.[2] Positive law[3] is laid down law that applies in a certain territory at a certain time.[4]

The applicable law can be laid down internal law, i.e. national law, and laid down external law, i.e. international law. Positive law is applicable in a certain territory at a certain time. It always applies in advance, which entails that it must be adopted beforehand in legally determined forms of legal acts.

Natural law is the antipode to positive law. Natural law comprises the rights that every human being has on the basis of the natural order of things, i.e. as a human being. Natural law originates in nature. It is in the nature of humans that through their consciousness and freedom they perceive with their minds the sensible natural order as a source of principles which they must realize in their own existence. Modern natural law – proceeding from a modern understanding of science – strives to avoid the above-mentioned problem and attempts to be constituted as rational natural law. It considers a human being to be a rational being, but also a being of interests and needs.

2. Legal Order or Legal System.

A legal system or legal order is the integrated whole of the hierarchically regulated principles of law, rules, and general legal acts which apply in a certain country, are published, and enter into effect from a certain date following adoption.

The term legal order is used as a synonym for the term legal system. A legal order reflects the entirety of the mutually connected normative and factual elements which are reflected in legal relations. A legal order entails the

includes human beings and legal entities. See BRADAC F. (1990). Latinsko-slovenski slovar, Državna založba Slovenije, Ljubljana, p. 288: I. ius, iuris = juha, corba, godlja, II. ius, iuris = 1. pravo (zakoni, naredbe, obi- caji), 2, pravica (suo iure: po svoji pravici), 3. moc, oblast, pravno stanje, pravni položaj , 4. prisega (ius iurandum).

[2] Cf. L. CZ., 2003, *ibidem*, p. 274.

[3] BRADAČ F. (1990), *ibidem*, p. 392. Pono, positum = dejati, postaviti, položiti.

[4] The Latin expression *de lege lata* means *the law as it exists*. Usually it is used with the Latin expression *de lege ferenda*, which means *what the law should be*.

applicable law at a certain time, defined in advance, in effect in a certain territory of a certain country.

The elements of the *legal order are the principles of law and legal rules*.

The factual elements of the legal order are the *legally relevant facts* (e.g. the relevant course of time, the fulfillment of a condition) and the legally relevant behavior and conduct of legal subjects which have legal consequences. The connecting elements of the legal order and the practical application of the law entail *legal relations*. They are defined in Part II of this book as the basic form of the application of the law in practice.

The legal order is based on the presumption that "being ignorant of law harms":

This entails that claiming that one does not know the principles of law, rules, and general acts does not result in *exculpation*.[5] The excuse that there was a mistake of law, which is another term for being ignorant of the law, is usually not a recognized defense. Legal certainty is based on the presumption that all subjects are aware of the law. Therefore, no one can excuse their unlawful conduct by stating that *they were unaware of a certain rule or that such conduct was not allowed*. In exceptional circumstances a mistake of law can be the basis for *exculpation*, however, only within the scope of criminal law.

Regardless of the above-mentioned exception, a legal order is based on the presumption that being ignorant of law harms. Thus, every person must know the law, as every person bears the consequences of being ignorant of the law.

3. The systemization of law

A further characteristic of the systemization of law are *double divisions*.[6] With reference to such, law is divided as follows:

(1) THE FIRST DIVISION OF LAW: EXTERNAL AND INTERNAL LAW,
(2) THE SECOND DIVISION OF LAW: CIVIL AND COMMON LAW,
(3) THE THIRD DIVISION OF LAW: SUBSTANTIVE AND FORMAL LAW,
(4) THE FOURTH DIVISION OF LAW: PRIVATE AND PUBLIC LAW

International or external law is a set of principles and rules which regulate the behavior and conduct of countries and international organizations (e.g. the United Nations, the Red Cross, and UNICEF). It comprises diplomatic and consular law, international law of the sea, law on good-neighborliness, as well as the law of war and international humanitarian law. One characteristic of international law is that in cases of violations of its rules there is no organization which can impose direct coercive sanctions against subjects who have violated such. However, a violation of international law rules can trigger

[5] Latin: *culpa* = blame, *exculpare* = exculpate.
[6] Cf. L. CZ., 2003, *ibidem*, p. 329.

or be a cause for unarmed or even armed interstate conflict, in other words, a war.

National law comprises a different set of rules than international law. Such rules consist of national state principles and rules which only apply in the territory of a certain state; they also regulate the behavior and conduct of state authorities, local community authorities, citizens, aliens, and all legal entities in a certain state territory. With its coercive apparatus (i.e. police, armed forces), a state has a monopoly on and absolute authority regarding the imposition of sanctions for the violation of the state rules.

Law in Europe has historically developed according to two concepts, namely the continental European concept of civil law and the Anglo-Saxon concept of common law.

The concept of codified, positive law is the basis for the regulation of the legal systems of the countries of continental Europe. This includes all the countries of Central Europe, the countries on the Iberian Peninsula, the Scandinavian countries, and the countries of Eastern and Southern Europe. In continental Europe, it is positive law that is codified in applicable legal acts.

Different from the concept of codified law, the concept of unmodified law is based on precedents. Such a system can be found in the United Kingdom and in countries that trace their legal heritage to the United Kingdom, i.e. its former colonies.[7] Common law is not based on formalized sources of law, but on court decisions adopted in similar cases. These are known as precedents.

Precedents are the judgments of the highest courts in Anglo-American law (i.e. common law). The rationale for the decision in an individual case (i.e. *ratio decidendi*) has the effect of a general and abstract legal rule. The court which adopted the precedent and the lower courts are bound by such precedent when deciding subsequent cases with similar issues. Common law based on precedents arose as the courts had to carry out integrative and law-creating functions, which in continental European law is reserved for the legislative branch of power.[8]

The main criteria for the substantive regularity of any modern law be it civil or common law, are human rights. They are universal and are a constituent part of the legal orders of all democratic countries.

[7] The countries that adopted the common law system are the USA and the members of the Commonwealth of Nations. The Commonwealth is a community of nations (i.e. originally the British Commonwealth of Nations, from 1964 named only the Commonwealth of Nations), namely, the community of 54 independent sovereign states, which are almost all former territories or colonies of the British Empire (the exceptions being Rwanda and Mozambique).

[8] See PERENIČ A. (2005), *ibidem*, p. 285.

Law can also be divided into substantive and formal law. Substantive law determines the substance of the rights, obligations, and legal entitlements of subjects under law. Formal law regulates the organization and procedures[9] regarding the judicial conduct of legal subjects.

Within the continental European concept of law, both substantive and formal laws comprise legal rules and principles which are written in legal regulations.

Substantive law entails all the legal rules which determine the substance of the rights, obligations, and legal entitlements of subjects and which are static. Substantive law consists of a number of various laws in which the substantive rights, obligations, and legal entitlements of legal subjects are determined.

Formal law determines the organization and powers of state authorities and other aspects of public administration as well as all general and special rules of legal procedures. Procedural law, i.e. procedural formal law, is dynamic. It determines the actions of legal subjects which must be performed in order to ensure enforcement of the rights and obligations whose substance is determined in substantive law.

In addition to substantive rights and obligations, in legal procedures subjects also have procedural rights and obligations. The latter are intended for the lawful exercise of procedural acts.

Only when all substantive and procedural rights and obligations are entirely respected can this result in a legally binding decision which constitutes the individual rights or obligations of individual subjects.

The final classic division of law is the division into private and public law. The development of the division of law into public and private law dates back to the ancient Roman state, where public matters were interwoven with private interests and vice versa. At the same time, coercive authority as a public matter was also subordinated to the private interests of those who held power. The main law developed in those times was private law, primarily contract law.

Only a small number of institutions and rules referred to public matters. Public matters were those in which in addition to private interests there was also the interest of the state. The classical Roman jurist Domitius Ulpian[10] named this law *ius publicum*. Ulpian wrote: "*Public law is concerned with the organization of the [Roman] state, while private law is about the well-being of individuals. – Ius publicum est quod ad statum rei publicae spectat, privatum autem*

[9] A synonym for procedural law is adjective law.

[10] KRANJC J. (2008). Rimsko pravo, GV Založba, Ljubljana, p. 155. The Roman jurist Ulpian was one of the greatest classical jurists. He lived and worked in the 2nd and 3rd centuries. In 223 he was murdered by a mob. About a third of the contents of Justinian's *Digest* come from Ulpian's writings.

quod ad singulorum utilitatem." Ulpian thus developed the division of private and public law, which has been preserved in legal systems up to the present day.[11]

Private-law relations are primarily contractual relations. This entails that dispositive rules (i.e. *ius dispositivum*) apply to such. The free will of the contractual parties has precedence over state regulation. Only if the contractual parties do not agree is law applied. Such application of law is secondary, i.e. *subsidiary*.

4. Law and Moral

Norma in Latin means a rule.[12] Therefore, the term *system of norms* is a synonym for the term *system of rules*. In addition to law, which is a normative system of rules sanctioned by the state, there exist other normative systems in society. These include moral rules, general social, personal, and family rules, the rules of religious communities and church rules, the special rules of voluntary associations, etc.

The word morals[13] derives from the Latin word *mos*, meaning *custom* (plural *mores* – customs). Morals entail a person's attitude towards the world, other people, and towards himself or herself. In a normative system morally relevant actions are assessed as either good or bad. What is good is morally correct and what is bad is morally incorrect. Morals comprise the values and customs of the people in the given society. In general, morals include unwritten rules, which apply not only to individuals, but also to the entire society. Law should include the most important moral rules and thus represent the *minimal moral code*.

It holds true for all the above-mentioned normative systems which are not legal systems that in cases of a violation of their rules the imposed sanctions never entail the use of state coercion. For instance, if a person violates a moral rule, a negative consequence of or sanction for such violation is contempt, social devaluation, the loss of one's good reputation, etc. If a person violates a family rule, other family members impose sanctions on them in a manner such that they make them feel bad, that they lose a certain benefit, or have a bad conscience (e.g. if children violate family rules, they might not be given pocket money by their parents). If a member of a religious community violates a church rule (e.g. one of the Ten Commandments, which is a sin in the Catholic Church) a sanction is imposed transcendentally. The person is punished after death by being sent to hell instead of heaven. In comparison with the rules of other coexisting social normative systems, legal rules are the only rules whose violation

[11] Cf. L. CZ., 2003, *ibidem*, p. 120. STOJČEVIĆ D., ROMAC A. (1984). Dicta et regulae iuris, Savremena administracija, Belgrade, p. 249.

[12] BRADAČ F., 1990, *ibidem*, p. 340.

[13] A similar word is ethics, which derives from Ancient Greek word η□θική (e□thike) and has the same meaning, i.e. morals. See http://en.wiktionary.org/wiki/ethics (accessed 21 January 2011).

results in the imposition of a coercive sanction by the state. Such is executed here and now. With its coercive apparatus the state namely punishes a person who has violated a certain rule by imposing, for instance, a fine, a prison sentence, or in certain countries even the death penalty. Certain rules can naturally be legal, moral, and church rules concurrently. For instance, if the rule "do not kill" is violated, such results not only in a legal sanction (e.g. a prison sentence), but also in a moral (e.g. contempt) and church sanction (e.g. punishment in the hereinafter for having committed a deadly sin).

In their substance, modern positive law rules are general and abstract, on one hand, and concrete and individual, on the other. Regulations are general and abstract, whereas contracts and decisions which cause direct rights and obligations of legal subjects are concrete and individual.

5. Sources of Law

Sources of law are mutually connected legal elements which are necessary for the existence of a legal phenomenon.[14] Sources of law may be direct or indirect. The former comprise legal regulations and customs, while the latter comprise case law and legal science.

Sources of law may be formal or informal. In Continental legal systems regulations (leges) are formal normative acts, whereas customs are informal normative acts. Collections of customs are termed *usages*.

Laws (leges i.e.Regulations) are legal acts, which are formal, general, abstract, and published. The principal sources of continental European law are regulations.

The general nature of regulations entails that they apply to everyone. All are equal before the regulations and regulations must apply equally to all.

The abstract nature of regulations entails that they refer to undetermined yet envisaged social relations.

Regulations must be adopted and published in a manner prescribed by law, which is described below in the section dealing with the principle of legality. The regulations furthermore have different mutual relations. Their correct application is ensured by three binding rules of interpretation:

(1.) *LEX SPECIALIS DEROGAT LEGI GENERALI* – SPECIAL LAW PREVAILS OVER GENERAL LAW.
(1) *LEX POSTERIOR DEROGAT LEGI PRIORI* – MORE RECENT LAW PREVAILS OVER EARLIER LAW.
(2) *LEX SUPERIOR DEROGAT LEGI INFERIORI* – SUPERIOR GENERAL LAW PREVAILS OVER INFERIOR SPECIFIC LAW.

The above-mentioned rules of interpretation connect and bind regulations into an integrated whole of positive law. The principal regulation is a law,

[14] Cf. L. CZ., 2003, *ibidem*, p. 279.

which is discussed in more detail in the section below dealing with the legal acts of the legislature. In the legal system, a law is applied in such a manner that in cases in which the same legal relation is regulated by a general and a special law, the regulation of the special law prevails (i.e. *lex specialis derogat legi generali*).[15]

In cases in which the same relation is regulated by an earlier and a more recent law, the more recent law prevails (i.e. *lex posterior derogat legi priori*). With reference to such, special laws have priority over general laws. A later general law thus does not prevail over the earlier special law (i.e. *lex posterior generalis non derogat priori speciali*).[16]

The rule that a higher regulation is stronger than a lower regulation (i.e. *lex superior derogat legi inferiori*) entails the rule of the supremacy of a higher regulation over a lower regulation. However, when applying regulations in practice, this is less important, as the consistency of lower regulations with higher regulations is decided primarily by courts. If such court proceedings are not initiated, the parties involved must respect legal regulations as they were adopted until the Constitutional Court abrogates or annuls them by a decision or until the state authority which adopted them amends or repeals them.

In the following sections the types of regulations will be introduced from the viewpoint of which authority adopts and issues them.

5.1. Legal act of the EU

The *supremacy* of EU law entails that the legal acts of the EU prevail over the legal acts of Member States. *In accordance with Article 10 of the Treaty establishing the European Community,*[17] *which determines that Member States must take all appropriate measures in order not to jeopardise compliance with EU law, every violation of EU law by the authorities of any Member State also entails a violation by the state itself.*

Before joining the EU, candidate states had to align their national law with EU law and had to correctly apply it from the day they became members of the EU. As a special type of a supranational organization, the EU does not have any

[15] See STOJČEVIĆ D., ROMAC A., 1984, *ibidem*, item 149, p. 262.

[16] See STOJČEVIĆ D., ROMAC A., 1984, *ibidem*, item 138, p. 262.

[17] The Treaty establishing the European Community reads as follows: "Member States shall take all appropriate measures, whether general or particular, to ensure fulfillment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community's tasks. They shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty." It must be added that a Member State that does not respect such may also be liable for compensation for damages caused to individuals on these grounds, as individuals may challenge specific and individual acts (e.g. administrative decisions) of their state due to noncompliance with EU law by an action brought before the Court of Justice.

bodies in the Member States in the form of ministries or branch offices, which would implement decisions adopted by EU institutions,[18] therefore the state authorities of the member states are charged with the implementation of EU policies and EU law. *Within the framework of EU law there is a distinction between primary and secondary sources of EU law.*

The primary sources of EU law are the founding treaties with all subsequent amendments, annexes, and protocols; the treaties of accession of new EU Member States with annexes and protocols; and agreements with third countries.

Secondary sources of EU law are the regulations, directives, decisions, recommendations, and opinions of the EU. The difference between these acts is whether they are binding or not, whether they are general or individual, whether they must be transposed into national law, etc.

Regulations and directives, as general binding acts interfere to the greatest extent with the national laws of the Member States and with the position of individuals. There are important differences between a regulation and directive.

A regulation can be compared with a law – it is directly applicable in its entirety and does not need to be transposed into national law of the Member States.

A directive, as a general rule, cannot be applied directly, contrary to what applies for EU regulations. A directive can be addressed to all or only certain Member States, which then must transpose the content and objectives of the directive into their national law by means of binding regulations of the national legal order in light of the objectives which the directive pursues; however, the choice of form and methods for achieving such is left to the national authorities of the Member States at issue. A directive is thus binding as to the result to be achieved upon each Member State to which it is addressed, but leaves to the national authorities the choice of form and methods. A directive requires action of the national legislative body, which must transpose it into national law, whereby the legislature must ensure that the national legislation is in conformity with the requirements of the directive, which entails that a national regulation which is not in conformity with the directive must be amended or that a new regulation be adopted in cases in which, for example, a directive regulates an area which is not yet regulated in the national legislation.

5.2. Legal acts of Legislature in the Republic of Slovenia

[18] This is also connected to the fact that in the EU there is no classic division into legislative, executive, and judicial powers.

State regulations are adopted by state authorities. The most important in this regard are the legal acts of the legislature.

The Constitution is a fundamental general, normative legal act that is adopted by the legislature by a two-thirds majority vote. The legislature is in this case the constitution framer. The Constitution contains principles and rules of the highest legal importance. The principles contained in the Constitution are the foundation of the activities of all citizens, state authorities, local communities, legal entities, and aliens in the territory of the state.

Laws (i.e. constitutional acts, statutes, etc.) are a fundamental direct source of law. Laws regulate fundamental social issues that are important for the legal order. Laws are subordinate to the Constitution and superior to other law in the country.

Laws regulate the content of the Constitution in more detail. The content of the Constitution is as a general rule not directly applicable to the regulation of concrete and individual legal relations, except in the field of human rights.

Laws have a double guarantee:[19]

1. *The guarantee of the applicability* of a law entails that only the legislature has the constitutional authority to prescribe rights and obligations in the country (and to amend and abrogate them);
2. *The guarantee of the existence* of a law entails that the existing law cannot be abrogated other than by a new law which must be a regulation of the same or higher level.

Laws are a fundamental source of law. This also proceeds from the Constitution, in accordance with which[20] the rights and duties of citizens and other persons may be determined by the National Assembly only by law. With reference to such, it must be emphasized that implementing regulations and other general legal acts must be in conformity with the Constitution and laws. Furthermore, individual acts and actions of state authorities, local community authorities, and bearers of public authority must be based on a law or regulation adopted pursuant to law.[21]

Treaties ratified by the National Assembly are applied directly and are thus a source of law.[22] In addition to the above-mentioned treaties, also other ratified treaties are sources of law. Laws must comply with the former treaties, whereas implementing regulations and other general acts must comply with the latter.

In addition to the Constitution and laws, the National Assembly of the Republic of Slovenia also adopts the state budget, declarations and resolutions,

[19] See ČEBULJ J., STRMECKI M. (2005), Upravno pravo, Fakulteta za upravo, Ljubljana, p. 85.
[20] See Article 87 of the Constitution of the Republic of Slovenia.
[21] See Article 153 of the Constitution of the Republic of Slovenia.
[22] See Article 8 of the Constitution of the Republic of Slovenia.

national programmes, ordinances, recommendations to the Government and other state authorities, authentic interpretations of laws, the Rules of Procedure of the National Assembly, and decisions.

The National Assembly also adopts programmatic documents. These are: national programmes for the future development of individual policies, declarations stating general positions on domestic and foreign policy issues, resolutions evaluating the state of affairs and problems in society, recommendations, opinions and guidelines comprising proposals for the work of national authorities, and authentic interpretations of laws adopted by the legislature itself.

5.3. Legal Acts of Slovenian Government

The most important implementing acts are adopted by the Government. (Case: Government of the Republic of Slovenia).

Decrees are the most important general, implementing regulations issued by the Government. By decree, the Government regulates in detail and defines certain relations determined in a law or another act of the National Assembly in accordance with the purpose and criteria of the law or another regulation. The Law of Government determines that a decree on the exercise of the rights and obligations of citizens and other persons may only be issued in accordance with an express authorization in a law.

By a decree the Government defines certain relations determined in a law. Decrees are hierarchically lower than laws. The Government of the Republic of Slovenia does not have *legislative* authority on the basis of which it could directly affect with the rights and obligations of the individuals. Only a law can constitute, reconstitute, or abolish rights and obligations of individuals. There are three types of decrees:

(1) INDEPENDENT GOVERNMENTAL DECREES,
(2) INTERPRETATIONAL OR EXPLANATORY GOVERNMENTAL DECREES, AND
(3) SUPPLEMENTARY GOVERNMENTAL DECREES.

The Government does not need special statutory authorization to adopt independent decrees and may adopt them independently. These are organizational decrees by which the Government regulates in more detail the internal structure of the administration and work processes in the administration.

The Government adopts interpretational or explanatory decrees on the basis of a general statutory authorization, i.e. a general clause. The Government adopts interpretational or explanatory decrees in instances in which it assesses that more detailed operationalization of the provisions of a certain law is needed for the implementation of such.

Supplementary decrees are not independent. The Government must adopt such on the basis of a special statutory authorization or an executive clause. Decrees supplement a law in a manner such that they define certain statutory rules whereby they may not interfere with the statutory subject matter, which is a domain reserved for the legislature.

By an ordinance the Government regulates individual issues or adopts individual measures of general relevance. Furthermore, it adopts other decisions for which it is determined by a law or decree that are regulated by a Government ordinance.

Through the budget memorandum, the Government presents to the National Assembly the fundamental objectives and tasks of the economic, social, and budget policy of the Government and the global frameworks of overall public finances for the following year.

By a strategy for regional development in Slovenia, the Government determines objectives, policies, and tasks with regard to regional development in Slovenia. The Government regulates its internal organization and work by its Rules of Procedure. The Government issues decisions on appointments and dismissals, in administrative matters within its competence, and on other specific matters within its competence. The Government issues an order whenever it does not decide by any other act.

5.4. Legal Acts of Slovenian Ministers

Ministers issue rules, ordinances, and instructions for the implementation of laws, other regulations, and acts of the National Assembly and regulations and acts of the Government.[23]

Rules are the most important legal act issued by a minister. Rules define individual provisions of a law, some other regulation, or an act on its implementation.

Measures of general relevance are determined by an ordinance. The contents of an ordinance regulate an individual situation of general relevance.

An instruction prescribes the manner of implementing individual provisions of a law, other regulation, or act. An instruction thus mainly regulates issues of a technical nature.

When deciding on administrative matters, ministers and heads of departments within ministries issue orders and decisions.

[23] It proceeds from the above-mentioned that this concerns implementing acts which are based on some higher regulation and that their substance proceeds from them. In addition, from the above-mentioned it can be concluded that there are two groups of regulations: the first group is issued for the implementation of laws, other regulations, and acts of the National Assembly, whereas the second group is issued for the implementation of regulations and acts of the Government.

5.5. Legal Acts of Slovenian Municipalities

Local matters which municipalities may regulate independently and which concern only the residents of a certain municipality fall within the competence of the given municipality. Legal acts that are adopted by municipalities are primarily statutes, rules of procedure, and decrees. These types of acts are the most common ones. Furthermore, municipalities adopt budgets; they may also adopt ordinances, rules, and instructions.

A municipality, more precisely a municipal council, adopts statutes. The statutes of a municipality determine the basic principles of the organization and operation of the municipality; the establishment and competence of municipal bodies; the manner of participation of members of the municipality in adopting decisions by the municipality; and other issues of common interest in the municipality as determined by law.[24]

A municipality regulates matters from its competence by municipal decrees.

A municipality regulates matters from its vested competence by decrees and other regulations determined by law. Rules of procedure regulate the organization and work of municipal councils as well as the procedure for adopting decrees and other general acts.

6. Indirect Sources of Law

In addition to general legal acts, customary law and case law (i.e. *usus fori)* are supplementary and additional sources of law. In general it can be noted that in the Republic of Slovenia the importance of customary law is relatively insignificant. Customary law is a supplementary source and can be applied only in the event of a gap in the law.

Objective and subjective reasons must naturally be taken into consideration in cases in which case law is applied in practice. From an objective point of view, this is a means which ensures the uniform application of law.

Attention must furthermore be drawn to a special type of source of law, i.e. the decisions of the Constitutional Court of the Republic of Slovenia, especially in cases in which the Court acts as a "negative" legislature and abrogates unconstitutional statutory and implementing norms.[25]

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[24] This is determined in Article 64 of the Local Government Act, Official Gazette RS, Nos. 94/07, 27/08, 78/08.

[25] E.g. in cases in which the Constitutional Court abrogates a law, it abrogates or annuls an implementing regulation and withholds the implementation of the legal act. Declaratory decisions of the Constitutional Court must be considered a binding general act when deciding on individual relations which have not yet been finally decided at the time of the deciding of the Constitutional Court, whereas such decision may only have *ex nunc* effects. Due to the fact that the Constitutional Court established that the first paragraph of Article 1 of the Civil

Any person who suffers harmful consequences due to a regulation or general act which has been annulled by an individual act issued on the basis of such is entitled[26] to request that the authority which decided in the first instance to change or annul such individual act. If such consequences cannot be remedied, the entitled person may claim compensation in a court of law.

With reference to Constitutional Court decisions, attention must also be drawn to its interpretative decisions, i.e. decisions in which the Court does not decide that the provisions of the challenged act are inconsistent with the Constitution or a law, but determines in the operative provisions of the decision in which manner they must be interpreted in order to ensure that their application in individual cases is consistent with the Constitution.

Finally, as was stated above for the decisions of Slovenian courts, also the judgments of the European Court of Human Rights in Strasbourg and the Court of Justice of the European Union in Luxembourg (i.e. the Court of Justice and the General Court – in case of the latter, judgments issued in preliminary ruling proceedings, which are a source of law in the individual cases in which they were issued, are in this regard the most relevant) must be taken into consideration as a source of law within the framework of administrative proceedings and deciding.

7. Conclusion

In the present article we have defined some basic elements of Slovenian formal law. This kind of law determines the organization and powers of state through laws (leges), governmental decrees and ministerial rules. Formal law covers the competences of state authorities as well as all general and special rules of legal procedures.

We can also conclude that law is a historical and civilization phenomenon. Its development began with the emergence of civilization. It continues to develop today.[27]

Servants Act, in accordance with which the highest officials can be replaced during their entire term of office, is inconsistent with the Constitution, the court of first instance had to respect the Constitutional Court decision and annul the decision of the mayor on the dismissal of the director of the municipal administration (Supreme Court Judgment, No. I Up 1477/2005, dated 15 March 2006, VS 17890).

[26] […] within three months of the day of the publication of the Constitutional Court decision, provided no more than one year elapsed from the service of the individual act to the lodging of the petition or request.

[27] For more on the essence of law, see CERAR M. (2001). (I)racionalnost modernega prava, Bonex založba, Ljubljana, pp. 241 and 337.

There are numerous theories and points of view as regards what the essence of law is. Immanuel Kant, for instance, in his time claimed that lawyers are still looking for the essence of their law. [28] Legal theoreticians have still not agreed on a uniform definition of the essence of law. Law can also be understood instrumentally (an instrument – a tool). Instrumental law is a tool prescribed in advance which is composed of rules that are suitable for preventing and resolving conflicts between subjects in society.

Sources:

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[28] See PERENIC A. (2005). Uvod v razumevanje države in prava, Fakulteta za varnostne vede, Ljubljana, p. 69.