OLIMPIA. Revista de la Facultad de Cultura Física de la Universidad de Granma.
Vol.15 No.47, enero-marzo 2018. ISSN: 1817- 9088. RNPS: 2067. olimpia@udg.co.cu

THE RIGHT GENERAL CONSIDERATIONS.

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Aw is the normative and institutional order of human behavior in society inspired by postulates of justice, based on existing social relations that determine its content and character. In other words, they are behaviors directed to the observance of norms that regulate the social coexistence and allow to resolve intersubjective conflicts.

The initial definition gives account of positive law, but not its foundation; jurists, philosophers and law theorists have proposed throughout history various alternative definitions and different legal theories without a consensus to date on their validity.

The study of the concept of law is carried out by one of its branches, the Philosophy of Law. However, the definition initially proposed bravely solves the problem of "validity" of the legal basis, by integrating the value of Justice into its concept. The validity legal concepts and legal goals are studied by the theory of law.
The concepts of positive law and the law in force can be reduced to the one that is applied and the second is that the public legislative body to be obeyed as long as it remains in force, as long as it is not replaced by the abrogation or derogation. Therefore, not every law in force is positive, that is to say there are legal norms that have little practical application; that is, it is not a positive right but it is a valid right.

From the objective point of view, it refers to the set of laws, regulations and other resolutions, of a permanent and obligatory nature, created by the State for the maintenance of social order. That is, taking into account the validity; that is to say, if the proper procedure for its creation has been carried out, regardless of its effectiveness (whether it is accepted or not) and its axiological ideal (if it seeks to establish a value such as justice, peace, order, etc.)

The Code of Hammurabi, created in the year 1760 a. C. by the homonymous king of Babylon, is one of the oldest sets of laws that have been found. In it appears the law of the Talión, that

established the rule of proportionality, as criterion of justice. It is located in the Louvre Museum, Paris.

The word right derives from the Latin voice "directum", which means "what is according to the rule, the law, the norm", or as expressed by Villoro Toranzo, "which does not deviate either side . "

The term "directum" appears, according to Pérez Luño, in the Middle Ages to define the law with moral or religious connotations, the right "according to right reason." This is so if we take into account phrases like "non omne quod licet honestum est" (not everything that is lawful is honest, in the words of the Roman jurist Paulo), which indicates the distancing of the demands of the right with respect to the moral. This word arises by the Stoic-Christian influence after the secularized right of the Roman era and is the germ and grammatical root of the word "right" in current systems: diritto, in Italian; right, in Portuguese; dreptu, in Romanian; droit, in French; in turn, right, in English; recht in German and Dutch, where they have retained their original meaning of "right" or "righteousness."

The subsequent separation of the binomial "ius" - "directum" does not pretend that the word "ius" is free of religious connotations: note that in early Roman times, according to Pérez Luño, law enforcers were practically exclusively, the pontiffs.
Although the definition of the term "ius" and its origin is still unclear, current studies of Giambattista Vico relate very intelligently and almost without question the origin of this term of "Iupiter" (Jupiter), the principal God of the representative Roman pantheon of ideas of power and justice.

The objective right can respond to different meanings:

- The set of rules governing the coexistence of men in society.
- Standard or set of rules that on the one hand grant rights or powers and on the other, correlatively, establish or impose obligations.
- Set of norms that regulate the behavior of men, with the aim of establishing a just order of human coexistence.

The subjective right can be said to be:

• The ability of a subject to perform certain behavior or abstain from it, or to demand from another subject the performance of their duty.

• The faculty, authority or authorization that according to the legal norm has a subject against another or other subjects, either to develop their own activity or to determine theirs. Concept

Law has been said that it is a set of legal rules that form a hermetic system to the point that solutions have to be found in the rules themselves, a criterion valid for a long time and that, otherwise, there is a certain share of certainty that offers security legal to the social relations that develop in that place and time.

In principle, let us say that it is a set of rules of a general nature, which are dictated to govern the whole society or sectors pre-established by the needs of social regulation, which are imposed compulsorily to the recipients, and whose non-compliance must entail a coercive sanction or the State's response to such actions. These norms are not only the result of rational elements, but also influence other elements, such as political and socioeconomic interests, of prevailing social values and demands, as they influence a certain political and juridical will. making is enforced through the rules of law. In turn, these norms express those values, concepts and demands, and will contain the mechanisms to promote their realization through the behaviors allowed, prohibited or required in the different spheres of social life.

he social diversity and areas in which methodological and juridical can be grouped, is a consequence of the level of development not only of the relations, but also of the normative and the demands of their progress, but even with this multiplicity of existing norms , the law has to be considered as a whole, as a harmonious whole. This internal harmony can be produced by the existence of the political and legal will that underlies them. In plural societies the harmony of political will depends on the coincidence of interests of the predominant party political groups in the legislative and executive, as well as of the continuity of the same ones in the time. Changes can also occur with variations in prevailing socio-economic and political interests, as

parliamentary or government composition changes. Likewise, in single-partisan societies and with a unit budget on the basis of existing social heterogeneity, the harmony of normative will is much more feasible but less democratic, which does not mean that it is achieved permanently; the basis of harmony lies in the unique interests of the party.

Doctrinally, the existence of unity and coherence is defended; but the truth is that in practice this is absolutely impossible in its formal aspect, even in spite of the interests and values at stake, since the normative dispositions are promulgated in different historical moments, by different organs of the State, and even dominated these by majorities political or with expressions of political wills very dissimilar. Equally, there is not always a pre-prepared program for legislative action by the State (legislative programs), but the promulgation of one or another provision depends on the needs or impositions of the moment. In such situations, social relations are regulated in a way, with certain recognition of rights and impositions of duties, with certain limitations, mandates of inescapable compliance are established; and these provisions may be questioned by other organs of the State, repealed by superiors, or modified by the same producers months or years later. That is to say, at the formal level, by analyzing the existence of a variety of provisions, whether we will find provisions that regulate institutions differently, or prohibit them, or admit them, or introduce variations in their regulation, or the process of modification or repeal, there are gaps or gaps, that is, deregulated areas or situations.

In the factual order, and using arguments from political theory, the basis for harmony is certainly provided by the existence of a prevailing political will, and certain certain political interests at stake, which wish to be prevailed as we have already explained. And from the legal-formal point of view, the existence of a set of principles that in the technical legal order make provisions subordinate to others, that the normative production of one organ prevails over that of others, which later ones can leave without force to previous ones, as it results from the principles of normative hierarchy not by the formal rank of the norm, but by the hierarchy of the organ of the state apparatus that has been authorized to dictate it or that has dictated it; prevalence of the special rule over the general; which allows for the existence of general laws, along with laws specific to certain circumstances or institutions, and which allow them to be regulated in a differentiated manner, yet both have legal force and force; or the principle of derogation from the previous rule by the later one, to cite just a few examples.

Creation of law

The production of the law is basically state and this is another factor that provides coherence to the current regulations. Without being an advocate of absolutely normativist positions, and even though this notion has been strongly criticized among us, we can not omit the fact that it is only by accepting that the law is the exclusive result of the State, the prevalence of the Constitution with respect to all legal order issued by the competent bodies, submission of the State to the law and the principle of citizen legal security shall be effective.

As a result of this assertion, regulatory lacunae or gaps are meaningless and the legal operator or judge must be able to find among the rules the solution of the case before them, they must specify within the harmonic set, the " system "and adopt the only possible response to the case, as a way of preserving the predominant will as intact as possible.

And if we admit that law is not only a norm, but a science, which as an expression of a predominant political will, has specific functions in society, it must guarantee the prevailing interest, allowing, mandating or limiting, and in turn being channel of what you want to get. The expression of interests brings unity to the current regulations.

Functions of Law

Within the basic functions of the Law we can mean that it is an instrument of social organization because by means of the established norms the direction of social relations is established, the ones admitted are admitted or others are limited; it is a rule of conduct, insofar as it defines, establishes, commands or impedes actions; is also a means of conflict resolution in order to order a channel, offers the guidelines for the solution, arbitrates and provides the means for the settlement of claims and the defense of citizens' interests; and is also a factor of conservation and social change, as it imposes a set of rules, actions and relations or as a result of their relative independence from structural phenomena, allow them to advance, establish new behaviors or relationships that will admit, on which will stimulate its development. In other words, we can directly assert the lack of independence of the Law with respect to the predominant Power and Morality.

But the real fact is that the law is not only normatively expressed political will, but is also a declaration of the values that prevail in society at a given moment, and in this sense the harmony of the system also occurs as a result of regulatory action of those values, legally recognized as guiding the society, or without being normatively detailed, exist as guides in the action of certain and certain socio-political groups and that manage to impose through the action of culture and other means of obtaining the passive consensus of the governed.

This agreement, which may be broken in time, can be restored from the same law by adapting the rules to the new conditions, work that will be carried out by legal operators, or by the adoption of new general provisions that lead to other directions the action.

The acceptance of this conception does not suppose the abandonment of the prevalence of the law on the state work, and still less on the jurisdictional function, but it does imply to a wider conception with respect to the system that is the Right. It is, then, a set of rules, values, principles and interests; and consequently the character of the Law as System is conformed as a result of the complementation of the factors that inform it and the very function of the same in the society; diverse components whose unity is not an automatic result of the existence of the same, but must be achieved from the conscious and regulated action of the creators and operators of the law.

The expression conscious action presupposes, from my point of view, the action of the bodies constitutionally authorized to create general norms, according to their hierarchy in the distribution of functions and attributions in the state system, which will be a basic element for the safeguard of the Legality and the development and monitoring of the same not only with respect to citizenship, but of the superior organs with respect to the inferior ones without infringing the liberties or autonomies recognized at the local levels. But it is not enough only that there is a functional distribution of rules that promote hierarchical differentiation among them, conscious action must presuppose the existence of a plan of action that prevents the action by impulses or pressures of certain groups and interests that have managed to locate in positions prevailing in the set of predominant forces, indications that are not easy to achieve, except those that result from the balance imposed by the joint participation in power, or the existence of a significantly strong political opposition.

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From the previous approach it could be understood that only the legislature and the executive are empowered, and even when some systems have doctrinally limited the work of judges in normative production, in practice, by specifying the norm to the case they produce a sort of individual norms , which can be recognized as producers of law, based on the precedent that derives from the doctrinal positions adopted, or as a result of provisions issued by the administrations of the judicial organs, which are a consequence of the assessments of cases that have had before him And for the original creators, as for the latter, regulation is necessary, establishing the channel with respect to the regular What ?, How? And To what extent ?, the conditions for the effectiveness of these provisions, as well as the real possibilities of control and guarantee of compliance with them.

The greater or lesser extent of the powers to create the Right also passes through the sieve of Democracy, and its determination formally is on who are the participants in the act of creation and the form of their selection. . The analysis of which have been the holders of the right to create the general regulations also requires, of a historical treatment, taking into account the concrete conditions in which the different positions have been defended. Thus, in the face of

monarchical absolutism, the recognition of powers exclusively for the parliament of nobles was a measure of guarantee and security for this social sector. The rise of the bourgeoisie to power, in some cases radically and exclusively, and in others in a shared way, also justifies the recognition of legislative powers only in favor of parliament. But if modern states of trafficking, the defense of powers limited to the legislature is a formula that limits Democracy to the action of elected representatives and skews the true notion of Democracy.
Permanent democracy, in the style of Rousseau, of all is known that can not be used in the daily, so the representative is a necessity, a limitation of the direct participation of the people in the decision of public affairs, which must recognize admit in favor of a group specialized in the work for political and government action. But this representative should not be of the nation, in its more general meaning, since as an abstract category it is not personified. The representative must be of a determined human group, must be linked and respond to him, and then that action of the superior apparatus, in which if the minor collective interests are manifested, it will be the result of an active sociopolitical consensus.

So far we have obtained the most accurate representation of local interests, but the participant who gives consent and legitimacy to the performance of the state apparatus has been limited to the performance of his second. It is necessary the participation of the one who must be the first so that this consensus is active, so that participation is synonymous with action; it should not only consult on the decisions that have been determined to be adopted, but rather on obtaining information on what should be done so that the constitutional formulas of popular legislative initiatives become reality.
In the subject of democratization we also find another participant subject, and it is to which in the doctrine is dedicated special attention for some years, to the judge, previously recognized as mouth that expresses the law and today defended as a creator.
If the designation of judges is treated, even though the doctrine admits their action to make the norm specific to the case, its legitimacy is enough to create general norms, and nonetheless, it can and does generate general rules from of the doctrines emanating from their decisions. An entirely different matter is the elective judges, in some cases popularly, who would enjoy full legitimacy, as well as popularly elected representatives to create general rules of law and mandatory compliance for all, which as a result of the judicial action would allow the harmonization of different regulations, eliminating obscurity, antinomies and gaps. But then another question arises: how far will the judges be able to correct the rules and preserve the

system? The obvious answer must be to the extent that they do not contradict the constitution and the laws. Another question: which judges will be empowered? To adapt the norm to the case, to all; but free creation of the Right to none. And in cases of unconstitutionality by omission, could judges also create law, in general, as a result of their experience? Additive sentences undermine the law, and may blur the Constitution. Recognize the action of the legislative initiative, which is necessary, but assigned to the administrations of the courts and not to individual judges.

The preservation of the principles of constitutional supremacy, of the hierarchy of law and of the validity of other normative dispositions within the juridical order of a country, will only be possible with the maintenance of the normative powers pyramidamente structured. Here multiple participation is necessary, but equal rights in participation would generate deregulation by contradiction.

The rationality of Law also manifests itself from its elaboration process. Making standards involves conscious activity about the social phenomena that are of interest, the causes of their production, what they want to regulate, their development circumstances, the possible consequences of such a measure, as well as the conscious decision of what to regulate and how to do it by selecting one of the possible options. The standard is thus born with a validation regarding its possible future effectiveness.

Realization of Law

In order for a norm to be effective, in order to be effective, the means and institutions conducive to the realization of the provision, and the rights and duties resulting from such situations, must also be created. But the effectiveness of a norm can not be demanded only at the normative level, it must also be social, material, so that there is correspondence between the norm and the fact or situation, to reflect the existing situation or that wishes to be created, functionality of the law. As a result of this, it will be possible for the norm to obtain the active consensus of its recipients, to be conscientiously respected and respected, without requiring the pressure of the coercive apparatus of the State.

Prerequisite of normative validity is advertising in the sense explained above. Publication of the rules is done not only to make known the birth of the provision, the beginning of its formal legal life, but also to declare the possibility of its requirement and mandatory for the circle of recipients of the regulations. Moreover, if any normative provision is, as a rule, dictated to have an indeterminate life, to be valid and therefore valid from the date of its publication if it does not

establish otherwise, the act of publication is vital in its birth and subsequent action. The validity of a rule of law, then, and the provision that contains and expresses it, is an important element for the effectiveness of the same, for the achievement of its realization in society, as predicted. It is not only the observation of the principles, but also of certain rules related to their rational elaboration, to the creation of institutions to ensure their fulfillment, as well as the purpose with which they are pursued, namely: to preserve, to modify, to legitimize changes, as well as the observance of basic principles that govern each legal system.

Therefore, the normative dispositions, of any rank, have to be the result of the previous analysis with the objective to know the facts, their causes and effects, possible regulations, their effects, to be able to determine what is the precise form that must be demanded or or of the legal institution that wishes to be regulated; the fulfillment of certain formal requirements in its creation and the observance of legal technical principles that govern in a determined juridical order. The means and institutions that promote compliance with the provision and the rights and duties resulting from such situations must be created, both in the order of social and material conditioning, from the prevailing socio-economic and political bodies that are necessary for its application, as the secondary legal regulations and necessary to implement the rule of law. The objectives or purpose of the standard must also be clearly defined, or, what is the same, what is the purpose of regulating that relationship, if the conditions set out above exist for its realization, and then the validity of the norm , it will not only be manifesting the functionality of the law, but will also be in the formal order, being possible, then, that the norm obtains the active consensus of its recipients, their acceptance, compliance and even their defense. Once the norm has been established, it must be applied and respected not only by citizens, but also by other social institutions and, in particular, by the lower bodies, which are formally prevented, thanks to the validity of the principle of legality, regulating different or contrary, to limit or extend the circumstances in which the previous legislation is to be applied, unless the provision itself authorizes its development.

Consequently, the effectiveness of the law depends not only on the training process, although it is very important, but also depends on the measures taken to make it possible to carry out the provisions of the norm and respect for it, the organs of the State, and in particular of the Administration at all levels.

Finally, in order for the rules issued by the State not only to be complied with in the face of the latent threat of a sanction in relation to its violation, but also to be carried out voluntarily, the creator of such standards must always bear in mind that the general and basic recipient of the rules he is the owner of power, who through the electoral act has given others a popular mandate to act in his name and, as long as the rules are governed by them, legal instruments must be envisaged, as well as the institutions and material means allow to enforce the rights that the provisions legally recognize and allow the defense of the same to possible threats or violations that the Administration or third parties may cause. In other words: The need for guarantees for the exercise of rights and their safeguard as a way for the realization of the law, to ensure, inter alia, bilateral relations between individual-State, individual-individual that have been regulated. So then safeguard of order, defense of rights and legality, go hand in hand.

Sources

The term "sources of law" refers to the concepts of where the content of the law comes into force in a given space and time, that is, are the "spaces" to which to go to establish the law applicable to a specific legal situation . They are the "soul" of the Right, they are foundations and ideas that help the Right to realize its end.

Western law (in the German Roman system or continental law system) tends to understand as sources the following:

• The Constitution: is the fundamental rule, written or not, of a sovereign State, established or accepted to govern

• The law: it is a legal norm dictated by the legislator. That is, a precept established by the competent authority, in which something is ordered or prohibited in accordance with justice, and for the good of the governed

• Jurisprudence: it is understood by jurisprudence the reiterated interpretations that of the legal rules do the courts of justice in their resolutions, and can constitute one of the Sources of the Right, according to the country

• The custom: a habit is a deep-rooted social practice, in itself a continuous and uniform repetition of an act to which normative value is sought.

• The legal business: the legal business is the act of private autonomy of prescriptive content with recognition and tutela by the legal order.
• The general principles of law: the general principles of law are the more general normative statements that, without having been integrated into the legal system by virtue of formal procedures, are understood to form part of it, because they serve as a foundation for other particular normative statements or abstractly collect the contents of a group of them.

• Doctrine: Doctrine is understood as the opinion of prestigious jurists on a specific subject, although it is not a formal source of law.

Also in the framework of international law, the Statute of the International Court of Justice in its Article 38, enumerates as sources:

•Treaties

• International custom

• The General Principles of Law

• The opinions of the doctrine and jurisprudence of the International Tribunals, as auxiliary sources.

• Reserves, at the request of a party, the possibility of failing "ex aequo et bono" (according to good and equitable).

The system of sources applicable to each case varies according to the subject matter and the specific factual situation on which to apply a legal solution. Thus, in Spain, the system of sources for legal relations in civil matters is included in the Civil Code and the system of sources for labor relations (which, for example, include Collective Agreements, as a source of specific law of labor relations) is included in the Workers' Statute.
Science of Law

Beyond the apparent tautology, the term Law, is used interchangeably to name science and its object of study, so that law as a science, is nothing other than the discipline that studies law.

Right is what one exercises example: nationality, roof, food, health etc ...
Content
Traditionally, law has been divided into the categories of public law and private law. However, this division has been widely criticized and at present is not so strong, given the appearance of plots of the legal order in which the differences between public and private are not so obvious. One of the exponents of this situation is labor law, in which the private relationship between worker and employer is strongly intervened by a public regulation.