# ON THE STRUCTURE OF LEGAL NORMS AND RELATIONSHIP BETWEEN BEHAVIOURAL AND DECISIVE LEGAL NORMS

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Research on legal norms is one of the fundamental and complex activities in the theory and practice of legislation and law implementation. The cultivation of the law-abiding way of life for citizens requires many conditions as well as efforts, of which building precise and consistent legal norms that could not be misunderstood is indispensable. Specific legal norms serve as components to form a universal rule of laws and legal documents. Their clarity, transparency, popularity, straightforwardness and maneuverableness are of prime importance in the process of making and implementing laws.

As a cell of laws, each legal norm has its function of adjusting behaviours, hence necessitating its own definite structure. Though being comprehensive, general and often polysemantic in nature, legal norms are specific in their contents. In terms of logic, the structure of a legal norm normally consists of three components: information about an action order, information about the conditions for such an action, and information about the consequences if violated. However, the 3-part structure is not always stated fully in every legal norm. Some do not directly mention consequences of violation within the legal norm but imply the typical outcomes that may result from the violation of similar social norms.

Legal literature shows that there have existed different schools of thoughts on the structure of legal norms. They can be basically grouped into two major schools. The first one supposes legal norms to be comprised of two parts, and the other three parts. The former states that a legal norm has two parts in its structure, namely regulation and sanction. The latter, meanwhile, argues for the three part structure of a legal norm including presumption, regulation and sanction [2; p.131-135].

Despite of the disagreement on how many parts a legal norm is composed of, these schools share the same view on what is meant by presumption, regulation and sanction.

## Presumption

Presumption, as a legal norm component, specifies the place, time, subject, and circumstance in which the legal norm can be realized. In other words, in the presumption one can identify the environment and the extent of impacts that a legal norm exercises.

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## Regulation

This part of a legal norm regulates behaviours that a subject should comply with when acting in the situation stated in presumption. Regulation is the central part of a legal norm since it is also the behavioural principle, the decision expressing the will power of a state that people in the presumed circumstances have to obey.

In criminal and administrative laws, regulation is the part of an article describing the criminal requirements or requirements of violation of administrative laws. The description itself implies that the state prohibits such behaviours as it considers them, to some extent, dangerous to the society, immoral and opposing to rule of law.

## Sanction

In a legal norm, sanction provides information of actions that are supposed to be taken with those subjects whose acts are not in accordance with the rule and order stated in the regulation. It can be said that sanctions are the law enforcement measures applied to violators of regulations. It should be noted that law enforcements could be understood in a broader sense as applicable for situations in which there are not yet any violations of law but concerns over preservation and protection of public order and interests of community and society.

To put it simple, a legal norm states a specific situation (presumption) in which a person is forced to behave to the will of a nation state (regulation) or otherwise bears a certain consequence (sanction).

### Some comments on the two schools of legal norms

Both schools on the structure of legal norms have their own rationality. On the basis of expression of legal norms in reality, the approach of two-part legal norms earns more popularity. This is because in acquiring laws, individuals often pay their attention to the two issues: what is regulated under law, say, who has to pay taxes and how much; and how the sanction is applied when there are violations. They also seem to show little interest in differentiating presumption from regulation. On their minds these two logical components of legal norms mean the same and can be simplified to one notion of "regulation".

However, it seems that viewing legal norms as containing three components, namely presumption, regulation and sanction is more logical and precise in terms of theory and practice of legal norm construction and realization. In our opinion, when taking into account the logic of legislation, the function of laws in general and of legal norms in particular, the viewpoint becomes more relevant. It demonstrates the legislative logic of legal norms. It shows the purpose and requirement of legal adjustments towards social relationships in that it anticipates circumstances, insists upon specific behaviours in such

presumed situations, and suggests measures taken by the state if there is no compliance of regulations. This school of legal norms is more predominant and accepted [1; p.380-391]. Besides their own peculiars, legal norms share much similarity with other social norms. Their inner architecture - the division into components and relations among them - constitutes the structure or more exactly, the logical structure of legal norms. Presumption is closely linked with regulation; regulation, in turn, is tied with sanction and vice versa.

It is believed by some that the three part logical structure of a legal norm may be nothing more than an invention and explanation by scholars and law practitioners rather than legislators. When coming to the implementation of laws, what really matters is the comprehension and execution of legal norms. Such belief, however, is not necessarily the case. In terms of structure, the expression of a legal norm does not merely belong to academia, both scholars and law practioners. In contrast, it belongs to legislators too and is one of the legislative technical issues. The three parts of legal norms bear practical significance in understanding, perceiving and executing the norms in the right way. If lawmakers (broadly referring to those who build and promulgate legal documents) are able to state explicitly and in a clear-cut way the three components of every legal norm then the acquisition and implementation of laws is for sure made easy and precise.

We can illustrate the logical structure of a legal norm consisting of three components: presumption - regulation - sanction as follows:

| Formula of legal norms: |
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| *If - then - otherwise...* |

With regard to the function, the behavioural legal norm is fully established only when all the three components are consistently in place. Without presumption, legal norms are meaningless; without regulation they do not exist; without sanction they have no power of enforcement. The structure of legal norms, hence, can be seen as a logical relationship among presumption, regulation and sanction. Presumption indicates the capacity to anticipate situations in the real life to be listed in legal norms. Regulation helps concretize legal policies into such presumed situations under the forms of prohibitions, obligations or permissions, including alternative behavioural solutions. Sanction shows the threat, impositions of specific law enforcing measures upon the subject who violates the legal norms. Sanction must have enough strictness and strength of threat, prevention and education both universally and specifically.

As far as the form (expression) of a legal norm is concerned, the formula mentioned above is true in most cases.

However, the fact of legislative techniques and social life may lead lawmakers to the variation and combination of different means of expression. Whatever form a legal norm may take, it is crucial that it has to ensure the convenience in understanding and implementing the contents, thus ensuring the legal purposes. Another point worth being noticed is the correlation between legal norms and articles in a legal document. In fact, legal norms do not always have all the three parts. Neither these parts are always expressed explicitly and fully in all the legal norms. Sanction is sometimes directly stated in every legal norm as in penal codes, whiled in the other times expressed in a general reference for a number of legal norms as in administrative legal documents. In some cases, sanction could be referred to other legal documents or even as widely as "under current rule of law". The reason for this comes from the fact that one sanction could be used to manage several similar social relationships and it is not necessary to repeat the same sanction in the legal norms governing these relationships. This technique is typical in administrative legal norms dealing with economic, cultural and social areas. For criminal and penal codes, it is not in use.

In legal theories, there is another concept of sanction, which can be said to be broader than the traditional one. In general, sanction is derived from legal consequences of violation of laws. *The viewpoint argues for a broader understanding of sanction as including all the measures that ensure the obedience of laws* [3]. According to this argument, sanction as one of the components of legal norms could be seen as the tool and mean that governments and communities would take to protect the implementation of legal norms. There could be a mistake here. In a narrow sense, sanction as a part of the legal norm, dictates the enforcement of law when there are occurrences of violation. When no specific sanctions are mentioned in a legal norm, it is necessary to understand that violators of the legal norm still take the legal responsibility and the implementation of legal norms is always done by the state with enforcement measures. It is not because of the absence of direct sanction in the legal norm that subjects are under no legal responsibilities. There could be many measures of law enactment, including measures of enforcement, sanction, and other state solutions like education. *In short, we should not confuse sanction with other measures of law enactment.*

**Concerning the relationship between the behavioural legal norm and legal norms of decisiveness, principle and definition**

In relation to adjusting directly or indirectly behaviour on rights and obligations, legal norms consist of two categories: the behavioural norm and

decisive, principle, definition, basic orientation and general legal norms. The behavioural norm is the one directly adjusting, stating rights and obligations in concrete situations. This type accounts for the majority of the legal norm system while decisive principle, definition legal norms consist of much less part. In comparison with behavioural norms, those decisive principle norms play a role of indirect adjustment due to not concretely stating legal rights and obligations. This type of norms states decisive principles, orienting the mechanism of law adjustment. Of course, whether directly or indirectly they are not actually separate process of adjustment running prevalently.

The decisive legal norm and principle norm join in the mechanism of law adjustment in unification with the behavioural legal norm. It is right to say that their participation is indirect if the comparison is in the direct manner of the behavioural legal norm. It is not wrong to say that their participation is direct because in reality during applying behavioural legal norms, subjects are within the adjustment by principle and decisive norms. For example, while employing legal norm concerning administration or civil transaction, subjects should use humanitarian principles which is suitable with social virtue.

Norms define decisiveness of indirect participation in mechanism of law adjustment, participation in unification with behavioural legal norms. Behavioral legal norms interpret concretely and in detail decisive - principle legal norms and should base on these decisive - principle rules. It is difficult to agree with the opinion saying that only a behavioural norm which states rights and obligations of legal subjects can be seen as a legal norm and types of principle and decisive norms should not be included in the category of legal norms, they are, if any, only a type of *incomplete* legal norm. Actually, the behavioural norm itself is a general legal rule. The "concreteness" and "generalness" in this case are integrated with each other. Saying *concreteness* because based on the fact that this norm defines concretely rights and obligations of legal subjects. Saying *generalness* because they are commonly applied. There are humanitarian principles, principles to protect legal rights and interests of individuals stated in laws for example they should be "norms" which are applied once behavioural norms – concrete norms are applied. This can be seen as the law spirit, law principle with compel validity. This law spirit /or principle is unnecessarily repeated in concrete norms, at the same time it should not be ignored just because it is not stated in concrete norms.

In relation to law area, alongside with rules identifying concrete solutions of citizens and other legal subjects, there are rules concerning political programmes, principles which all play

special roles in a law adjusting mechanism. Many opinions say that the majority of rules - articles of law of the institution are not types of norms because they do not directly and concretely identify rights and obligations of legal subjects. In our opinion, all of rules of the Constitution are of legal norm value. Principle, decisive rules of the Constitution themselves are types of norm. They are a generalization at a high level of basic legal categories of social relations. The appearance of rules, principles, definitions, political programmes in the Constitution does not disappear their value of norms.

The norm value of Constitutional rules is indicated in the generalization of the most basically social relations, identifying a legal frame for setting up other legal rules. In reality, principle rules of the constitution are patently required orienting and directing any of subjects of legal relations. *Principles are always of norm values, which make principles different from a simple direction in reality*. This principle is very important in legislation and in law execution. It is necessary to use philosophy to think about and approach to the relationship between "principle" and "rule". The "similarity and the "difference" among them is only relative, we should not see these categories as contrary. Principles are always present while employing principles and concrete rules are addition to, indicators, examination, and nurture of principles. For instance, justice and appropriateness as one of the basic principles of the law why should they be impossible to exist in legal relations regardless of basic and condition of these legal relations for them to be any legal norms?.

The fact shows that it is impossible to do a law adjustment without a combination, addition among principle, decisive norms and behavioural norms. In law adjustment, there are always a combination of impact by norms of principle, decisiveness, definition and impact by behavioural norm and directly adjusting norm.

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