THE GENERAL THEORY OF LAW AND ITS AMBIGUITIES

Lucretia DOGARU[*]

ABSTRACT:*In the area of the Theory of Law persist a lot of ambiguities that are continuously perpetuated and got amplified. Even if some of these are apparently insignificant, they cause not only perplexity but also the desire for knowledge and understanding.*
In this paper we will address issues related to the names attributed to disciplines whose object of research is both the law in general and the law as a dimension of a concrete society. So, even starting with the analysis of notions "The General Theory of Law", "The Theory of Law", "Introduction to the Study of Law", we can see that the referent for each case is "Law", the law stripped of any predictive qualifier. We find that the study of law, leads to a theory generally valid for any law, particularly to it, while the study of a particular law, leads to a theory particular to the theory of law. The same is with the sources of law and right dealt by the "The General Theory of Law", law is not the same with the law in force.
By analyzing the sources of the objective and subjective law from the perspective of the General Theory of Law, we will distinguish between the objective law and the objective law in force, as well as the particularities of the subjective law.
We will also clarify the distinction between the science of law as a science of social discipline and the legal sciencejust as we will try to clarify some unclears related to other components of law, namely, the positive law and natural law.
Throughout the present paper, other universal themes of the General Theory of Law will be identified and subjected to analysis, such as those on the sources of law, the legal norm in its complexity, the principles of law, the subjects of law and aspects of legal interpretation.
We try to highlight by presenting such aspects, the particularities of a science considered to by the broadest generality and legal principle, the science that opens the gates of the legal universe.

KEYWORDS: *general theory of law; principles of law; legal science; interpretation of the law, legal norm.*
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ANALYSIS AND DISPUTES

The General Theory of Law is the science that explains the legal reality by investigating the legal phenomenon from both a philosophical and a scientific perspective, looking to capture both, its own and its constant characteristics. Being a fundamental

[*] Professor, Ph.D., University of Medicine, Pharmacy, Sciences and Technology of Tîrgu-Mureş, ROMANIA.

discipline for the science of law, a science that studies positive law in its generality, this is dictated not only by theoretical requirements but also by practical requirements. Having an introductory character in other areas of law, the General Theory of Law provides the general, theoretical, conceptual and methodological premises of initiation in those fields. (Popa, 2014) (Craiovan, 2005)

In the field of the theory of law research remain a lot of ambiguities that are still perpetuated and even get amplified. Even some of them are apparently minor they are seeding confusion in an inquisitive spirit. To begin with, focus on the notions "The General Theory of Law", "The Theory of Law", "Introduction on the Study of Law". As it can be seen, the reference for each case is the word "law", the law stripped of any predicative qualifier - the law natural, material, formal, legislated, doctrinarian and so an. Finding differences, some authors believe that the law both as a general dimension and as an element of a concrete society can be the subject of research. (Mihai G. D., 2006) (Mihai G. D., 2007)

The study of Law leads to a theory generally valid for any law, particularly to it, while the study of a particularly law (French, Romanian, Italian), leads to a theory particular to the theory of law. Thus we will understand why is born reserve for a work of General Theory of Law, which has the ambition to be valid for any particular law; this can be verified in a simple way: the principles of law analyzed by The General Theory of Law will necessarily have been the same for the French law, Italian law, German law and so on; otherwise, we will be hindered only by the principles of a family of law, probably only on a positive right.

Similarly, if we talk about the sources of the objective right that The General Theory of Law considers them we recall that the objective law is not the same as the objective law in force. (Barac, 2013) In this context, we can discuss about the formal sources of the objective law in force in the Canadian state for example, that do not coincide with the formal sources of the objective law in force in the Chinese state or in the Australian state.

Sometimes we can also deceive ourselves in our generalizations, such as, for example, with the concept of equity that carries a series of differentiations or particularities within law systems. Just as we can deceive ourselves even with the legal responsibility, with its principles and conditions, with the assertions of The General Theory of Law regarding the relations of law with the morals, with politics or with religion, whichpossesses alike universal and particular features.There are also serious obstacles in the synthesis that we try to do starting from the positive law related to the religion from the different states of the world.

This last reflection engages us in another dispute: does any theory of law have "scientific" quality, such as those of the biology, anatomy or physical theories, for example? Is the theory on communist law, a theory as scientific as it is the theory on liberal law?It is one philosopher more scientific than another? What meaning have the terms "theory" or "scientific" of the socialist or contemporary authors?

The questions also oblige us to analyze the distinction between the "Science of law" and the "Legal science". If the totality of the legal sciences form the legal doctrine, then why does the totality of the economic, sociological or psychological sciences do not form the economic, sociological or psychological doctrine? If the epistemological purpose of a scientific theory is the truth, then what is the meaning of the doctrinal truth in contrast to the truth of another scientific theory but non-doctrinal? (Kelsen, Doctrina pură a dreptului,

2000) Even though the legal sciences are socio-human sciences, they do not mean that are less theoretical, and their authors are no fewer theorists than the sociologists or the psychologists. We say also, that the science of law is the science of social discipline, and the legal sciences are the theories that teach the science of law, either as a whole, as it does The General Theory of Law, or on its constituent elements, as does the science of civil law, criminal law or administrative law.We consider that in the two expressions - the science of law and the legal science - the term science is used in distinct meanings. Thus we will assert that the legal science of civil law, in an epistemological sense, theorizes about the science of civil law, in a pragmatic sense.

We also allow ourselves to believe that, no doctrine or civil or penal theory has the monopoly of truth in relation with the others theories.

Going forward and taking into consideration the name of the General Theory of Law, we find other difficulty or ambiguity regarding the “law„ termin the situation when we approach the"positive law" and the "natural law". These "positive" and "natural" adjectives, lead us to the idea that the law exists in two defining components or species.Or, in such a case, the General Theory of Law would target not one component or another, as is also apparent from its name. (Vida, 2016)

In the present study, we identify some universal themes of the General Theory of Law, such us: the law as a subsystem of the social system; the relations of law with other subsystems of the social system (such as, the morals, religion, politics or the state); the functions of law; the structure and application of the legal norm; the law interpretation; the sources of law; the quality of legal subjects in the legal relations; the law-making process; legal liability.Undoubtedly, nothing stops us to discuss them placed at a particular time and place.Certainly, the Romanian doctrinal analyzes the formal sources from the perspective of the Romanian positive law, other than the positive French or Austrian one. So we can identify three theories that are valid for particular legal spaces.

If we address the fundamentals themes of law, as well as: the principles of law; the social and legal order; the legal truth and the reality of law, we leave the General Theory of Law field and we enter in the field of philosophy, sociology, anthropology, logic and ethics.Although the General Theory of Law limits are difficult to establish, it is easy to see that this legal discipline debates, contradicts or agrees with other social sciences.

The history of the "Law science", coincides with the history of the man, and it begins with the lack of distinction between the "Morals science", from which he never tried to separate, precisely in the idea of social and individual utility and human fulfillment.

On the level of the General Theory of Law, the juridical norm is a rule of conduct, a prescriptive enunciation concerning the relations between persons - subjects of positive law, which setsout patterns behaviors. (Kelsen, General Theory of Law and State, 2007) We can say that, the legal norm is configured as a prescription or a prohibition of a certain behavior, established by the authority, addressed to the recipients and accompanied by sanction application in the case of their non-compliance. This prescriptive enunciation outlines an abstract, generic model of behavior for some classes of generic recipients, under a generics set of conditions, because in case of non-compliance, the generic sanction occurs. (Terre, 2009) But, we can easily see that the legal rule is not absolutely imperative, what means that its so-called trichotomy is false (for example, the legal rules that recommend a behavioral model or that stimulate the behavior).We can say that the legal norm did not aspire, over time, to be immoral, but on the contrary it has profiled by

calling on moral values and principles and by justifying them.It is obvious that, the legislator's normative acts contrary to the general morale of their recipients, neither had efficiency nor adhesion. By legal norms it is only possible to shape people's behaviorthat is responsible for the society in which they live and aspire to be what they need to be.

All these observations send us to the principles of law that are required to be rationally grounded. (Barac, 2013) From the very beginning, we address a natural question, namely: Are there different kinds of principles? Are there fundamental principles, general principles and particular principles? What exactly is a principle? Is there a distinction between principle and law? What is the difference between a principle of law, a material legal principle and a formal principle? Here are only few questions that need to be answered with epistemological and pragmatic value.

Another issue is the legal interpretation. This one also raises many problems: what is it being interpreted? The normative act or the legal norm contained in the normative act? We say that the law in force is interpreted. The legal norm is found in the text, it is the prescriptive idea included in certain writing and the act is normative for the established norms or rules, not for the sentences listed. Thus, the legal language is not formed only by grammatical sentences which expressthe legal norms, but,any legal norm is expressed by the grammatical sentences that set the legal normative sentences. (Barac, 2013) To identify it, we use the grammatical method of interpretation. Also, interpretation involves the destination on two levels: the text for identifying the norm, and norm, for adapting it in solving the particular causes. (Dogaru, 2015)

The purpose of the legal norm and its correct interpretation is the defense of subjective rights and the sanctioning of the violation of the obligations assumed in defined legal relationships.The means of defense of subjective rights - patrimonial or non-patrimonial – are different, in according to the nature of the positive right. (Marmor, 2001) Of course that, the source of all subjective rights it are both the legal acts and the legal facts.

The holders of subjective rights have the status of legal persons, a quality that applies both to the individual person and to the organizational person. Of course, in order for a person to be recognized as a subject of law, it is necessary to be recognizing his legal capacity. The human's ability to have subjective rights and to exercise it is conferred by the law in force; it is the positive law that who enshrines human freedom. (Mihai G. , 2009) While the human person is a legal creation, the personality is not.Thus, the legal relation of civil law does not involve the personality, but the individual or legal person, as well as in the commercial relation no personality takes part, but the traders and companies are involved. On the other hand, when the criminal law criminalizes the slander, it defends the subjective right to the dignity of the personality and not the right of human person. The personality does not need the law intervention to be personality.

Finally, the claim of a presumed holder of subjective right who claims that his right has been violated must be proved before a competent authority which is invested in verifying that claim. Of course, the verification regards the veridicality of the claim. If the claim is veridical (namely true), the competent authority has to establish the legal area where it belongs: the legal or illegal character, the legality or illegality. The Court decision has two dimensions: the veridicality (truth), and the legality (according to the law in force). Certainly, the research of the fundamentals, structures and process mechanisms, from the stage of claim to the decision-making stage, is the job of the General Theory of

Law. This process involves the principles of law, the interpretation of legal norms, the theories referring to the subjective rights holders and the legal liability.

CONCLUSIONS

In conclusion, this discipline ofgreat generality and legal principled, elaborates concepts and general notions that are valid also for the branches of law and other legal sciences. Trying to find the characteristics and the constant features of law, the General Theory of Law, bases the science of law. Through the General Theory of Law, are elaborated the main tools by which the law,in its entirety, is thought. Therefore, both from a theoretical and practical perspective, the General Theory of Law are a reference discipline for the science of law.

This science, with all the particularities and ambiguities that we can surprise, had a journey to which the greatest thinkers, philosophers and jurists of world have contributed.

So we can recall about the Aristotelian philosophy of law, although its author lived in the 4th century BC, nobodycan says at present that it is overcome or expired, and this is proved by the numerous contemporary doctrinal debates and discussions about this theme.Also, the theory of Thomas d Aquino, eight hundred years old, is currently current, just like the theory of Leon Duguit or Fr. Genny.We believe, however, that there is a difference in approach in Asian or African doctrines on approaching the law in its generality at the General Theory of Law level. Without making a distinction, the principles, the categories and the legal notions formulated in the field of the General Theory of Law by different authors, continue to preserve their cognitive flavor and to enrich themselves with each generation that adds even with an insignificant contribution to the edification of the doctrine.

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