

THE SOURCES OF LAW

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Abstract

The sources of law are considered to be, over time, manifestations of interpersonal (interhuman) relationships which have as a result the birth, or the necessity of birth of rules which are materialized in what we call the rule of law or legal norm (rule). In the historical evolution of law, due to development of the whole society, the creation of rules was imperative in order to coordinate activities representing the society on which it was based on. Thus, the sources of law, even if they started like habits (tradition, custom), they have materialized during the development of mankind into real laws that underlie all activities in today's society.

Key words: sources of law, legislative acts, rule of law, doctrine, jurisprudence

INTRODUCTION

The sources of law constitutes an essential point in studying and debating the legal norm and the regulatory acts, mainly because these regulations constitutes himself the main sources of law and is carried out through an organization of society. An important factor in the study of these sources of law, is the history of law, as a whole, because the evolution of the right has been in close touch with the evolution of society, with its development, and last but not least the possibility or even the desire of man to keep step with the evolution, considering that this evolution concerns because human beings wish to know more, to satisfy their "thirst for knowledge".

MATERIAL AND METHOD

Materials used for compiling this paperwork are composed by manuals of expertise, specialized courses, treatises in civil law and internet sites. Methods used are legal, namely formal method, the historical method, comparative method, sociological method, the logic method and analytical methods, which have affected systematic analysis of information extracted from the studied sources in order to develop views and conclusions.

RESULTS AND DISCUSSION

In studying this important chapter of the law, we have to keep in mind certain classical, contemporary and current theories. Classical theories of studying sources of law refer exclusively to the regulatory acts as the main sources of law as they are *written and official* (in this category we find the law, and more specifically the totality of normative acts). Contemporary and current theories consider *jurisprudence* as an essential source of law, as it represents both the application in practice of normative acts, as well as their interpretation by the courts. However, besides these written and official sources of law, we still have another category of sources, more specifically *the unofficial sources of law* which are: *tradition (custom) and doctrine*.

Through these sources of law, we understand the legal acts which have value of norm (rule) and in which we find the rules of law, rules according to which the society works and guides herself.

The phrase "source of law" knows the two significances: 1. in the first one, the *material* source, through the source of law we understand material conditions of existence, which generates norms of law; 2. in the second one, meaning the *formal* source of law, the expression "source of law" designates the specific forms of expression of the rules (norms) of law. Forms of expression of the norms are those acts which are emanating from the State invested with law-making powers. The fundamental law - the Constitution - establishes the prerogatives for law-making powers. [1]

The sources of law represents the specific form of expression of the norms of law. Due to this fact the sources of law are divided into two categories: direct sources of law - normative acts, and indirectly sources of law - jurisprudence, legal science, doctrine of case law. [2,4]

Thus, the sources of law are: the Constitution, Organic, Ordinary, Financials, Ratification of International Treaties Laws, Resolutions and Ordinances, Government Decrees, Decrees-Laws, Motion, Codes, Regulatory acts issued by the leaders of the central bodies of State administration and legal acts adopted by local executive bodies - Orders, Statutes, Regulations, Contracts or framework, Standards, Rules, Decisions.

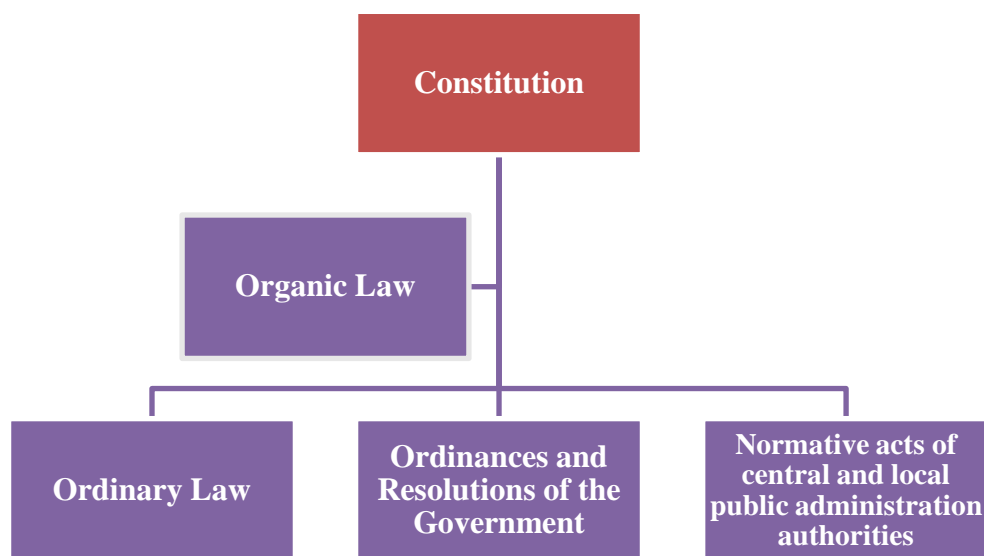


Fig. 1. Sources of law

[3]The Constitution represents the fundamental Law in the State, it is the most important source of law because regulates the institutions of State with lawmaking role, the procedure for the adoption of normative acts and the separation of powers in the State. Legal norms which are stipulated in the Constitution are developed and modified by a special procedure, superior to that used for the development and modification of other laws. Because of this, constitutional norm is considered to be privileged and protected because of its unique character and because of its modification named juridical review, is more difficult to accomplish, but not impossible, thanks to the stipulations of Art. 150 par. 1 and 2 " *Revision of the Constitution may be initiated by the President to the Government's proposal, at least a quarter of the number of Deputies or Senators and at least 500,000 citizens entitled to vote. The citizens who initiate the revision of the Constitution must come from at least half the counties and in each of these counties or in Bucharest must be registered at least 20,000 signatures to support this initiative* " and Art. 151 par. 1,2,3 " *The project or the recommendation of juridical review must be adopted by the Chamber of Deputies and the Senate with a majority of at least two thirds of the members of each Chamber. If through the mediation process does not reach to any agreement, the Chamber of Deputies and Senate, in joint session, decide with a vote of at least three-quarters of the total number of deputies and senators. The juridical review shall be final after approving it through a referendum held within 30 days from the date of passing the project or the recommendation of juridical review*", thereby giving through this stipulations (provisions) stability. According to the principle of separation of

powers, in any State are three powers: a) the legislative power exercised by the Parliament; b) the executive power exercised by the Government, which exercises this power with the President of the country, at central level, and the local government institutions, at the local level; c) the judiciary power, which belongs to the Courts: Courts of Justice, Tribunals, Courts of Appeal and High Court of Cassation and Justice.

In the European Union the sources of law are: **Regulation** - is a binding legislative act that must be applied in its entirety in all Member States and it is adopted by the European Council; **Directive** – is a legislative act that sets a target that must be achieved by all Member States and each of them has the freedom to decide the ways of achieving or performing the settled objective, it is up to the individual countries to devise their own laws on how to reach these goals; **Decision** - is a legislative act which is directly applicable and is binding on those to whom it is addressed (EU country or an individual company) and is directly applicable; **Recommendation** - is not binding and allows the institutions to make their views known and to suggest a line of action without imposing any legal obligation on those to whom it is addressed; **Opinions** - is an instrument that allows the institutions to make a statement in a non-binding fashion, in other words without imposing any legal obligation on those to whom it is addressed. An opinion is not binding. It can be issued by the main E.U. institutions - Commission, Council, Parliament -, the Committee of the Regions and the European Economic and Social Committee. While laws are being made, the committees give opinions from their specific regional, economic and social viewpoint. [5]

The institutions which are responsible for legislation at European Union level are:

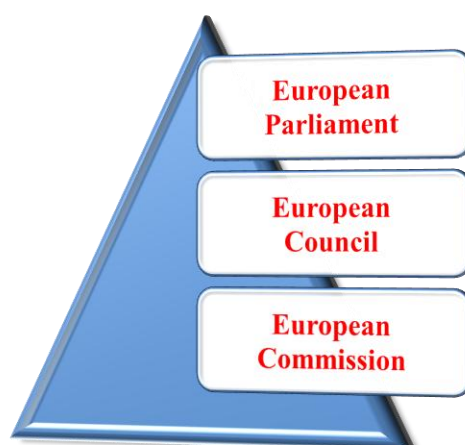


Fig. 2. E.U. legislative institutions

CONCLUSIONS

The source of law is the source of the science of law in a society that ensures social organization. The main source of law in current society is the legislative act, namely the act of the competent authority including legal norms, represented by the concept of law, which constitutes the set of rules whose application is guaranteed by the state. Such normative act is the main driver in regulating all activities of the society of today.

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3. Constitutia Romaniei
4. Stănciulescu Camelia , *Manual de drept civil general*, Editura Hamangiu, București 2009, pg. 25
5. https://europa.eu/european-union/law/legal-acts_en, accesat la data de 08.10.2016

