

INTRODUCTION TO LAW

Lesson 10

SOURCES IN DIFFERENT LEGAL SYSTEMS



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The topics

Sources in different legal systems

1. The main contemporary legal systems
2. The concept of the sources of law
3. Source of origin; source of validity
4. Legislation (primary and secondary)
5. Decrees of the President of the Republic and acts of the administrative and local government organs
6. Court decisions as a source of law

The main contemporary legal systems

➤ There are three major legal systems in the world:

1. Romano-Germanic legal system;
2. Common Law Legal System (Common Law)
3. Religious legal systems.

Romano-Germanic legal system

- 1. The Romano-Germanic legal system includes those countries **whose law is formed on the basis of Roman law.**
- This system was born in Europe as a result of the efforts of European universities since the 12th century.
- They were based on the codification of the Roman Emperor Justinian, who developed the science of law, and these efforts were supported by almost all European countries.

5-th century-early Middle Ages

After the collapse of the Roman Empire in the 5th century, **the population of the Roman Empire on the one hand, and the German barbarians** on the other hand continued to live according to the relevant laws and customs. After the barbarians embraced Christianity, the two sides gradually began to approach and merge into a single community.

- Generally in the early Middle Ages, the importance of law also declined in the context of a general cultural decline. **There were contracts and other legal acts**, but conflicts were resolved based on the law of the strongest and the arbitrariness of the ruler.
- **The Church also underestimated the law** because it envisioned Christian society more on the idea of mercy rather than on the law.

Romano-Germanic legal system 12th-13th century

- This system was called **Romano-Germanic** and it was developed by university scholars of Latin and Germanic countries.
- The formation of this system is related to the European renaissance that began in Western Europe in the 12th and 13th centuries.
- Society understood the necessity of law as the only means which could guarantee the order and security and would set aside the Christian ideal.
- In the **13th century religion and morality no longer mingled with right and law.**

2. Common Law System

- This system corresponds to the English law model, including **Great Britain, Northern Ireland, Scotland, the La Mansh islands** as well as the **United States of America, Canada** and partially **India**.
- But the historical differences and cultural development of these countries unlike that of England have made American and Canadian law to have broad autonomy.

Common Law System

The characteristics of common law system differ from the Romano-Germanic legal system.

- **1) The common law is created by the courts** through the decisions resolving conflicts between two parties.
- **2) The norm of common law is less abstract** than the norm of the Romano-Germanic system, as it is formulated as a judicial decision, **to solve a concrete problem** rather than to establish a general rule of conduct for the future.
- **3) Procedural norms governing criminal and civil litigation are important in common law.**

Similarities between Romano-Germanic legal system and Common law system

- Despite the differences, these two systems have a tendency to get closer to each other, and for specific problems both systems hold the same position, provide the same solutions and apply the same principles.
- The rule of law is becoming more widespread in countries where common law system is applied and on the other side, in all western countries similar solutions are applied, based on the same principles which are found in Common law system.

Features of the law of former socialist countries

- The law of the **former socialist countries**, although it was a separate system due to its distinctive features, previously belonged to the Romano-Germanic legal system.
- Despite the fundamental changes during the existence of the socialist order, the law retained many features and institutes of the Romano-Germanic system.
- This also applies to the law that has existed in the **People's Socialist Republic of Albania**.

Religious legal systems

- In addition to Europe's legal systems, there are also **some systems of philosophical and religious character.**
- These systems do not constitute a separate system that are independent of one another. Among them, it is the Muslim legal system (shari'ah).
- **Muslim legal system is not the law of any particular state.**
- Just like the right of Christianity and Judaism, it is considered the right of the community of believers.
- It constitutes a set of norms, which are the object of people's relationships based on religion.

Religious legal systems

- Muslim law differs from other legal systems because of its links to religion and its original concepts.
- In many countries, **personal, family inheritance rights** are governed by the norms of **Muslim law**, while **other branches of law** are conceived under the **Romano-Germanic legal system or Common Law system**.
- In the group of legal systems of a philosophical character, there can be mentioned **the Indian law or otherwise Hinduism**, the **Jewish system**, the **canon law of the Catholic Church**, etc.

The concept of the source of law

- The birth of special norms of law is conditioned by certain phenomena defined in social life.
- These phenomena, which are the cause of the birth of the norms of law, form what we can call **the sources of law in the material sense**.

The source of law in the legal meaning

- Legal science uses the concept of the source of law in the legal meaning.
- **The source of law is considered to be the specific form in which the norm of law is dressed.**
- This specific form is called the source of law.
- By the means of this form, any content of the will becomes law.
- This content becomes a mandatory norm of behavior for all, the implementation of which is ensured by the coercive power of the state.

Sources of Law

We can mention here:

- 1) Law
- 2) Presidential Decrees
- 3) Sub-legal acts of the executive (administrative) organs: Decision of Council of Ministers; Instructions of Council of Ministers; Instructions of the Ministers;
- 4) Court decisions
- 5) Custom as a source of law
- 6) Agreement

1. Legislation (primary and secondary)

- **The law is an act of the highest power in the state and comes out of the body that represents this power.**
- Among the acts issued by state bodies, the law takes the highest place in the hierarchy of legal acts.
- **The law can only be amended or repealed by another law.**
- Even the promulgation of laws is done according to a special legislative order.
- The specific content of the laws responds to this feature.



1. Legislation (primary and secondary)

- The law establishes rules of conduct, rights and duties of the authorities, for different citizens, etc.
- But law also regulates other aspects of life, such as economic, financial, political, cultural, sports and education aspects, etc.

The characteristics of the law

The law has two main characteristics:

- **a. the law is an act issued by the supreme power of the state;**
- **b. the law represents an act that establishes a new right.**

The Assembly is the legislative body of the country, the function of which is to issue the laws.

The law formation

Today laws are enacted in a certain order. Each law goes through **these stages:**

- 1. legislative initiatives;
- 2. discussion of the draft law;
- 3. adoption and validation of the law;
- 4. promulgation of the law. (shpallja e ligjit)

Legislative initiative

- Legislative initiative relates to the individual or organ that has the power to propose a bill.
- According to the constitution, the legislative initiative belongs to:
 1. The Council of Ministers,
 2. Each deputy
 3. The 20,000 voters.
- The discussion and approval of the draft law takes place in the Assembly.
- Various draft laws are discussed in the standing committees elected by the Assembly.
- **The bill is voted on three times: in principle, article by article, and in its entirety.**

The promulgation of the law

- The promulgation of the law **is made by the President of the Republic, 20 days from the submission.**
- The President has the right to return the law to the Assembly for reconsideration **only once within this period**, and in this way **he exercises a suspensive veto.**
- If a majority of all deputies vote against the President's decree, the decree loses its force and the President is obliged to promulgate the law.
- This right of the President is known **as a suspensive veto and differs from the absolute veto**, or **otherwise in the right of the Head of State not to accept a certain law at all.**

Types of laws

- Due to its content, the importance and legal power, the **constitutional laws** take a special place in the diversity of laws.
- Constitutional laws define the organization of state power, establish the basic principles of social and state order.
- They also determine the content of all other laws in a particular state.
- **No law should be in conflict with constitutional law.**

Types of laws

- According to the Article 177 of the Albanian Constitution, the initiative for the revision of the Constitution can be taken by no less than **one fifth** of the deputies.
- The draft constitutional amendments are approved by **no less than two thirds of all MPs**.
- The Assembly may also decide by two-thirds of its members whether the constitutional amendments will be approved by referendum.

(See Article 177 of the Constitution).

Types of laws

- Among other laws that are adopted under the Constitution, **organic laws** are of particular importance.
- These laws determine the organization and operation of the particular state institutions provided for in Article 81 of the Constitution.
- These laws are approved by **three fifths** of the Members of Parliament.
- **We can mention:**
 - the law on citizenship,
 - the law on elections,
 - the law on referendums,
 - the codes,
 - the law on state of emergency, on the status of public officials, etc.

The regulation of the Parliament

- Among the sources of law, a special place is occupied by the **Regulation of the Parliament.**
- According to Article 75 of the Constitution, the Assembly is organized and functions according to the regulation adopted by the majority of its members.

The regulation of the Parliament

- ✓ The Regulation of the Assembly cannot be considered as the regulation of any other institution.
- ✓ The Regulation of the Assembly expresses in the first place its organizational autonomy.
- ✓ But there is a debate among lawyers about whether parliamentary regulation has legal value or not.
- ✓ However, lately it seems that the Parliament's regulation is passed **for reconsideration** by the Constitutional Court as the laws do.

Administrative acts

- In addition to the law, the norms of the law are also established by **other acts issued by administrative bodies.**
- The administrative bodies, in addition to carrying out administrative aspects, issue acts in compliance with the laws.
- These acts are in themselves a concretization of laws.
- In this way, these acts serve as a source of law.

Administrative acts

- In our country, **the decrees of the President of the Republic** and the **decisions and instructions of the Council of Ministers** can serve as a source of law.
- **Ministers' instructions** as well as **some decisions of local government bodies** may be included as appropriate.

The decrees of the President

- Under the Law “On the Principal Constitutional Provisions”, the President's decrees could also contain legal norms related to various branches of law, and thus these decrees were in themselves a source of law.
- Under the current Constitution, the President of the Republic does not issue normative decrees.
- The President of the Republic issues individual decrees for specific cases. (Article 92 of the Constitution).

The decrees of the President

- Some of the President's decrees are not necessary to be approved by the Assembly but there are also decrees that require approval by the Assembly.
- **In the first group, we can mention the decrees:**
 1. on the appointment and dismissal of some senior officials,
 2. on the award of decorations and honorary titles,
 3. on the granting and denunciation of Albanian citizenship,
 4. on the exercise of the right of pardon.

The decrees of the President with normative content

- The President may also enter into international agreements and issue decrees on the date of elections to the Assembly, local government bodies, and referendums.
- **These decrees are normative acts as they assign rights and duties to various state bodies.**
- But these decrees are not passed by the Assembly for approval.

The decrees of the President with normative content

- There are other decrees which, despite being individual acts, pass for approval by the Assembly, **including decrees for the appointment of the Prime Minister and the ministers.**

The decisions of the Council of Ministers

- The source of the law are also **the decisions of the Council of Ministers**, as well as **a number of acts of different ministers**, depending on the volume of competences vested in a particular department (regulation in the field of transport, provisions on how to levy customs duties, etc.)
- So all these are sources of law as they establish new rules of law that have been issued due to the development of law and create rights and obligations for the parties.

Judicial decisions as a source of law

- Judicial bodies are obliged to comply with the applicable legal norms based on the examination of the case and the decision they render.
- However, courts often face situations that do not have the legal capacity to adjudicate on issues that arise.
- In the event of a **legal vacuum**, they should address the legal conscience and the main principles of law.

Judicial decisions as a source of law

- If the norms of law that the court elaborates in resolving a particular case are accepted as binding in the future, **then the binding judicial precedent is created as a source of law.**
- Judicial precedent in some countries is mandatory for the courts (Anglo-American system), **but it is not so for Romano-Germanic law.**