RAIS RESEARCH ASSOCIATION for INTERDISCIPLINARY STUDIES
March 12-13, 2026

DOI:10.5281/zenodo.19553625

Some Considerations on the Existing Legal Systems at International Level

Daniel-Ștefan Paraschiv

Assistant Professor, PhD, "Constantin Brâncoveanu" University of Pitești, Râmnicu Vâlcea, Romania
daniel.paraschiv@hotmail.com

Abstract: The legal reality is an inalienable dimension of the social reality and under certain specific historical circumstances, its existence cannot be separated from the existence of the other parts of the society, by which it is influenced and which it influences in its turn. The formal sources imply a pre-existing legal reality, a multiplicity of legal relations, which call for general, compulsory rules of conduct. Law, which becomes objective due to the formal sources, does not exist independently of the collective will, interest or conscience. On the contrary, it is their expression, by means of the legal norms. At present, apart from the nations with an overwhelming proportion in favor of one of the formal sources of law, it should be noted that at a global level, there are various states with a mixed legal system, which means that it is based on a combination between two or even more sources, considered in respect of their signification, related to the form of the legal rules. The legal systems, characterized by the fact that the norms thereof rely predominantly on one particular formal source of law, which is also the main one, of the states, are classified into several legal families, specifically the large Romano-Germanic legal family, the Anglo-Saxon legal system, the Muslim law and the customary law.

Keywords: Formal Sources, Romano-Germanic, Anglo-Saxon, Muslim, Customary

Introduction

In the early phase of societal organization (Paraschiv, 2007, p. 2), norms were of public, religious, or moral nature, in the absence of a special apparatus which could ensure their compulsoriness and thus impose a legal character on them. In case of non-compliance, the sanctions were applied by the whole community and consisted of the expulsion from the tribe, blood revenge, or lex talionis, e.g., "an eye for an eye and a tooth for a tooth", etc.

In the same manner as the state, law is created as a result of the general will—which does not represent the sum of all the wills, as a matter of fact, but only of those bound by an agreement, taking into consideration the common interest—of a community to live their life in common, having not only an explicative, informational function, but also a normative one (Popescu, 2000, p. 14). Such general, formalized will, which constitutes the core of the law and turns into the legal will, is expressed (Popa, 2002, p. 63) by legal rules and is defended by the state bodies.

The main trait of the law is that of being social, therefore it governs only the relations between people, and not the relations between them and things, or only the relations between goods, as it was erroneously claimed, in some opinions. This trait of the law, namely that of being social, was summarized by the Roman jurists in the dictum „ubi jus, ibi societas."

The review of the sources of law has unveiled two meanings, e.g., law source in the material sense and law source in the formal (Djuvara, 1999, p. 306) sense. Material sources are the origin of the substance of the legal norms, being identified with time and space factors, religious, moral, philosophical principles, and social facts, which condition the orientation and content of the law. In the legal field, the phrase "material source" refers to the origin of law, the social factors determining the creation and content of the legal norms, in a given society. However, the formal sources of the law are those manners of creation of the legal norms, those forms, procedures and solemn deeds, whereby such norms acquire their validity, constituting the positive law of a country.

1. General presentation of the existing legal systems at an international level

Law is a phenomenon conditioned (Kelsen, 1992, p. 57) by time and space, being inextricably linked to society, from its first primitive forms of organization. It cannot be withheld from the complexity and state (Boboş, 1996, p. 58) of a society, from the determination, influence and inter-conditioning relations pertaining to the economic field, the social organization, the political field, culture-civilization interferences, inseparability with respect to the state, since it is itself integrated without losing its specificity in the ”normative network”, which makes social life possible.

The development of law throughout history demonstrates the existence of a plurality of formal sources, both in the legal system of each country and at a regional or international level. This plurality arises from the complexity of the social relations subject to legal regulation, on the one hand, and to the variety of forms of organization and government of societies, to the structure of the activities and competences of the state bodies or international bodies or to the relations between the public authorities, on the other hand. In the primitive, unorganized societies, there were no formal sources (Paraschiv, 2007, pp. 7-8) or they were very scarce, hence the judge was generally free to assess each and every case, according to his own reason and faith.

In the initial forms of the human community, social life inherently, instinctively, spontaneously, and roughly, and subsequently more and more elaborately, imposed some rules in the form of habits, customs, and traditions, in connection with the struggle for survival. As to their observance, the whole community was interested, because only in this way, could they survive. Such rules of conduct were complex, strongly pervaded by the mystical, religious aspect and their observance was ensured by the influence of internal, moral-religious, mystical motivation and also by the sanctions which the community or its leaders applied.

Over time, precedents are set, compulsory norms of conduct take shape, and the interpreter is bound to observe these norms before using his own judgment. One may consider that the establishment of law as a fully defined entity occurred upon the creation of the public power as state power in the Ancient East countries and in the Greek and Roman Ancient civilization, as well. During this period, the written law emerged along with the customary legal norms. The former was also illustrated by normative acts, some of which being genuine masterpieces of legislation in the history of human law and culture.

One of the earliest sources of law is the custom or habit, comprising rules of conduct, which are set by being repetitively applied over a relatively long period of time, inside a human community (Marcu, 1996, p. 183). Initially, the customary norms took the form of moral or religious customs and traditions and were an original, primary modality of governing social relations and influencing human activity.

At the beginning of the organization into states, the legal doctrine was also among the major sources of the Roman law and the pontiffs were jurisconsults, who conferred upon them the power to create and interpret law. In Rome, law interpretation fell on the praetor over time, and then on the laic jurisconsults. In the feudal law, habit and jurisprudence prevailed, and due to the excessive centralization of power in the hands of the absolute monarch (Popa, 2002, p. 193), many abuses, illegalities and disregard for the law were possible.

The customary law could not and still cannot ensure full governing and defense of the social relationships and thus, with the development and diversification of the social relationships, the need to concretize the will of the state power holders to rule society by norms arose, taking the form (Craiovan, 2001, p. 171) of the written law. Later, in the modern and contemporary ages, the positive law developed and diversified in accordance with the different types of social evolution of the human communities existing in certain areas of the globe and among the formal sources, the written normative acts rank first, along with the

custom, which still has a significant role in the Anglo-Saxon law, jurisprudence, doctrine, general principles of the law etc.

Depending on the legal civilization region to which it belonged, several law families emerged, namely the Romano-Germanic legal system, the Anglo-Saxon law system or "common law", the socialist law, the Muslim law, the Hindu law, the Chinese law, the Japanese law or that of the Far East and also the law of Sub-Saharan Africa and Madagascar. Each system evolved and was improved according to the concrete conditions of social organization, traditions and others similar, while the formal sources of law were broadly the same, with certain particularities, though. In fact, the differences between these law systems, which have lasted into the contemporary era, are in general ideological and legal, more specifically, they are related to the legal language, legal concepts, philosophical tenets etc.

The evolution of the formal sources of law was marked by significant advances following the bourgeois revolutions, when the edicted legal norms were based on progressive principles, such as personal freedom, inviolability of property, will autonomy, the equality of rights or legality, which influenced not only the national law of the states, but also the specific regulations of the international law.

The enhancement of the complexity of social life nowadays brought about an enlargement of the scope of the legal regulations, new domains being tackled, with interstate implications, such as the nuclear law, the environmental law or the international cooperation in the field of human rights protection, for instance.

2. The Romano-Germanic legal system

Notably within the large Romano-Germanic legal family, the formal source pervading in point of legal norms, which is, among others, one of the various fields existing in the society, is assimilated to the written legal rule, taking into account that the present law originates mostly in the Roman law.

It should be mentioned that, in a broad sense (lato sensu), the term "law," also referred to as normative legal act, is understood as any permanent, compulsory, general written norm edicted in the form of a commandment by a public authority, coming not only from the supreme authority of the state, but also from other state authorities (Popescu, 2000, p. 147). Furthermore, in the narrow sense (stricto sensu), the term "law" signifies the normative act with a higher legal value, being considered the most important source of law and representing an emanation, according to a pre-established procedure, from Parliament, the supreme body of state power (Craiovan, 2001, p. 231), an exponent of the people's sovereign power.

Law is considered the expression of the general, deliberate and conscious will (Paraschiv, 2007, pp. 37-38), the outcome of the act of will of a social authority. It conveys the people's interests and governs the most general and important social relationships. As a rational and democratic expression of the legal system, law constitutes the most suitable technical modality of adopting legal norms, having the advantage of being the creation of the people's representative body, in comparison with other sources.

The norms, as part of the legislation, in a broad sense, should be as general and permanent as possible, so that they may guarantee impartiality and justice, respectively. They should be characterized by great logical accuracy to ensure the necessary security of legal relations. No redundant phrases should be included therein, so as not to give rise to unexpected confusion, in unforeseen cases, when the law is applied.

An appropriate legislative technique requires a systematization, as scientific as possible, of the rules in the normative acts drawn up in such a manner that they can be interpreted and applied in line with the lawmaker's will.

Regarding the Romano-Germanic legal system, also named "civil law", "continental law" or "Romano-French law", which (Paraschiv & Paraschiv, 2007, pp. 174-177) emerged in the 13th century and originates in the Code of Justinian, as it uses both the exegetical and dogmatic

methods, shaped to a great extent in accordance with the archaic German law, canonical legislation, feudal law or local customs, we may also note that it is a referential legal system, implemented in most of the states around the world, with roots in the Western Europe, and its most important characteristic is that it holds the fundamental ideas of the system inventoried and included in a well-defined collection, which consequently represents the main formal source of law.

3. The Anglo-Saxon Law System

Apart from the nations within the scope of the above-mentioned standard, there are nations in whose legal systems we find other main formal sources of the law. Thus, the state entities (Paraschiv & Paraschiv, 2007, pp. 177-184) such as the United Kingdom of Great Britain and Northern Ireland, the United States of America, Canada or Australia, which are mainly based on the Anglo-Saxon legal system, govern through the jurisprudence of the courts of law, or otherwise put, through court orders, which are binding, with regard to the similar situations for the courts of a subsequent rank.

It is true that the notion "jurisprudence" encompasses (Paraschiv, 2007, p. 124) all the court orders, even the mistaken ones may be subject to review, but in the sense of its utility, of establishing a practice setting benchmarks for the improvement of the future activity concerning the application of law, what usually matters are the rulings in their majority or unanimity which settle a matter of law in a certain manner and which are useful by the content of the argumentation thereof, with a view to solving similar cases.

Therefore, we may consider that only the rulings contributing to the crystallization of a correct practice as to the application of laws by the courts could be included in the notion of "jurisprudence", while the other solutions having no role, because they are wrong or lack the suitability to be used for this purpose, seem inappropriate for this category.

This normative system, otherwise known both in theory and practice as "jurisprudence law" or "common law"—the latter title coming from the fact that it was "common" to all the courts of the English monarch—represents the law "accomplished" by the judge and a consequence of the activity, based on the customs in force, which William the Conqueror kept, by virtue of a declaration, of the courts of England's kings, chronologically related to the period following the Normans' victorious military campaign, concluded in 1066. Subsequently, the unwritten English legal system took shape all over the British Isles, being first implemented in Wales, then by the Irish people and eventually in the farther territories conquered by the English or the British over time.

Nowadays, within a large selection of nations which have regained independence, getting out of the dominance of the British Empire, the jurisprudential law persists, being characterized by the fact that in the cases brought before the court, great emphasis is laid on the legal precedent, the main formal source of this legal system and the manner of reasoning coming from the ancient English law.

In addition, it may also be noted that, at present, the activities of a third of the people living on Earth are governed by the norms pertaining either to a jurisprudential law system or a mixed legal system, which is a result of the combination between the Romano-Germanic law and the common law, existing in some states such as South Africa, Australia, Bahamas, Cameroon, Canada—both at federal level and at the level of each province, except Quebec—Cyprus, India, Ireland, Israel, Jamaica, Kenya, Malaysia, New Zealand, Nigeria, Sri Lanka, the United Kingdom of Great Britain and Northern Ireland—including in its territories overseas, such as for example Gibraltar—Pakistan, Sierra Leone, the United States of America—both at federal level and at the level of the 49 out 50 states—or Zimbabwe.

4. The Muslim Legal System

Another dominant category, as to the formal sources of law, is the Muslim religion, which (Paraschiv & Paraschiv, 2007, pp. 187-188) at first included the Islamic law organically and which governs in the legal field, only within the nations whose leadership is assumed by an Islamic authority. Therefore, Shari'a—which, translates as "a path to be followed", and, which in the pre-Islamic period, was perceived as "the path to the watering hole", that is the only way one could survive if he didn't stray from it—is the major component of the Islamic law and comprises all the divine commandments, as set forth in Qur'an, the holy book of the Islam, and in Sunnah—which refers to the sayings and deeds of the prophet Muhammad, detailed in "hadiths", a notion denoting traditions or customs—or revealed, in some cases, by other methods, considered of legal nature.

Islamic law, considered the successor to original Sumero-Akkadian legislation and Greco-Roman law, is implemented on the terrestrial surface bordered by Maghreb and Mașrek, by the Eastern and Western Arab world as it is today, and refers to the "Five Pillars" of Islam, dogma, the private law rules, the criminal law, social relationships, family relationships, some food interdictions, setting strict clothing rules—particularly for women—and the like, being based on five postulates, which thoroughly govern a Muslim's existence.

5. The customary law system

The legal systems of certain states situated on (Paraschiv & Paraschiv, 2007, pp. 191-192) the African continent or in Asia are founded on local habits, also called customs. These habits, which are identified by oral tradition, too, as one of their characteristics, and which may stem from cultural identity, religion or ethnicity, have acquired legal value over time and have finally materialized into what is known as the customary law. As to such law typology, it is noted that multiple legal systems are in place, as many as the aforementioned ethnic communities existing on the globe of the type subject to analysis and each such society has its own customary practice.

It should also be mentioned that we talk about a legal habit (Popescu, 2000, p. 149) or custom when the legal norm has a spontaneous origin, its emergence is not connected to any official specialized body, instead it comes directly from the social group, when the legal norm originates in a general, prolonged and constant practice, underpinned by the consent of the whole social group, being considered in line with the law. It follows that not all the habits created in a society become sources of law. More explicitly, the habits which do not pertain to the legal relations, even if they are similar to the legal customs in terms of structure, do not constitute a positive law because they are not applied by the courts under the state's guarantee and under the pressure of sanctions, if necessary.

The customary law that the great powers came across in different colonized African states, was considered "backwards", the legal rules thereof being influenced to a great extent by the agrarian nature of the society on the African continent. This law system is described as having a deeply religious character, dominated by the tribal religion, also made up of certain agrarian rites, according to which land, in the form of a possession, was offered by God, considered its owner, to the ancient generations, who, in their turn, passed it down to their descendants.

Conclusions

The sources of law are of major importance for the regulation of social relations, for the assurance of a proper legal order (Paraschiv, 2007, p. 319), and they particularly influence the quality of the legal practice, its accomplishment in accordance with the idea of justice, specific to each human society in its historical evolution.

The formal sources of law do not manifest in isolation from one another, but, on the contrary, they have a systematic, organic connection of complementarity and subordination,

and they all form a unitary system. The multitude of formal sources is characteristic to all the law systems due to the fact that there is a multitude of social relations subject to legal regulation and spatial-temporal realities. Consequently, one single expression of the law would not cover all this diversity and would hamper its efficient use.

The legal systems that are similar in terms of quality may include regulations expressed by different normative modalities, as, throughout its existence, one concrete law system may act in several forms. Accordingly, the share of one or another of the formal sources of law changes depending on its level of development, on the type of organization of the society, and on the complexity of the social relations it expresses.

References

Boboş, G. (1996). *Teoria generală a dreptului* [General theory of law]. Dacia Publishing House.

Craiovan, I. (2001). *Tratat elementar de teoria generală a dreptului* [Elementary treatise on the general theory of law]. All Beck Publishing House.

Djuvara, M. (1999). *Teoria generală a dreptului. Drept raţional, izvoare şi drept pozitiv* [General theory of law: Rational law, sources, and positive law]. All Beck Publishing House.

Kelsen, H. (1992). *Théorie pure du droit* [Pure theory of law]. Dalloz.

Marcu, L. (1996). *Introducere în studiul dreptului* [Introduction to the study of law]. All Beck Publishing House.

Paraschiv, E. (2007). *Izvoarele formale ale dreptului* [Formal sources of law]. C.H. Beck Publishing House.

Paraschiv, E., & Paraschiv, R.-G. (2007). *Introducere în istoria dreptului* [Introduction to the history of law]. Conphys Publishing House.

Popa, N. (2002). *Teoria generală a dreptului* [General theory of law]. All Beck Publishing House.

Popescu, S. (2000). *Teoria generală a dreptului* [General theory of law]. Lumina Lex Publishing House.