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Formal Boundaries of Slovenian Law

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Purpose:

The article is primarily intended for foreign exchange students (e.g. students participating in the Erasmus+ programme) at the Faculty of Criminal Justice and Security of the University of Maribor studying how Slovenia regulates the field of criminal justice and security. The article deals with the formal boundaries of Slovenian law mostly from the viewpoint of the legal order in force in the country. Readers will learn how the Slovenian legal order functions, which general acts are adopted by the state and which by local bodies, the rules governing their application, and the relationships between them, as well as the way EU law is applied in Slovenia.

Deign/Methods/Approach:

The article is a review article based on a descriptive analytical method and linguistic interpretation of the relevant regulations. The author also applies a historical method – primarily by presenting the Roman law perspective on legal concepts – as well as teleological and legal philosophical methods in defining legal concepts.

Findings:

The article examines fundamental legal institutions. The author establishes the attitude of writers in the fields of the theory of law and critical jurisprudence regarding the definitions of key legal concepts and phenomena. The article concludes with Kant's remark that lawyers are still seeking a definition of their concept of law (Perenič, 2007).

Research Limitations/Implications:

The article is short. The legal definitions are occasionally simplified which, however, is not to the reader's disadvantage. In some instances, the author attempts to simplify complicated legal concepts with the objective of making the study of other subjects in the field of criminal justice and security easier for the reader and to provide a clear foundation for a basic understanding of the categorical apparatus in law.

Practical Implications:

The article has practical value for foreign, English-speaking students who, generally, are not students of law, but need a basic understanding of the fundamental legal concepts useful in most social science research. The definitions of the concepts are appropriate and contemporary and thereby contribute to better understanding of the field.

Originality/Value:

The article is a review article and therefore its originality is limited. The author namely does not establish any new scientific findings, but summarises and defines already known concepts. The article's original value is that the author presents fundamental legal concepts and definitions in a readable and easy-to-digest manner that the reader can easily remember. The definitions of the legal concepts addressed in the article are precise and useful and will serve the reader in further study or research.

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Keywords: law, legal order, morality, classification of law, sources of law, legal norm, statute, lex specialis

Formalne meje slovenskega prava

Namen prispevka:

Prispevek je v prvi vrsti namenjen študiju na Fakulteti za varnostne vede Univerze v Mariboru, in sicer tujim študentom (npr. tistim iz programa Erasmus+), ki prihajajo na izmenjavo in študirajo slovensko pravno ureditev na področju varstvoslovja. V prispevku so predstavljene formalne meje slovenskega prava predvsem z vidika veljavnega slovenskega pravnega reda. Bralec se lahko seznani, kako slovenski pravni red deluje, katere splošne akte sprejemajo državni in lokalni organi, kakšna so pravila uporabe in razmerij med njimi ter kako deluje pravo EU v Sloveniji.

Metode:

Članek je pregledni znanstveni članek, ki temelji na deskriptivni in analitični metodi ter jezikovni razlagi relevantnih predpisov. Od pravnih metod avtor uporabi še historično metodo – predvsem s prikazom rimskopravnega pogleda na pravne pojme – pa tudi teleološko in pravno-filozofsko metodo pri opredeljevanju definicij pravnih pojmov.

Ugotovitve:

V prispevku so na pregledni način prikazani temeljni pravni instituti. Avtor sproti ugotavlja, kakšen je odnos piscev s področja teorije prava pa tudi s področja kritičnega prava na definiranje ključnih pravnih pojmov in pojavov. Članek zaključi s Kantovo mislijo, da »pravniki še zmeraj iščejo svoje bistvo prava« (Perenič, 2007, str. 69).

Omejitve/uporabnost raziskave:

Pogled na pravne definicije je zaradi krajšega prispevka poenostavljen, kar pa za bralca ne pomeni ničesar slabega. Avtor skuša bralcu približati pravno zapleten pojem včasih tudi na poljudni način zaradi lažjega študija drugih predmetov s področja varstvoslovja ter zaradi potrebe po osnovnem razumevanju pravnega kategorialnega aparata.

Praktična uporabnost:

Prispevek je praktično uporaben za tuje, angleško govoreče študente, ki praviloma ne študirajo prava. Kljub temu lahko spoznajo temeljne pravne pojme,

ki so uporabni v večini družboslovnih raziskav. Opredelitve pojmov so korektne in sodobne, zato prispevajo k večanju znanja na tem področju.

Izvirnost/pomembnost prispevka:

Prispevek je pregledni znanstveni članek, zato je njegova izvirnost omejena. Avtor namreč ne postavlja znanstvenih spoznanj na novo, pač pa povzema in opredeljuje tisto, kar je že znano. Izvirna vrednost prispevka je v tem, da avtor postavlja temeljne pravne pojme in definicije v berljiv in lahko razumljiv kontekst, ki si jih bo bralec zapomnil. Definicije pravnih pojmov, prikazanih v članku, so točne ter uporabne in bodo marsikateremu bralcu prišle prav pri nadaljnjem študiju ali raziskovanju.

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Ključne besede: pravo, pravni red, morala, sistemizacija prava, viri prava, pravna norma, zakoni, *lex specialis*

1 INTRODUCTION

Law is a system of rules and principles that, within the boundaries of legal regularity, regulate the vitally important external conduct and behaviour of the subjects in a state-organised society (Pavčnik, 2017).

This definition of law is not universal. Many different definitions can be found in contemporary critical jurisprudence (Flander, 2012).

The science dealing 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 law that is currently applicable. 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 (Pavčnik, 2017). Positive law is law laid down that applies to a certain territory at a certain time (Bradač, 1990). The Latin expression *de lege lata* means the law as it exists. It is usually used with the Latin expression *de lege ferenda*, which means what the law should be.

The applicable law can be adopted internal law, i.e. national law, or adopted external law, i.e. international law. Positive law applies to a certain territory at a given time. It always applies in advance and thus must be adopted beforehand in legally determined forms of legal acts.

Natural law is the opposite of positive law. Natural law comprises the rights held by every human being based on 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 realise 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 as 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 particular country, are published, and enter into effect from a certain date following their 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 encompasses the law applying at a specific time, defined in advance, in effect for a certain territory of a given country. The elements of the legal order are the principles of law and legal rules.

The factual elements of a legal order are the legally relevant facts (e.g. the relevant course of time, the fulfilment of a condition) and the legally relevant behaviour 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 article as the basic form of the application of the law in practice.

The legal order is based on the presumption that "being ignorant of the law harms" (*ignorantia iuris nocet*). This means that claiming that one does not know the principles of law, rules and general acts does not result in exculpation. The excuse that there was a mistake of law, which is another term for being 'ignorant of the law', is usually not a recognised defence (Cancik & Schneider, 2003). Legal certainty assumes that all subjects are aware of the law. Therefore, no one can seek to excuse their unlawful conduct by stating 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, but 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 the law harms. Thus, every person must know the law, as every person bears the consequences of being ignorant of the law.

2.1 The Systemisation of Law

A further characteristic of the systemisation of law are basic double divisions (Tičar, 2012). In this sense, the law is divided as follows: external and internal law, civil and common law, substantive and formal law, private and public law.

International or external law is a set of principles and rules which regulate the behaviour and conduct of countries and international organisations (e.g. the United Nations, the Red Cross, and UNICEF). It comprises diplomatic and consular law, international law of the sea, the law on good-neighbourliness, 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 organisation which can impose direct coercive sanctions on subjects who have violated them.

However, the violation of international law rules can trigger 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 behaviour and conduct of state authorities, local community authorities, citizens, foreigners, and all legal entities in a certain state territory. With its coercive apparatus (i.e. police, armed forces), a state has a monopoly over and absolute authority regarding the imposition of sanctions for violations of the state's rules.

Law in Europe has developed historically 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 regulating 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.

Unlike 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 whose legal heritage may be traced to the United Kingdom, i.e. its former colonies. Common law is not based on formal sources of law, but on court decisions adopted in similar cases. These are known as precedents.

Precedents are judgements of the highest courts in Anglo-American law (i.e. the common law). The rationale for a decision in an individual case (i.e. *ratio decidendi*) has the effect of a general and abstract legal rule. Such a precedent when deciding on subsequent cases with similar issues binds the court which adopted the precedent, as well as the lower courts. 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 (Perenič, 2007).

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

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 organisation and procedures 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 are static. Substantive law consists of several different laws in which the substantive rights, obligations and legal entitlements of legal subjects are determined.

Formal law determines the organisation 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 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 have procedural rights and obligations. The latter are intended for the lawful exercise of procedural acts.

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

The final, traditional division of law is into private and public law (also see Hess-Fallon & Simon, 2003). The development of the division of law into public and private law dates back to the ancient Roman state when 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 that 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, apart from private interests, there was also the interest of the state. The classical Roman jurist Domitius Ulpianus (Kranjc, 2018) named this *law ius publicum.* Ulpianus (in Stojčević & Romac, 1984) 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 quod ad singulorum utilitatem; Ulpianus thus developed the division of private and public law which remains intact in legal systems today (Stojčević & Romac, 1984).

Private-law relations are chiefly 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 the law applied. Such application of the law is secondary, i.e. subsidiary.

2.2 Law and Morals in General

Norma means a rule (Bradač, 1990). 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 derives from the Latin word *mos*, meaning custom (plural *mores – customs*). Morals entail a person's attitude to 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 (Meško, Eman, & Flander, 2016). Morals comprise the values and customs of the people in a 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 the 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 such that they feel bad, they lose a certain benefit, or have a bad conscience (e.g. if children breach 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 their 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 ones whose violation 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 all at once. For instance, if the rule "do not kill" is breached, this 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 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 create direct rights and obligations of legal subjects, are concrete and individual.

3 SOURCES OF SLOVENIAN LAW

Sources of law are mutually connected legal elements necessary for the existence of a legal phenomenon (Bohinc, Cerar, & Rajgel, 2006). Sources of law may be direct or indirect. The former comprise legal regulations and customs, while the latter include 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*) 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 means 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 also have different mutual relations. Their correct application is ensured by three binding rules of interpretation.

The principal regulation is a law 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 where the same legal relation is regulated by a general

and a special law the regulation of the special law prevails (*"Lex specialis derogat legi generali"* – Stojčević & Romac, 1984, p. 262).

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

The rule that a higher regulation is stronger than a lower regulation (*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 the courts. If such court proceedings are not initiated, the parties involved must respect the legal regulations as adopted until the Constitutional Court abrogates or annuls them with its decision or until the state authority which adopted the regulations amends or repeals them.

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

4 IMPACT OF THE EU LEGAL SYSTEM ON THE SLOVENIAN LEGAL SYSTEM

The supremacy of EU law means the legal acts of the EU prevail over those of the member states. In accordance with Article 10 of the Treaty establishing the European Community, 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 involves a violation by the state itself.

Before joining the EU, candidate states had to align their body of national law with EU law and had to correctly apply it from the day of becoming a member of the EU. As a special type of a supranational organisation, the EU does not have any bodies in the member states in the form of ministries or branch offices for implementing the decisions of EU institutions, therefore the state authorities of the member states are tasked with implementing 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 the 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.

As general binding acts, regulations and directives 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 the national law of the member states.

A directive typically cannot be applied directly, contrary to what applies for EU regulations. A directive can be addressed to all or only certain member states, which must then 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 pursued by the directive; however, the choice of form and methods for achieving such is left up to the national authorities of the member states involved. A directive is thus binding as to the result to be achieved in each member state to which it is addressed, but leaves the national authorities with the choice of form and methods. A directive requires the action of the national legislative body, which must transpose it into national law, whereby the legislature must ensure that the national legislation conforms with the requirements of the directive, which entails that a national regulation 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 GENERAL LEGAL ACTS IN THE REPUBLIC OF SLOVENIA

The Constitution of the Republic of Slovenia (Ustava Republike Slovenije, 1991) is a fundamental general, normative legal act in Slovenia 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 foreigners 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 laws in the country (Tičar, 2012).

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

Laws have a double guarantee (Čebulj & Stermecki, 2005):

- 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); and
- the guarantee of the existence of a law means the existing law cannot be abrogated other than by a new law, which must be a regulation on the same or a higher level.

Laws are a fundamental source of law. This also proceeds from the Constitution, in accordance with which 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 emphasised that implementing regulations and other general legal acts must be in conformity with the Constitution and laws. Further,

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.

Treaties ratified by the National Assembly are applied directly and are thus a source of law. In addition to the above-mentioned treaties, 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.

On top of the Constitution and laws, the National Assembly of the Republic of Slovenia adopts the state budget, declarations and resolutions, 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 (Grad & Kaučič, 2008).

5.1 General Legal Acts of the Slovenian Government

The Government adopts the most frequent implementing acts called decrees. 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 line 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 authorisation 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 based on which it can directly affect the rights and obligations of individuals. Only a law can constitute, reconstitute or abolish the rights and obligations of individuals.

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

The Government adopts interpretational or explanatory decrees based on 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 based on 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.

5.2 General Legal Acts Issued by 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. 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 (Tičar & Rakar, 2011).

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.

5.3 General 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 (Tičar, 2012).

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 SLOVENIAN LAW

In addition to general legal acts, customary law and case law (*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 (Tičar & Rakar, 2011).

Any person suffering 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[1] to request that the authority which decided in the first instance change or annul that 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 their application in individual cases is consistent with the Constitution.

7 CONCLUSION

In the present article, we have defined some basic elements of Slovenian formal law. This kind of law determines the organisation and powers of the state through

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

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 may also conclude that law is a historical and civilizational phenomenon. Its development began with the emergence of civilisation and as contemporary legal writers say: It continues to develop today (Cerar, 2001).

There are numerous theories and points of view regarding what constitutes the essence of law. Immanuel Kant, for instance, claimed in his lifetime that lawyers are still looking for the essence of their law (Perenič, 2007). Legal theoreticians have still not agreed on a uniform definition of the essence of law. Law can also be understood instrumentally (*instrument* – a tool). Instrumental law is a tool prescribed in advance composed of rules suitable for preventing and resolving conflicts between subjects in society.

Finally, as stated above for the decisions of Slovenian courts, the judgements 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 – with the latter, judgements are 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 considered as a source of law within the framework of administrative proceedings and decision-making.

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