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**THEORETICAL AND PRACTICAL VALIDITY OF LEGAL NORMS:SOME  
PROBLEMS OF THEIR IMPLEMENTATION IN PRACTICE BY CITIZENS**

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**Abstract:** The experience of justice creates, in its normative statements, a distinction between the state of being something and what ought to be. The relationship between these two states of human existence in the world is particularly emphasized by Kelsen and belongs to the subject of examination in the philosophy of law, which analyzes this distinction between legal knowledge and its applicability.

Logification of law is one of the directions of the validity of legal norms encompassed in its legal procedures. Therefore, Kelsen, Alexy, Raz insist on a logical exposition of the law, seeing logic as the tool for processing law in society, as well as its regulation.

When we talk about the implementation of legal norms, it is assumed that the person reading the law should not only engage in the logical connection of the relevant words that signify it—meaning what the legislator intended—but also reconstruct the text based on the field experience they possess and the preconceptions they have about the law.

*In this way, the conditions and possibilities of understanding laws are found in the "world of life," in the social environment, the community where the individual trying to understand the law resides.* The influence of preconceptions of the legal text does not mean that this process depends entirely on individual consciousness, but it arises from the person's experience with the law and what jurists call "precedents" or "doctrine," which encapsulates a sometimes invisible system of legal techniques in the world of law.

Another difference between legal normative knowledge and its acceptance as a standard of behavior and actions in a society has two main directions: laws can be enforced out of fear of sanctions, and this experience is characterized as the efficiency of its *implementation*. However, if legal rules are applied because citizens believe they are good for solving some of their problems, then we are dealing with legal validity.

The importance of this distinction in the relationship between legal normative knowledge and its implementation serves to understand why some Eastern European countries with totalitarian mindsets, such as Albania, face difficulties in law enforcement. This is because they rely more on the external efficiency of legal norms rather than on creating a legitimacy (validity) of these norms in the eyes of the citizens.

**Keywords:** Legal knowledge, legal logic, efficiency, legal validity.

### **1. THE LOGIC OF LAW AND ITS CONNECTION TO REALITY**

When discussing the implementation of legal norms, it is assumed that the person reading the law should not only engage in the logical connection of the relevant words that signify it—meaning what the legislator intended—but also reconstruct the text based on the field experience they possess and the preconceptions they have about the law. In this way, the conditions and possibilities of understanding laws are found in the "world of life," in the social environment, the community where the individual trying to understand the law resides. The influence of preconceptions of the legal text does not mean that this process depends entirely on individual consciousness but arises from the person's experience with the law and what jurists call "precedents" or "doctrine," encapsulating sometimes an invisible system of legal techniques in the world of law.

"As Kant states in the Critique of Pure Reason, the concept Must/ought to, expresses a kind of necessity that is not found in the nature outside of man and, as a result, is not found in being."(Kant.I,1970,p.586) Therefore, it seems that it must be found in man and not in nature, as such it must be found only in Dasein (being in the world, the existence of a being) precisely in its relationship with other Daseins. This is the main difference between being, as a characteristic of being in general, and duty/must, as a characteristic of Dasein in particular.

The logic of law brings significant practical benefits in formulating legal methods and their application, for drafting laws, for the connection between non-positive law and positive law when laws are drafted and approved in parliament. Therefore, positivists, especially Kelsen, insist on a logical exposition of the law, seeing logic as the tool for processing law in society, as well as its regulation. In this same logical relationship between the general and the particular, the decision-making process from the law also arises from the specific case.

The legal system can be thought of in at least a few possible logical ways: one way is when each rule is subjected to others, and another is that the rules can be of the same rank. Let's take a closer look at the issue of law, its logic, and how it flows in the example of a practical syllogism.

The law can be formally presented as a kind of syllogism, more or less like this:

- (1) You must live your life. (Premise 1)
- (2) You must live according to the rules of law. (Premise 2)
- (3) Therefore, you must live your life according to the rules of law. (Inference/Conclusion)

Sometimes even the premises of the conclusion break down into simpler syllogisms that help understand the transition from one premise to another and to the conclusion. Let's reflect on the first logical way mentioned above, where each rule is subjected to higher-ranking rules in the legal system hierarchy. In logic, this is known as subsumption. Subsumption in logic means the submission of a narrower concept to a broader concept. In the field of law, it means trying to prove that a given event constitutes a violation of a law in accordance with existing legal norms. Here, we are interested in the second meaning of the word. Schematically, this hierarchy can be presented as follows, taking the form of a practical syllogism:

- I. Prove whether the given event (N) corresponds to the fact described by the legal norm (F).
- II. Determine the legal consequence (P).

Formalized law and its application are logically presented as follows:

Law: For all F, P holds:  $F \rightarrow P$

Step one: N is a case of F:  $N < F$

Step two: For N, P holds:  $N \rightarrow P$

Application of Article 76 Law nr 7895/1995 of the Criminal Code of the Republic of Albania (RSH)) Example: Ilir(I) has killed Ervin (E): Legal statement: For all people who commit intentional murder, a sentence of imprisonment for ten to twenty years is given. First step of logical analysis: He intentionally killed a human being (E). Second step of logical analysis: He must be sentenced to imprisonment for ten to twenty years.

However, in reality, the scheme we just gave is very simple, and it rarely happens that a criminal act is point by point as described by the law. For example, Article 82 of the Penal Code states: "Intentional murder committed in a state of strong psychological shock caused by violence or serious insult of the victim is punishable by imprisonment for up to eight years." (Republic of Albania, Penal Code, Law 7895/1995)

In this case, subsumption, or linking the event to a law or its provision, also presupposes an evaluation concept regarding the fact, whether the victim has provoked or not a serious psychological state towards the accused. Therefore, the dispensation of justice is not always strictly determined by laws or legal provisions. Their explanation within the hierarchy of laws through subsumption is not sufficient to deliver justice. Additional data is needed to limit the application of Article 46 and influence the imposition of a lower sentence. The linguistic explanation and presentation of the law are as much a definition of the concept field as they are of the linguistic context. For example, in the case of necessary defense of a person, the Penal Code provides: "A person who has committed the act, being compelled to protect his life, health, rights, and interests or those of another, from an unjust, real, and immediate attack, provided that the nature of the defense is proportionate to the danger of the attack." (Republic of Albania, Penal Code, Law 7895/1995) But the question arises: how far does the concept of "necessary defense" extend?

Another element where the use of logic is required is the understanding of the law. This scale is necessary when simple subsumption or cause-and-effect explanation within the hierarchy of norms is doubtful, according to their logical subjection. Here, it must be discussed first what "understanding" means, as explanation is called an evident cause-and-effect connection, while understanding aims at the subject's most influential involvement in interpreting the normative sentence or as Kelsen names the "science of norms" (Bix, 2018). The process of understanding involves the application of human reason, which, following some logical rules, avoids misunderstandings of the text, in this case, the law. Thus, the understanding of the law aims to bridge the gap between the generality the law makes and the specificity of the given case. In this way, the understanding of a law contains two important parts related to hermeneutic philosophy:

Firstly, it is assumed that the person reading the law must enter into the logical connection of the relevant words that signify it, in other words, what the legislator intended to express. Secondly, the person can reconstruct the text based on their field experience and preconceptions about this law. In this way, the conditions and possibilities of understanding laws are found in the "*world of life*," (Wittgenstein, 1953) in the social environment, the community where the person trying to understand the law lives, because the philosophy of law does not create ideas but finds them operating already in law. (Vega, 2018) The influence of preconceptions about the text of the law does not mean that this process depends entirely on individual consciousness, but comes from one's experience with the law, as well as what jurists call "precedents" or "doctrine" that summarizes a sometimes invisible system of actions in the world of law.

Therefore, the text of a law must be connected to the person who will apply it, understanding the law as the legislator wrote it with the understanding of the real-life situation of the action committed by someone and the consequences that the law recognizes for this action.

In the decision-making process in court, many people think that when a decision is made, it must be indisputable, while others believe that upon later examination, some decisions could have been better. The value of logic in weighing justice plays an important role, but it is not alone in seeking justice, as facts play an even more significant role. Logic is valued within the framework of rationalizing arguments, but not always the applicability of the law must adhere to formal logic. In fact, a realist, Holmes, says that decision-making in court is not so much a logical matter as an experiential one. (Holmes,2002). There are opinions that logic appears more in cases where legal experience is lacking or unclear, and in the majority of legal scholars, the logical consistency of decisions taken with each other on the same issue guarantees equal respect for the law among different people, regardless of their social status. This consistency helps create trust in the judiciary, alongside other factors.

So, the role of logic in law cannot be separated from other methods of judicial decision-making or more broadly, and it should not be overemphasized in its use, as Rudolf Jhering asserts when writing: "All this cult of logic, which can turn jurisprudence into mathematics, through its formalization leads to errors and misunderstandings of justice. With this, we do not want to dismiss logic, but to assert that the law must be oriented by life, its social interaction." (Jhering,1960)

Hence, he is not asking for the elimination of logic within the law, a critique we have seen from Hart, but rather to see the law in its content, to understand its purpose in society. The extension and application of legal norms, as well as the clarity of their explanation, are to some extent determined by the logic of their linguistic analysis and argument. We will delve further into these last two elements.

The repeated formal application of the law in courts sometimes leads to the failure to achieve justice, and there are many cases where excessive formalism has prevented people from making just decisions. The example of the nephew who kills his grandfather to quickly inherit the estate, mentioned above even by Dworkin, shows us that the logical way of following rules by subsuming from them is not just a matter of formally deriving rules, which is overemphasized by positivists. Ultimately, we are now aware that the formal way of approving the law and its logic are insufficient without the reasoning and experience of the judge.

Certainly, in this discussion, we must keep in mind that the essence of laws is not only to serve officials but also citizens, and this is a decisive requirement for their existence. Furthermore, the functions of the law involve both its use within the judiciary and the performance of human actions, regulating them outside the court, to plan and direct human life itself.

## **2. ALEXY ON THE DIFFERENTIATION OF LEGAL KNOWLEDGE FROM OTHER FIELDS OF KNOWLEDGE**

Some authors today emphasize not so much on the formal logic of the law but on the way arguments are constructed from it. Specifically, for Robert Alexy, the theoretical support or foundation of legal arguments has some distinct characteristics from argumentation in other fields of knowledge, where formal or informal logics are used. The problem for him also lies in the link between empirical facts and certain laws. Alexy believes that there are elements that make overcoming this gap in the law uncertain.

He begins the examination of the problem with those norms that create a theoretical gap in argumentation. The validity of the law in practice convincingly shows that different judicial decisions link legal discussion to life situations. With this observation, it may seem that we have gone beyond legal frameworks, but that is not the case. For Alexy, there is an "internal legal reasoning," meaning an attempt to connect it with one or more laws in the form of legal syllogism, as explained in the logic section, as well as an "external legal reasoning," often called reasonable legal decision-making. (Alexy,1983) Here, reasonableness means aligning some arguments derived from the experience of human reason in general and that of jurists in particular.

Some overly simple theoretical criteria that come from this experience and that Alexy lists are:

- Not all legal norms need to be connected, because cases are so apparent that it seems clear that the action being judged is prescribed by the law.
- Legal rules should be used uniformly, regardless of the individual's status.
- Even when a rule serves a small group of people, it must be accepted and considered reasonable by all community members.
- According to Alexy, "...there are many cases when it is not about arguing normative legal assertions but about linking with facts." (Alexy,1983)

- To deem a court or administrative decision valid, it must also be considered as such by all citizens who read or hear it and who share a common societal sense of justice.
- The discussion among jurists is an important part of reaching this common societal sense of justice.

Certainly, according to Alexy, the application of laws is not just the use of subsumption but that the judge is obliged to weigh and evaluate, according to the above-mentioned argumentative criteria, whether they are acting in accordance with the laws. The supplementation of these decisions with a common societal sense, as reasonable observers of justice, is based on some values. The question then arises, what are those values that the judge should refer to? Can they be incorporated or aligned with specific legal arguments?

In this case, Alexy says: "Judges cannot only use subsumption and strict concepts of the law when presenting the arguments of a decision made by them, but they are obligated to independently evaluate and weigh." (Alexy,1983) This because rules represent a real ought, while principles represent an ideal ought, which means that rules are those that have authoritative determination in the field of their factual and juridical possibilities. Meanwhile principles are those which do not have authoritative determination in the field of factual and juridical possibilities and therefore demand a balancing judgment. (De Fazio, F. (2021).

In conclusion, it can be said that when a law or legal system is accepted as a standard of behavior and actions in a society for the sake of fear of sanctions, only its effectiveness is being measured here. But if legal rules are being applied because citizens believe they are good for solving some of their problems, then we are dealing with validity. Thus, there are at least two ways that citizens incorporate these rules into practice.

### **3.IMPLEMENTATION OF LEGAL RULES BY CITIZENS**

Building on what was said about the distinction between laws that may be enforced out of fear and laws that citizens accept as right, Hart delves into the intricacies of this real distinction (Bix,2018). He explains the legal validity of such a norm in the eyes of citizens in two ways: When citizens internalize this rule, they apply it without the need for sanctions because they understand it and are convinced by their reasoning that this rule is right. A democratic political system gives citizens the opportunity to express and think about the legal norms they should apply. However, there are instances where they apply the legal rule also out of fear of sanctions. When ordinary citizens, not criminals, apply the law in this way, we are, in fact, dealing with a fundamentally non-democratic political system.

For Hart, the formal approval of a law, even through another law that he calls a recognition rule, is not enough to deem the legal rule valid because validity is related to the reasonable conviction, not the blind obedience, of the citizen that this law, and indeed the entire legal system, is reliable, thus serving the citizen's interest.

Validity, according to Hart, relates to the internalization of the legal rule, while the effectiveness or ineffectiveness of a law relates to its external function. "The claim that a rule is valid only if its application is foreseen by the courts or by administrative offices" (Hart,2000) is dismissed by Hart because it attributes a mysterious metaphysical property of validity that cannot be revealed by empirical means. (Hart,2000) When we say that a legal system is effective, it should not always be understood as if every person accepts the rules as an internal duty and recognizes their validity. Internal acceptance with a reasonable conviction and not for any other reason is a unique process that each individual undergoes when educated to judge these rules for themselves, and it does not always have to do with the efficiency of a legal system. Even a slave system can have effective laws, but they treat the individual as an animal that cannot think with its own mind, but only needs to obey orders given by those who make the laws. Remember that there are quite large states today that treat their citizens this way and do not consider it necessary to consult them at all about decisions made by state leaders. Sometimes they even bear the name of a "people's republic," but the people are there only in number.

Therefore, legal rules become valid for citizens not only because they serve as a prediction of decisions made by state authorities and judges, but they are seen by judges and citizens more as an internal affirmation that this rule is indeed law. In practice, we can base the validity of a ministerial order on the power given by a recognizing law to issue this order. As we have such laws, they not only provide knowledge of who should do something but also competence. However, this constitutes only one aspect of the applicability of the law; the other side is conditioned by the awareness of citizens, as mentioned earlier.

There are many reasons why citizens adhere to the law, but the sanctions and fear of punishment by the law, when applied to the majority of citizens, show the profile of an authoritarianism with dictatorial tendencies. It may be rightly thought that it is impossible to bind all citizens to all laws of a legal system. Here we must take into account the trust that citizens create in laws through several other reasonable and verifiable ways. 1. From their experience in a specific field of life activity such as profession, family roles, etc., they can say whether the laws are good or not and if they have confidence that they are correctly applied by institutions. 2. Part of this knowledge comes from legal specialists such as lawyers, various jurists through discourse in the media. 3. They also develop a personal

sense of trustworthiness in the legal system, or distrust, based on various public discussions, hearing and seeing what happens around them, and how law enforcement institutions behave with people like themselves. Thus, the validity of a legal rule is also conditioned by citizens' concrete experiences with this system.

"In this way, the assertion of the existence of a legal system, like Janus, has two faces, one looking at the conviction of ordinary citizens and the other at the official acceptance of the second set of rules (recognition, competence, etc.) as common standards for assessing the behavior of authorities." (Hart 2000). Hart emphasizes that if the internal perspective of laws has not spread much in this system, these legal rules are not valid even though they exist in writing somewhere. As a result of such discussions in legal philosophy, among the standards offered for new laws is also the requirement for public consultation of interested parties as a request to build public trust in government and the legality of decisions made, making it easier to implement the law. (Republic of Albania, 2010)

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