

LEGAL PRINCIPLES AS TELEOLOGICAL LEGAL ATTITUDES IN THE LEGAL ORDER OF A STATE OF LAW

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Abstract. *This article presents the difference between legal norms and legal principles. The author's viewpoint is based on the differentiation between regulatory, systemic and teleological legal attitudes in the legal order of a state of law (Rechtsstaat). The conceptual framework of legal principles entails constituent laws and different areas of a legal order. Unlike legal norms (as subject-specific regulating legal attitudes) and legal standards (as the most general legal attitudes), legal principles are radiating teleological legal attitudes. Moreover, being the result of systemic and teleological concretisation of written law, legal principles as basic teleological legal attitudes are shaped as bundles of teleological legal attitudes and legal conceptions. In the order of a legal state, legal principles have a circular flow in the operation of the legal order, which is determined by the complementary roles of the institutional order of public authority, the institutional order of state authority, and the institutional order of a territorial community. It necessarily brings to light the difference between the fundamental legal principles of a legal order and the legal principles governing different areas of a legal order. This article analyzes the aspects of systemic and teleological understanding of legal principles, particularly considering the distinctive nature of legal principles as sources of law. Legal principles are also viewed as canons directly developed in jurisprudence, within the framework of the "internal legal system" based on legal forms.*

Key words: *legal principles, legal grounds, cause and purpose of legal regulation, legal standards, legal norms, legal situations, "internal legal system"*

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1. INTRODUCTION

Roman law is the cradle of legal principles, which are embodied in the attainments of Roman legal jurisprudence as the most brilliant form of teleological jurisprudence in the history of law.¹ Relying on the knowledge of the legal method employed by Roman jurists, it is important to emphasise at the very outset of this article that the destiny of legal principles in a specific legal area is determined by the development and direct presence of jurisprudence in a legal order, which is primarily embodied in the understanding and conceptualization of legal principles in the process of creation and concretisation of written law.

Despite the fact that legal principles have strongly contributed to the constitution of contemporary European legal systems, as well as to the creation of the state of law (*Rechtsstaat*) doctrine in general, the independent legal nature of legal principles has been generally disputed in Serbian legal literature. Such an understanding of legal principles is inconsistent with the development of legal consciousness in the period after the French Revolution to the present day. Taking a glance at the legal history of European legal systems, one may learn that quite a few legal principles have been unambiguously formulated in judicial practice, as an expression of legal consciousness that required the court jurisprudence to ensure a simultaneous preservation of public policy and legitimacy of statutory law! In these cases, the process of shaping legal principles in judicial practice provided a direction for the development of legal consciousness and ensured the compliance of legal institutes with the “spirit of the time” and the “nature of things”. Hence, the judicial formulation of legal principles was often designated as “discretionary law-making authority”, considering that it departed from the framework of possible interpretations of legal norms under the impact of moral perceptions, the objective spirit of a territorial community, or philosophy-of-law doctrines.²

The insufficient presence of legal principles in Serbian jurisprudence and legal literature is undoubtedly a consequence of the general acceptance of normativism (the normativist concept of law *stricto sensu*),³ where law is viewed as a process of creating and applying legal norms as

¹ The legal thought of Roman jurists focused on establishing the legal grounds for legal issues under consideration, as the cornerstone for the most valuable expression of the Roman legal method - the legacy on legal principles related to subject-specific legal regulation. Notably, Savigny said: “[...] in our science, everything depends on the possession of the leading principles, and it is this very possession which constitutes the greatness of the Roman jurists. The notions and axioms of their science do not appear to have been arbitrarily produced; these are actual beings, whose existence and genealogy have become known to them by long and intimate acquaintance. For this reason, their whole mode of proceeding has a certainty which is found no where else, except in mathematics; and it may be said, without exaggeration, that they calculate with their notions. But this method is by no means the exclusive peculiarity of one or a few great writers; on the contrary, it is common to all and, although a very different measure of felicitous application falls to the lot of each, still the method is universally the same” (Savigny, 1998: 34). For more on the legal method of Roman jurists in Serbian legal literature, see: Sić, 2015: 617-633.

² For example, it may be indicative to mention the origin of the principle of objective liability for damage in French law. Originally, the French Civil Code did not envisage the objective liability as a legal institute and a separate legal principle; there was only subjective liability (based on individual culpability). Relying on the *Code Civile* and taking into consideration the emerging changes in the society, French courts took the legal stand that it would be proper to establish objective liability for damages caused irrespective of culpability. French courts found the legal grounds for establishing objective liability in the French Civil Code, by using linguistic flexibility of legal formulations, although such a conclusion could not be reached by applying a subjective interpretation - “the will of the legislator”, nor an objective interpretation of the “spirit of the Code”. It means that the introduction of objective liability for damage implied bringing the legal institute of liability for damage in compliance with the “spirit of time”, which was necessary for preserving the public order and the legitimacy of statutory law! For more on the development of the idea of objective liability for damage during the 19th century, see: Popović, 1984: 97-101.

³ For more on the conceptual framework of normativism, see: Hasanbegović, 2015: 69-74.

“formal sources of law”.⁴ In this paper, the author aims to present the arguments proving the independent legal nature of legal principles and the theoretical grounds of differentiation between legal principles and legal norms in legal logic. To that effect, the starting premise is that the legal order of a state of law (*Rechtsstaat*) encompasses regulating legal attitudes, systemic legal attitudes, and teleological legal attitudes. Unlike legal norms (as regulatory legal attitudes) that directly regulate individual rights and legal duties of the subjects of a legal order, legal principles are radiating teleological legal attitudes; by expressing the basic legal ideas, they give direction to legal consciousness and inspire the basic legal regulation in the legal order of a state of law, thus laying grounds for the development of legal norms and activities of the subjects of a legal order. Legal principles are the basic canons that are woven into the *causa* of law-making sources, legal acts and actions, legal relationships and legal forms. It means that legal principles have a distinctive feature of constituent laws of a legal order and different areas of legal order.

2. TELEOLOGICAL, SYSTEMIC AND REGULATING LEGAL ATTITUDES

The author’s standpoint on the distinction between a legal order and a legal system was presented in earlier papers (Prica, 2018: 103-113; Prica, 2016: 20-82). On this occasion, we shall revisit the main postulates of that viewpoint, considering that they contain the theoretical grounds for discussing the subject matter of legal principles. Whereas normative legal theories posit that there is no law outside normativism, the author’s standpoint is that law is primarily a categorically (conceptually) determined order, governed by the legal subject-matters and their immanent law-making sources; a legal norm is one of many elements of a legal order. As a categorically (conceptually) determined order, law is indeed a result of the existence of different institutional orders established within the framework of a state (as a legal and political community), where an inextricable bond between the legal order and the institutional orders comes to light.⁵ Generally speaking, a legal order implies the establishment of a legal and political community and the presence of legally

⁴ Here, we may refer to the conception that legal principles are derived from legal norms, which means that legal principles are “abstract norms composed of norms of a lower degree of generality” (Lukić, 1995a: 222-223). In this paper, the author endeavours to prove the opposite: it is in the nature of things that legal norms are derived from legal principles.

⁵ A state is a trinity of a territorial community, the basic institutional order of public authorities, and the respective territory. In terms of international relations, territoriality is an important feature of every state, bearing in mind that a state (as the basic territorial order) only exists in the form of as a sovereign state (as the basic institution), which has the supreme authority in the given territory. As for internal relations, the relationship between the distinctive identity of a state as an institution and a state as a territorial community is even more important; this relationship is primarily recognised through a spiritual and teleological content of a legal order, expressed in the unity and overarching power of the objective spirit. The starting premise should be that the state (as the basic territorial order) is embodied in the territorial community, which is shaped by the activities and the spirit of its subjects. That community has its constituent subjects (man as a holder of freedom, nation, family, civil society, etc.), which are all interconnected by historical predicament and a permeating effect of the objective spirit, which is the foundation for the development of a spiritual and teleological content of the public order of a territorial community. It entails the idea of historical endurance, the idea of a state as the subject of history. Therefore, to understand and properly establish the legal state doctrine (*Rechtsstaat*), the presence of three institutional orders must be presumed: 1) a territorial community as an institutional order; 2) an institutional order of state authorities; and 3) an institutional order of public authorities (institutional public order as an embodiment of the rule of law). A state as an institution (a political and legal community) is a trinity of the aforesaid institutional orders (Prica, 2016: 23-26; 33-40).

regulated relations between subjects of different institutional orders; their relations are governed by legal principles and legal norms, regulating the activities of the subjects of a legal order. The basic purpose of a legal order is to prevent any arbitrariness of the subjects of institutional orders, whereas the creation of legal orders cannot fully represent a concretisation of general legal norms, considering that subject-specific legal regulation (in a substantive sense) may be both beyond the law and above the law.

In terms of legal science, a legal order contains integral constituent entities (elements), without which the in-depth analysis of the creation and concretisation of law is inconceivable in legal science. In the author's opinion, a legal order has the following structure:

1) basic (constituent) entities of a legal order, including: a) a legal subject; b) subjective rights; c) a legal duty; d) a legal object (subject-matter); e) a legal act; f) state action; g) legal action; and f) legal facts; all these elements have an equal (constitutive) significance in a legal order, and it would be entirely wrong to put them in a hierarchical chart;⁶

2) the subject matter of legal regulation, including: legal goods (assets) and legal interests;

3) the law-making sources, including: rational interpretation of legal norms and legal principles, political assessment of expediency, and free will and administrative assessment of expediency;

4) the forms of legal regulation, including: a) *direct dynamic forms*: general legal acts, individual legal acts, state actions, and legal actions; b) *direct static forms*: legal principles, legal norms and legal standards; and c) *higher static (legal-science) forms*: legal matters, legal situations and legal institutes.

In the legal order of a *Rechtsstaat*, the rule of law is anchored in-between the general and private interests, publicity and privacy, interventionism of the state authority and civil society, institutional order of public authorities and institutional order of a territorial community. It aims to establish a balance between various legal goods, interests and goals of a legal order. In that sense, a legal state governed by the rule of law is an embodiment of the public interest as a static expression of the common good;⁷ naturally, the exercise of the rule of law in a legal order is conditioned not only by well-developed written law but also by the need of attain a high degree of publicity and development of virtue in a legal order.

Essentially, the formation and the functioning of a legal order (in the above sense) is to ensure a minimum of public interest as a static expression of the common welfare, while the rule of law under the auspices of the legal order is instituted and strengthened by developing written laws, the general public as the "judiciary" of a territorial community, and virtue (of judges, public attorneys, political officials, public servants, subjects of institutional order of a territorial community, etc.). Thus, it would be important to make a clear distinction between a legal order an embodiment of a legal state (in a formal sense) and the rule of law as an expression of a moral and spiritual progress of a legal and political community.

Legal principles as the radiating teleological legal attitudes and general legal norms as systemic legal attitudes have a decisive importance for the existence of a legal order (in the above sense), whereby various systems of legal norms (as regulating legal attitudes) are developed under the auspices of a legal order. Bearing all this in mind, the development of

⁶ By analogy, it would be like giving priority to the blood system over the nervous system, or the right hand over the left hand.

⁷In the author's opinion, general interests represent the dynamic expressions of common good; private interests represent the dynamic expressions of individual legal goods of citizens as subjects of a legal order and holders of freedom, while the public interest represents a regulatory determinant of the legal and public order, and a static expression of common welfare (Prica, 2016: 211-229; 269-280).

a legal order is conditioned by the development of the so-called “internal legal system”, which occurs at the points of encounter of opposed entities and systems within a legal order. An internal legal system is mainly developed in judicature as a system embodied in legal attitudes and legal conceptions having a radiating effect on legal consciousness in a legal order.⁸ An *internal legal system* is a sum of legal attitudes, legal conceptions and legal concepts adopted in (spiritual) areas of a legal order. The relationship between a legal order and an internal legal system depends on the nature and the scope of direct presence of legal science in the process of creation and concretisation of law. Being a product of direct legal-science activity in a legal order, an internal legal system can ensure a high degree of development of written law and a stable legal consciousness; consequently, an internal legal system is established as a hard core of a legal state and a legal order.

What is the difference between teleological legal attitudes, systemic legal attitudes and regulating legal attitudes? **Teleological legal attitudes** express basic legal ideas and give direction to legal consciousness in the legal order of a state of law, thus determining the legal grounds of legal norms as regulating legal attitudes and the legal grounds for the activities of subjects of a legal order. **Systemic legal attitudes** regulate mutual relationship of constituent entities of a legal order and legally regulate the course, volume and extent of legal regulation and the activities of subjects of a legal order. **Regulating legal attitudes** directly regulate subjective rights and legal duties of subjects of a legal order.⁹

Thus, given their intrinsic (legal-logic) structure, legal norms and legal principles are **legal attitudes**,¹⁰ but they are legal attitudes of distinctive properties. Legal principles are radiating teleological legal attitudes, while legal norms represent systemic and regulating legal attitudes. Systemic legal attitudes exclusively have a form of general legal norms with a general legal effect, while regulating legal attitudes have a form of legal norms with an *erga omnes* effect and legal norms with an *inter partes* effect. We will see later that legal norms as regulating legal attitudes necessarily represent subject-specific legal attitudes, regardless of whether they are legal norms with an *erga omnes* effect or legal norms with an *inter partes* effect! Legal principles as basic teleological legal attitudes have general legal character, whereby systemic and teleological concretisation of written law results in

⁸ The development of European-continental legal orders in the period after the French Revolution was marked by an endeavour to develop jurisprudence, which was actually an expression of the need to enhance the creation and application of law by legal thought, to promote the understanding of the general above the individual, i.e. to expose the constituent elements of the whole behind the particularities. These constituent elements of the whole are, in fact, legal concepts. The direct presence of legal thought in the process of creation and concretisation of law is the foundation for developing the conceptual framework of theoretical jurisprudence. Legal thought does not have to be directly present (to a significant extent) in legal regulation. Internal law may also entail ongoing formation and application of legal norms, but the postulate on the significance of legal thought in the process of legal regulation reflects the endurance and stability of law and, thus, its further development. Nowadays, German and French laws are often designated as “radiating continental legal orders”; to a lesser extent, it is the result of the direct impact of substantive and procedural law on other legal orders but, to a much greater extent, it is the result of the strength of German and French jurisprudence, particularly the one developed in the judicature of courts, which is a clear indicator of the significance of legal consciousness and the conceptual legal framework.

⁹ In Serbian legal literature, the expression “norms on behaviour” has become common (Lukić, 1995b, 84-85). In that context, regulating legal attitudes do not take into account only the behaviour of natural persons (individuals) but also the activities of state authorities and other subjects of a legal order.

¹⁰ Petrović noted: “Legal attitudes (German: *Rechtssatz*) and a legal act are the final embodiment of law. All law-related content is contained in or correlated with either the former or the latter; yet, a legal attitude is an intentional expression of legal statics (where law i.e. legal thought actually “stands still”), whereas a legal act is an element of legal dynamics, legal reality and movement” (Petrović, 1981: 75). Toma Živanović also supported the view on a legal norm as a legal attitude (Živanović, 1997: 60; 65, etc.).

the development of legal principles as bundles of general and subject-specific teleological legal attitudes. In that sense, legal principles as teleological legal attitudes determine the legal ground of legal norms as regulating and systemic legal attitudes. We may examine the difference between teleological, systemic and regulating legal attitudes by referring to some examples.

(1) In a typical civil law contract, legal norms with an *inter partes* effect (regulating legal attitudes arise from the free will of contracting parties; the dispositive statutory general legal norms (regulating legal attitudes) have a secondary character; but, in terms of this contract, general legal norms are primarily valid as systemic legal attitudes¹¹ and legal principles as teleological legal attitudes.¹² Therefore, regulating legal attitudes contained in these contracts emanate from the consent of free wills of the parties as the basic law-making sources in one area of a legal order, provided that legal regulation at issue does not jeopardise the preservation of the legal order as a whole.

(2) In police activities aimed at preserving public order and peace, statutory norms are valid as systemic legal attitudes which determine the course and limits of physical activities of the police; however, the course of these activities cannot be precluded by statutory norms because it entails physical action of the police strengthened by the assumption of legality and the assessment of expediency, including the possibility of direct enforcement. In this case, legal principles are primarily valid as basic teleological legal attitudes,¹³ whereas statutory norms as systemic legal attitudes¹⁴ prevent the arbitrariness of the police, thus preserving the public order. It means that the content of physical activities of the police (as their regular and primary function in a legal order) cannot be regulated by statutory norms as regulating legal attitudes; yet, they can regulate the requirements and limits of a specific activity, as well as the consequences of undertaking the activity, in order to preserve the legal order.¹⁵

¹¹ Article 10 of the Obligation Relations Act (*Official Gazette of the SFRY*, no. 29/78 [...]) states: “The parties in obligation relations are free, within the limits of compulsory legislation, public order and good faith, to arrange their relations as they please”. Art. 20 of the ORA specifies: “The parties may regulate their relations in a different way from the one specified by the law, unless a specific provision of this law or its meaning provides otherwise.” To confirm the justification of distinguishing systemic legal attitudes from regulating legal attitudes, we may refer to Vodelinić’s understanding of the introduction to civil law. Vodelinić states: “Unlike the specific part and the general part of civil law, which constitute civil law norms, the introduction to civil law is a benchmark for legal norms which are not an integral part of civil law but they pertain to civil law, i.e. to civil law norms. Civil law norms regulate civil law relations: rights, obligations, capacities and properties of persons involved in such relations, the acquisition, change or termination of such rights and obligations, capacities and properties. The introduction to civil law regulates various issues, pertaining to civil law norms rather than civil law relations. Norms of the introduction to civil law are norms about civil law norms (metanorms) [...]” (Vodelinić, 2014: 29).

¹² Article 11 of the ORA (*Official Gazette of the SFRY*, no. 29/78 [...]): “Parties to obligation relations shall be equal in terms of law”. Art. 12 of the ORA: “In establishing obligation relations and exercising rights and duties from these relations, the parties shall adhere to the principles of good faith and honesty.”

¹³ Art. 31 of the Police Act (*Official Gazette of the RS*, no. 6/2016 and 18/2018): “The Police shall perform police duties with the aim and in such a manner as to provide for an equal protection of security, rights and freedoms, by implementing the law and the constitutional principle of the rule of law.” On the basis of this general teleological legal stance, Art. 32 of the Police Act envisages the legal principles for performing police duties: professionalism, depoliticization, cooperation, cost-effectiveness and efficiency, legality of work and proportionality.

¹⁴ The police legislation contains a myriad of systemic legal attitudes (either restricting and not restricting the police powers), which is the consequence of the primary and regular functions and physical activities of the police in a legal order. See: Art. 65-128 of the Police Act, *Official Gazette of the RS*, no. 6/2016 and 18/2018.

¹⁵ Physical activities of the police, as the primary and regular function of the police in a legal order, are also reflected on the spiritual (intellectual) activities of the police, bearing in mind the possibility of rendering an oral decision, which is regulated by the General Administrative Procedure Act (*Official Gazette of the RS*, no.

(3) When the President of the Republic and the Government decide on appointing an ambassador of the Republic of Serbia in another state, the process entails a political assessment of the expediency of competent decision-makers, which is by no means limited by statutory norms as regulating legal attitudes. The assessment involves only a statutory norm as a systemic legal position;¹⁶ teleological legal attitudes are also not applicable in this legal matter. Therefore, the proposed decision of the aforesaid supreme state authorities can only be challenged by the public (as the “judiciary” of the institutional order of a territorial community), for the purpose of achieving public interest as a static expression of general welfare.

(4) A decision on an administrative matter, rendered in the administrative procedure, is an expression of a reasonable interpretation of general legal norms and an administrative assessment of expediency (as law-making sources); the decision-making process is governed by the legal principles envisaged in the General Administrative Procedure Act (GAPA) and the legal principles of the applicable substantive law. Notably, like other procedural laws, the GAPA encompasses myriads of systemic legal attitudes.

(5) In criminal offences, the factual being (essential factual ground) is a constituent element of the legal being (the body of crime in substantive law) as a completed spiritual construct (criminal offence as a legal concept), whereas a legal rule of the Criminal Code is a general legal situation (as a regulating legal form). A general legal situation arises from a reasonable interpretation of the constitution and a political assessment of expediency (as law-making sources); it is a complete legal being (entity), whose content encompasses the primarily factual being (negative and positive duties) and the secondary factual being (commission of an illicit act or omission resulting in a criminal offence). Hence, the subject-matter of criminal procedure is the assessment of legal facts related to the primary and the secondary being; a criminal offence is a legal fact that does not constitute a law-making source. Therefore, criminal procedure is inconceivable without legal principles, including not only the basic principle of legality *stricto sensu* but also other legal principles (e.g. *in dubio pro reo*, presumption of innocence, etc.).

In these examples, we may observe the presence of various dynamic forms of legal regulation (contract, material act, governmental act, administrative act, court judgment), as well as the existence of various law-making sources (internal conception of legal acts, state and legal actions), free will, administrative assessment of expediency, political assessment of expediency and reasonable interpretation of legal norms as regulating legal attitudes.¹⁷

18/2016). Article 143 of the GAPA envisages as follows: (1) In the event of extremely urgent measures taken for the maintenance of public order and safety, or elimination of direct threats to human lives and health or property, the authority may adopt a decision orally. (2) At the request of a party, if submitted within 60 days from the date of adoption of the oral decision, the authority shall be obliged to issue and deliver it to the party in writing not later than 8 days from the submission of such request.”

¹⁶ Article 15 of the Foreign Affairs Act (*Official Gazette of the RS*, no. 116/2007).

¹⁷ Law-making sources reflect the subject-matter of a legal order in the process of the creating and applying the law, determining the *causa* (rationale) of its action. They reveal the internal conception of comprehensive spiritual and physical activities in a legal order, in terms of both formal legal sources and all legal and material acts, affairs and actions in a legal order. In that context, we are in the area of material sources of law. Yet, we should bear in mind that law-making sources determine the *causa* of both spiritual and physical activities in a legal order; consequently, law-making sources should be differentiated from material sources of law related to a legal being (e.g., the objective spirit and legal consciousness as a material source of law). In the author’s opinion, the meaning of creation and application of law should be inspired by the endeavour to establish fair (just) and steadfast law, which can be achieved by establishing the basic legal principles, the “nature of things” of legal subject-matter, and legal rules as a measure of justice and fairness in typical legal subject-matters. Consequently, the material source of law in the legal order of a state of law would be a trinity of the said legal principles, legal matters and legal rules, including well-shaped legal consciousness; thus, the formal sources of law would necessarily emanate from the material sources of law (in the aforesaid sense). It would

We may also conclude that the functioning of a legal order cannot be precluded by a pyramidal course of creation and application of general legal norms as “formal legal sources”, bearing in mind that the principle of legality in material sense is a dominant principle in all areas of a legal order. Substantive law may also be created outside the institutional order of public authorities, as an activity that does not represent a concretisation of legal norms as regulating legal attitudes, in the area of free will and private interest in absolute sense. On the other hand, the institutional order of public authorities is necessarily broader in relation to substantive (statutory) law, bearing in mind the political activities of state authorities that can also be above the law. But, it is important to point out that the coordinates of a legal order are not exceeded in either case, and it is the essence of their existence. In view of the aforesaid, the principle of legality has various forms in different areas of a legal order, including the legality *stricto sensu* (retention of legal norms as regulating legal attitudes), the prohibition of unlawful effect in civil law transactions, and the political assessment of expediency of the supreme state authorities (which can also be above the law, e.g., in case of concluding an international agreement). Yet, in all areas of a legal order, legal principles are valid (applicable) as basic teleological legal attitudes and general legal norms are valid as systemic legal attitudes. The constitution (as a basic law of a legal and political community) primarily contains basic teleological and basic systemic legal attitudes, while any area of a legal order contains the systemic (basic) law which regulates the basic teleological, systemic and regulating legal attitudes currently applicable in the specific area of a legal order.

Amongst various strands of legal thought on the character of a legal norm in legal literature, the criterion for differentiating between the legal norms as systemic legal attitudes and legal norms as regulating legal attitudes may be observed in the discussion on primary and secondary legal norms. The discussion on primary and secondary legal norms undoubtedly has a character of an insightful scientific thought; but, given that the discussion is anchored in the normativist strands of legal thought, it has only reached the point of differentiation between a legal order and various systems of regulating legal attitudes developed within the framework of a legal order. It seems to have been the guiding idea of Jhering, who has to be credited for being the first to underscore the significance of the distinction between the norms on behaviour and the norms on sanctions, as the existence of a legal order is inconceivable without the latter (Jhering, 1998: 152-153). Hart's discussion on the concept of law is also significant as he elaborates on the “rules of recognition, rules of change and rules of adjudication”, thus underscoring the significance of the existence of a legal order. Hart says: “[...] the complexity of a legal system calls for differentiating between two different yet related types of legal rules. The rules of the first type, which are also called primary or basic rules, require people to do something or to refrain from action, whether they want it or not. Another group of rules rest and depend on the basic rules and they are secondary to them because they confer powers enabling people to create new primary rules, to abolish or change the existing ones, to impact their application in various ways, or to determine their outreach.” (Hart, 2013: 140-141). Here, we may also refer to Bobbio's standpoint on the rules on identification of systemic norms: “Upon initial consideration, we can say that [the rules of identification...] include three different types of norms, which emerge at the point of transition from a primitive order to a developed one: a) the norms on legal sources or norms indicating facts or acts that are given the power to produce systemic norms; b) norms

certainly mean that the constitution (as the basic law of the state) has to be in compliance with the constitution of civil society and the constitution in absolute sense.

establishing spatial or time limits (the rules on the validity of laws in time and space) within which the rules produced by authorised sources may be considered to belong to the system of norms; c) norms on interpretation and application of rules which are considered to belong to the legal system according to the criteria under a) and b)” (Bobbio, 1988: 69).

The discussion on the relationship between the primary and the secondary norms in a legal order is appropriate only if that relationship is considered from its functional aspects, without evaluating what is more important for a legal order. A functional analysis of the relationship between the primary and the secondary norms can only be consistent if it takes into account all the constituent elements of a legal order as the subject-matter, not only legal norms. In that sense and for the sake of an example, general legal situations on absolute legal duties are primary; criminal matter as a subject-matter of criminal proceedings is secondary, but the norms of the Criminal Procedure Code are of primary significance for the existence of a legal order. Likewise, subject-specific legal situations of private law are primary, litigation matter is secondary, but dispositive norms of obligation legislation have primary importance for the existence of a legal order; etc. In terms of the constituent entities (elements) of a legal order, it follows that the weight on the balance scale measuring the relationship between primary and secondary norms shifts to either side, depending on the area of a legal order and the nature of the subject-specific legal regulation. As a matter of fact, general legal situations (envisaged in the Criminal Code) on absolute legal duties (legal protection of basic legal goods) and general legal situations (direct application of constitutional norms) as basic legal statuses and guaranteed substance of subjective rights are equally valid for a legal order; the norms on sanctions for the violation of absolute legal duties and the norms on sanctions for the violation of guaranteed subjective rights are of equal validity as well. For this reason, instead of discussing primary and secondary norms, it may be more appropriate to examine the difference between legal norms as systemic legal attitudes and legal norms as regulating legal attitudes. In light of the legal thought pursued in this discussion, Hart’s norms of recognition, norms of change and norms of adjudication, as well as Bobbio’s norms of identification of systemic norms, undoubtedly correspond to the concept of legal norms as systemic legal attitudes. Moreover, legal principles serve as proof of the impossibility of considering the relationship between primary and secondary norms in a legal order only in the light of legal norms, bearing in mind that legal principles as teleological legal attitudes are primary in relation to legal norms as regulating legal attitudes, which we will endeavour to prove further on in this discussion.

Now, we have reached the point where we may examine the relationship between legal principles as teleological legal attitudes and legal norms as regulating legal attitudes. To that effect, we should first address the issue of a conceptual framework of teleological legal attitudes. Teleological legal attitudes are not equivalent to the purpose of legal regulation, bearing in mind that purpose does not cover the entire legal ground of legal regulation. What is the relationship between a legal ground and a purpose in law?

According to Jhering, there is the law of causality and the law of purpose: “Only one of the two is possible: either cause or purpose is the moving force of the world” (Jhering, 1998: 17). Jhering finds that purpose is the moving force in the world of law. Yet, to what extent is purpose actually the moving force in the world of law if we are fully aware of the powerful impact of free will and interests? Thus, in addition to purpose, the world of law also includes causes, reasons, terms and conditions for accomplishing the purpose (goals) of legal regulation. Hegel addressed the dichotomy within internal law, when elaborating on the identity of *being-in-itself* (*Ansichsein*) and *positedness* (*Gesetzsein*): “Through this

identity of abstract or implicit with what is actually constituted, only that right is binding which has become law. But, since to constitute a thing is to give it outer reality (*Dasein*), there may creep into the process a contingency due to self-will and other elements of particularity. Hence, the actual law may be different from what is in itself right” (Hegel, 1911: § 212; Petrović, 1981: 54). This further implies that teleological legal attitudes do not only express the purposes of legal regulation; their ultimate meaning is manifested in linking the grounds and the grounded, being-in-itself (substance) and positedness (constructed reality), being and needing, purpose and cause of legal regulation. Therefore, legal principles as teleological legal attitudes express the basic legal ideas which serve as legal grounds for regulating the activities of the subjects a legal order and legal norms as regulating legal attitudes; thus, teleological legal attitudes give direction to legal consciousness in a legal order.

In view of the above, the relationship between legal principles as teleological legal attitudes and legal norms as regulating legal attitudes is determined by a “type” as a methodological category, which is embodied in the synthesis of the general and specific. As noted by Dilthey, it entails “regular linking of different individual characteristics into the basic forms of mental life” (Dilthey, 1924: 241). Dilthey concludes: “In such a type, a number of features, parts or functions are interconnected in a regular manner. These interconnected features, which constitute a type, stand in such a relationship that the presence of one trait allows for making a conclusion about the others, a variation in one facilitates a variation in another. These typical interconnected features are strengthened in the universe, in an ascending order of life forms, and reach their ultimate point first in organic and then in spiritual life” (Dilthey, 1924: 270). Hence, it can be concluded that legal norms as regulating legal attitudes are derived from legal principles as teleological legal attitudes, but it does not imply their concretisation; instead, legal norms are shaped by perceiving legal principles as a synthesis of elements constituting teleological legal attitudes.

Duguit's viewpoint on “normative legal rules” is consistent with the presented understanding of the relationship between legal principles and legal norms (Duguit, 1927: 109; Petrović, Prica, 2014: 39). Analysing the French Civil Code, Duguit came to the conclusion that the Code included only three normative legal rules (the right of ownership, freedom of contract, and liability for damages); Duguit subsumed all other provisions of the Napoleonic Code into “constructive legal rules”, which seem to be close to the concept of systemic legal attitudes presented in this article. It gives rise to an important conclusion: the methods of concretisation and subsumption cannot be applied to the relationship between legal principles and legal norms! The reason may be found in the conflicting nature of elements constituting the substance of the subject-matter of legal regulation, which also affects the structure of legal principles as teleological legal attitudes. Thus, to understand legal principles, the relationship between legal principles and legal norms may be rightly subjected to a teleological interpretation of the ultimate degree, which spiritually stands above interpretation and concretisation inherent in the mutual relationship between legal norms as regulating legal attitudes!¹⁸

Notably, Kant's thought that “antagonism is the means used by nature to further the development of all human talents” (Kant, 1974: 32) reflects the nature of the subject-matter

¹⁸ Traditionally, the interpretation of legal norms is viewed as a means of understanding legal norms. Heidegger introduces an inversion of relations between interpretation and understanding, where understanding as “original comprehension” precedes interpretation as “its self-illumination” (Heidegger, 2007: 184; Bovan, 2013: 83-84). Legal principles are not interpreted but comprehended, bearing in mind that understanding of legal principles exceeds the frameworks of logical conclusion and reasonable interpretation; it is primarily due to the processes of comparing and weighing, which are predominantly used in the assessment of legal principles.

of legal regulation. Consequently, legal principles as teleological legal attitudes should allow for linking, balancing and guiding the conflicting legal goods, legal interests, legal goals, and entities of a legal order in the direction of progress of a legal and political community. Both in life and in legal order, conflict and counter-positions are a chance for advancement and progress. In this regard, Bobbio says: “[...] conflict [...] is a necessary condition of humanity's technical and moral progress. This progress is viewed as something that takes place through conflicts of different opinions and interests, conflicts which open the path to truth in the field of argumentation, conflicts which aspire to ensure the greatest possible social welfare through economic competition, conflicts which through political struggle lead to the selection of the most capable individuals for government.[...] Individual freedom[...] is viewed as the essential condition for developing a 'variety' of individual personalities which is construed as being compatible with conflict,¹⁹ while the conflict itself is viewed as promoting the perfection of all“ (Bobbio, 1995: 42).

The term “legal teleology” very rarely appears in legal literature, which comes as no surprise if we look at the rare endeavours to analyse the grounds of legal regulation of legal subject-matter and legal relationships in positive law. Legal scholars are not unfamiliar with the so-called value-based consideration of law; but, without a sufficiently clear legal expression in positive law, such consideration fails to gain the character of a clear and effective legal understanding.²⁰ In the legal order of a state of law, legal teleology is the totality of teleological legal attitudes, legal goods and legal interests (as a trinity of co-conditioned and opposed entities in a legal order), and legal regulation should be aimed at balancing and correlating them. As legal regulation does not necessarily have to be part of the public order, the relationship between legal principles as teleological legal attitudes and legal norms as regulating legal attitudes entails a clear differentiation between the public and the private interest; in fact, it is the boundary line that delineates freedom and autonomy (on the one side), the public order (on the other side), and the interventionism of public authorities (on the third side).

This certainly means that different legal principles necessarily converge in the process of legal regulation, whereby the opposed legal principles are subjected to mutual balancing and correlation, unlike the hierarchical structure of legal norms in resolving incompatibility

¹⁹ Legal principles *per se* are not sufficient for advancement of a legal and political community. In this regard, virtues (of judges, political officials, public servants, subjects of institutional order of a territorial community) are the basic, dynamic expressions of progress of a legal and political community; it follows that virtues are necessary for establishing the real grounds of legal principles in a legal order. Here, we may quote Ulpian's wonderful thought: *Iuris praecepta sunt haec: honeste vivere, alterum non laedere, suum cuique tribuere* (The basic principles of law are: live honourably, cause no harm to another, and give everyone his due).

²⁰ We should certainly commend the endeavours to observe positive law in a wider context, beyond the legislative framework and general legal norms, as a way of thinking that considers an issue from the standpoint of legal ethics. But, the problem occurs when the justified criticism of positive law yields no solution for the observed problem. In this regard, the aforesaid value-based consideration of positive law is problematic because it is mainly performed outside the boundaries of legal science, generally as a current strand of ethical understanding of a legal phenomenon. In terms of legal doctrine, the major downside of the doctrinal “value-driven orientation of positive law” lies in the fact that “values” assimilate goals and interests in law, and that there is no clear-cut method of entering “values” into positive law. Moreover, viewed in terms of concrete legal objects and legal matters, the doctrine of “value-driven orientation of positive law” does not establish a clear correlation between the subject matter of legal regulation and the method of legal regulation. Namely, the subject matter of legal regulation is composed of legal goods (as static statements) and legal interests (as their dynamic expressions), whereas a regulation method is determined by the rationale of legal regulation (legal ground), the purpose of legal regulation (legal teleology), and the necessary conditions for adjusting the legal regime (envisaged in positive law) to the legal ground and the legal purposes.

of legal norms as regulating legal attitudes.²¹ For example, establishing a judicial control of legality of administrative acts (the so-called administrative dispute) is undertaken as a guarantee of exercising the principle of legality and the protection of subjective rights, which at first sight constitutes a departure from the principle of the separation of powers. However, it would not be right to conclude that an administrative dispute constitutes a departure from the principle of the separation of powers, bearing in mind that the essence of the principle of the separation of powers is not in full separation, but in cooperation and balance of the functions of state authorities. In an administrative dispute, the balance is established by court which assesses the legality of an administrative act but not its expediency; consequently, it can be concluded that an administrative dispute aims to connect and balance the principle of legality, the protection of subjective rights and the separation of powers. For example, contesting voidable legal acts can be undertaken within a legally prescribed time limit; after the expiry of the envisaged time limit, the invalid legal act is convalidated in order to safeguard the principles of legal security and protection of acquired rights. Yet, it would be unjustified to conclude that the principles of legal security and protection of acquired rights have a stronger legal force than the principle of legality, given that convalidation of a voidable legal act is actually a way of achieving a balance between legal principles in question.

If basic legal goods, legal interests and basic legal principles are viewed from the pinnacles of a legal order, we may observe the purpose of the principle of justice (fairness) as a “relational category”. Namely, the purpose of justice as the most general legal principle is to balance the basic legal goods, basic legal interests and basic teleological legal attitudes. To understand the idea of justice as a “relational category”, we refer to Petrović: “The legislator is authorized to harmonise these principles (basic legal principles, M.P.) and to determine which one has priority in a given case. The assessment of priorities calls for establishing solid boundaries. The legislator must never completely disregard any of these principles in favour of one or another. Should this happen, the law would be clearly unjust. [...] Justice is, therefore, the fourth principle among the basic legal principles, and it is the most sublime among them as it governs their mutual relations and dimensions. There is no end to discussions on the concept of justice. It is largely due to inobservance of the specific nature of this principle in relation to other legal principles. Other legal principles always have specific content that distinguishes them from others and constitutes their peculiarity. Justice has no such content; its content is volatile and it is made up of the content of that principle which takes precedence over others in a given situation. It is not a “substantial” but “relational” category, like categories of logics and mathematics. It is a category of social balance and harmony, of “societal beauty”, as ancient Greeks would say (Petrović, 1987: 322-323).²²

²¹ In this regard, Canaris says: “Principles are not applicable without exceptions; they may conflict or contradict each other; they do not tend to be exclusive; they develop their legal meaning in mutual correlations, by supplementing and limiting each other; finally, in the process of shaping legal principles, they do not have to be specified by referring to lower principles and individual valuations with independent real content” (Canaris, 1969: 46). For more on the understanding of legal principles in foreign legal literature, see: Spaić, 2017: 109-130.

²² This understanding of justice is present in judicature and legal literature but under different designations (proportionality, balance of interests, weighing interests, etc.); it is as if there is fear of the radiating effect that might be produced with the term “justice”. For, justice is much more than balance and harmonisation; it is an embodiment of spirit and faith in a moral potential of man. It means that justice does not display all its beauty when it is an expression of pure opportunism, stemming from the need to preserve the public order. Justice shows all its beauty and significance when the tidal wave of justness (justice as fairness) rises from moral and spiritual depths, from the sense of justice as the embodiment of the highest moral and divine image in man.

In a legal order, there are objective and subjective legal purposes (goals). Subjective legal purposes are woven into private interests and represent a *causa* of free will. On the other hand, the existence of internal law cannot be conceived without objective legal purposes, whose subject-matter are legal goods and legal interests, and their mutual relationship. When considering all manifestations of law in different areas of a legal order, the objective purposes of legal regulation should be differentiated from teleology of legal regulation, as well as from the *causa* of legal relationship and the *causa* of law-making sources.²³ The presence of legal principles in all aspects of legal regulation is crucial. Legal principles are part of the *causa* of law-making sources, the *causa* of legal relationships, and teleology of a legal order; ultimately, legal principles contribute to establishing a hierarchy and balance in accomplishing the objective and subjective purposes (goals) in a legal order.

The most difficult issue to be addressed in this discussion is the distinction between legal principles and legal standards. As the author's viewpoint on the relationship between legal principles and legal standards is in line with the distinction between teleological legal attitudes (legal principles) and regulating legal attitudes (legal standards), it is first necessary to test the nature of general legal norms as regulating legal attitudes. For, content-wise, unlike legal principles as general teleological legal attitudes, general legal norms as regulating legal attitudes are subject-specific legal attitudes!

A legal norm is designated as "general" because of the nature of a legal object it regulates, not because of the content of legal position by means of which the legal object is regulated. The legal nature of a general legal norm is a consequence of the circumstance that general legal norms as regulating legal attitudes express typical (distinctive) characteristics of a person, event, action and relationship as the object of legal regulation; consequently, in general legal norms, the legal object is abstract while their content is subject-specific. By the nature of things, a general legal norm is (content-wise) a subject-specific regulating legal attitude, which does not call into question its capacity to produce a general legal effect. Therefore, in terms of legal logic, general legal norms are subject-specific legal attitudes arising from legal provisions (constitutional, legislative, regulatory), which apply to an indefinite number of cases and indefinite number of persons.²⁴ The essence of imperative validity of general legal norms as regulating legal attitudes is the need to protect the core tenets of general welfare in imperative norms by applying the principle of legality (*stricto sensu*), and to preserve a legal order in dispositive norms which, regardless of their secondary application, are a primary guarantee of the public

²³ For example, in order to determine the concept of a contract in a material sense, it is necessary to consider the elements of the legal regime governing contracts, including: law-making sources, subject-matter of contract, legal being, *causa*, and objective purpose. The significance of these elements is not the same in all contracts. In contracts where the principle of legality in a material sense does not apply, the objective purpose is stipulated in negative terms, envisaging that the contract shall not be contrary to the imperative norms, public order and good customs (good faith and fair dealing). In some contracts, the objective purpose is expressed in positive terms (e.g. exercising a specific common interest in the contract dealing with compensation for expropriated real estate, or family protection based on consanguinity in the contract on assignment and distribution of property in one's lifetime). Regardless of the manner of designating the purpose of a contract, legal principles constitute an integral part of any contract: of its objective element, of the *causa* of the contractual relationship, and of the *causa* of law-making sources (Prica, 2016: 249-255).

²⁴ In Serbian legal literature, general legal acts (as formal sources of law) have the greatest significance for understanding the law due to their general legal effect. In this regard, Marković says: "[...] only general acts may be formal sources of law because law may originate only from them, regardless of the number of cases where they are applied. By being applied to specific cases, individual legal acts cease to exist in a legal sense because their binding nature is exhausted upon their application to the case they refer to" (Marković, 2008: 19-20).

interest as a static expression of general welfare. Hence, content-wise, general legal norms need to be subject-specific regulating legal attitudes; otherwise, the reason of their existence in a legal order would be meaningless. In addition to content-related issue, the concretisation of a general legal norm also refers (to some extent) to the legal object which is regulated by such a norm. Thus, the degree of concretisation determines whether a general legal norm as a regulating legal position will be a complete and precisely defined legal being. In most cases, general legal norms as regulating legal attitudes are not such, but it does not call into question general legal attitudes. It actually means that a general legal norm should be further specified in terms of the legal subject-matter, or that a subject-specific regulating legal attitude of a general legal norm should be further specified by a general legal norm, or when resolving an individual legal case. Therefore, legal norms as regulating legal attitudes exist as general legal norms and as individual legal norms;²⁵ content-wise, general legal norms as regulating legal attitudes are subject-specific legal attitudes with a general legal effect. Furthermore, according to the degree of concretisation of an object of legal regulation, general legal norms as regulating legal attitudes can be “more general” and “more specific”.

In terms of the distinctive legal nature of general legal norms, it is highly important to take into account the nature of the relationship between general legal norms as regulating legal attitudes and legal objects which are regulated by such general legal norms. In other words, general legal norms as subject-specific regulating legal attitudes may (but do not necessarily have to) represent a complete and precisely defined legal being (entity). In some legal objects, general legal norms appear as a complete and precisely defined legal being; thus, subjective rights and legal duties emanate directly from general legal norms; these are general legal situations. On the other hand, there is quite a number of legal objects where general legal norms as a legal attitude of necessity do not represent a complete and precisely defined legal being. It follows from the above that a legal rule as a precisely defined and subject-specific legal attitude (“legal being”) related to a legal object may arise from a general legal act but also from an individual legal act, which is the basis for disclosing and shaping legal situations as legal forms expressing complete and precisely defined legal beings in a legal order.

Legal situations are legal forms based on legal rules (in the above sense), which give rise to subjective rights, legal duties, and activities of subjects of a legal order. There are two important features of legal situations, without which the understanding of law and the

²⁵ Considering the difference between general and individual acts, Petrović says that the concepts of individuality and generality may refer to a number of addressees as well as to the subject matter regulated by a legal act. Thus, “[...] if the act refers to one or more explicitly specified persons, that is to say, if the circle of addressees is closed and determined by the act in an exclusive and definite manner, such an act will always be an individual administrative act, regardless of the manner in which it regulates numerous behaviours of a single person. In effect, the singularity of a person is such a powerful element of individualisation that the entire situation necessarily attains quite individual features. [...] In case of an open circle of addressees, an individual legal act will exist if it regulates a single behaviour, i.e. if its content is fully singular, regardless of the open or closed circle of addressees in the act. For example, if a legal act prohibits a public assembly which is to be held at a specific time and venue, it is an administrative act, regardless of the fact that the circle of addressees is unspecified; the same situation would exist in case of a ban on damaging a specific poster, or in case of an order to all fruit-tree owners to white-wash them on a specific day, etc. On the other hand, an act prohibiting swimming in a river or crossing a bridge would not be an administrative act but a normative measure, although the content of such an act is also specific. But, in this case, the issuance of the act is triggered by specific pre-existing circumstances; the ban on swimming in the river was imposed due to water pollution, while a dilapidated bridge was the reason for the ban on crossing the bridge. This act (normative measure) regulates conduct which can be repeated in an indefinite number of cases, while the subject matter of the former (administrative) act is a single behaviour” (Petrović, 1981: 135-136).

existence of objective rights are not possible. First, given that legal situations are precisely defined (complete) legal beings, the only proper path to be pursued in the systematisation of law is the one based on legal situations, not on legal norms. Second, legal situations only enable setting of the limits of the legislator's power, in terms of the direct effect of the law and particularly in view of the ban on the retroactive effect of the law.

Based on their content, legal situations are classified into general, specific, and individual legal situations. The content of a general legal situation is regulated by a general legal act, precisely defining the subjective rights, with direct legal effects and a general legal effect in a legal order. For instance, all drivers of passenger cars are in a general legal situation, given that their subjective rights and legal duties arise directly from the law, and it is up to the police to check their behaviour in a specific situation by referring to relevant material (substantive) acts.²⁶ General legal situations are general and permanent; they are fully governed by the general legal act where they are envisaged.

Specific legal situations may be temporary (e.g., by enforcing a tax decision, the specific legal situation ceases to exist) and permanent (e.g., lease as a legal institute). In essence, specific legal situations are constituted by individual legal acts, which means that these situations have an independent legal character, even when they are based on general legal norms as regulating legal attitudes. In that sense, it is important to bear in mind that individual legal situations occur as a result of specific legal situations; it follows that the law-making process in a legal order actually involves cross-referencing of general, specific and legal situations, which ultimately generates legal institutes as a form of a direct systematisation in a legal order. For instance, a decision on the request (application) for Serbian citizenship implies the adoption of a constitutive individual legal act, which is based on a reasonable interpretation of legal norms and an administrative assessment of expediency (as law-making sources). If the competent decision-maker issues a positive legal act (approving the request), it first gives rise to an individual legal situation while, in terms of content, citizenship implies a myriad of general legal situations, not a single general legal situation. Similarly, basic proprietary powers and basic real-property authorisations represent a general legal situation; but, the right of ownership to the real estate of a John Doe, arising from a purchase agreement, is an individual legal situation, whereby a legal regime of ownership over a specific real estate implies a bundle of general and individual legal situations. For example, *habitatio* (personal servitude) is established on the basis of a purchase agreement, bringing the *habitatio* holder in an individual legal situation; the content of this situation is regulated by the law and it is a general legal situation. In this case, the individual legal situation of the *habitatio* holder has a general legal effect; a legislative act can change the content of the concerned situation, but it cannot abolish a legal situation, which is the proof of its individual character. Besides, the change of the right of ownership over a real estate will not affect the change of the legal situation, but the law allows the titleholder of the right of ownership and the holder of servitude to arrange the termination of servitude; it means that a specific legal situation is in action in the described case. In the presented examples, citizenship and private property are perceived as legal institutes directly present in a legal order (Prica, 2016: 78-82).

²⁶ The legal situations of the greatest significance in a legal order are general legal situations envisaged in the Constitution (regulating the substance of the guaranteed human rights) and general legal situations envisaged in the Criminal Code (stipulating the absolute legal duties in a legal order).

In legal literature, there are standpoints on provisional acts. Thus, although certain general legal situations arise from the law (legislative act) which determines their reach and scope, they come into play provided that individual legal acts are invoked (Duguit, 1927: 308). The standpoints on provisional acts are unjustifiable because of the failure to recognise legal institutes as distinctive wholes (entities) composed of general, specific and individual legal situations. It is ungrounded to say that a constituent individual legal act represents a condition for entering into a statutory legal situation, bearing in mind that an individual legal act establishes a legal institute as a bundle of individual and general legal situations. In case a general legal situation is applicable to a specific individual case, by issuing a declarative administrative act (e.g., on renouncing or relinquishing the citizenship of the Republic of Serbia), it gives rise to an individual legal situation but the situation in question implies the individualisation of a general legal situation. However, the issuance of a constitutive individual legal act (on the basis of legal norms as regulating legal attitudes) does not result in the individualisation of a general legal situation. An individual legal situation is constituted on the basis of legal norms as regulating legal attitudes; content-wise, such situation may be governed by statutory norms (a general legal situation).

Additionally, the autonomy of individual and specific legal situations is confirmed by the circumstance that, in terms of their establishment and duration, they do not have to be necessarily related to the completion of regular legal proceedings, nor to the existence of a legal act they are established by. For instance, instituting a regular legal proceeding is obligatory in criminal procedure, where a specific legal situation is established by initiating criminal proceedings, while an individual legal situation (e.g., pertaining to a person sentenced to pay a fine) is established upon the completion of a regular legal proceeding, i.e. upon declaring a judgment final and enforceable. By contrast, in administrative procedure, a specific legal situation is established by initiating an administrative proceeding but, as a rule, an individual legal situation is established prior to the completion of a regular legal proceeding, in compliance with the rule that the final decisions have to be declared enforceable, even though an administrative dispute may be instigated against a final decision (as part of the regular procedure). In administrative procedure, an individual legal situation may also appear prior to declaring the finality of an administrative act, in cases where the act is enforceable even before it is declared final (e.g. a non-suspensive effect of appeal). Thus, in administrative procedure, an individual legal situation may be established in various phases of a regular legal proceeding but, as a rule, prior to the completion of regular legal proceedings. In line with the aforesaid, it is important to conclude that both specific and individual legal situations have a character of separate (autonomous) legal situations; it should limit the direct effect of a legislative act to the regime of specific legal situations so that the established legal situations should be permanently subject to the statutory regime which was applicable at the moment when they were established.²⁷ The limitation of a direct effect of a legislative act is certainly applicable to individual legal situations, regardless of the legal effect of these situations. Moreover, the possibility of establishing individual legal situations with a general legal effect by means of an individual legal act is actually the best proof of non-viability of the

²⁷ Considering the possibility of using extraordinary legal remedies (e.g., repetition of an administrative procedure in an objective 5-year time limit), it is important to bear in mind that a specific legal situation does not perish from the legal order upon the completion of a regular legal proceeding and declaring the finality of an individual legal act. Besides, there are specific legal situations which, given the nature of things, remain at a stand-still for a period of time after the completion of a regular legal proceeding (e.g., de-expropriation of real estate within a 3-year period if no significant work was done on the expropriated estate within the 3-year period).

normativist conception where law is perceived as the creation and application of general legal norms as formal sources of law. For, if individual legal situations of private law (e.g. *habitatio*) can also produce a general legal effect, it means that a legal order resembles a multitude of watercourses originating from different sources and that it entails a constant criss-crossing and intertwining of general, specific and individual legal situations (Prica, 2016: 66-78).

The diversity of law-making sources and directions in a legal order calls for establishing legal standards as regulating legal attitudes. The difference between legal principles and legal standards actually corresponds to the difference between teleological legal attitudes and regulating legal attitudes, bearing in mind that legal standards are the most general regulating legal attitudes in a legal order. On the one hand, legal standards are legal attitudes enabling the regulating legal function to reach all aspects of factual considerations, given that a legal norm as a regulating legal position cannot encompass the world of facts in its totality.²⁸ On the other hand, a more important reason for the necessary existence of legal standards in a legal order is the need to establish harmony between a free will as a law-making source and the public interest as a regulating determinant and a static expression of general welfare. In some areas of the legal order, there is a strong conflict between legal goods and legal interests; the presence of free will as a law-making source in these areas necessarily determines the presence of legal standards as instruments for achieving the public interest as a regulating determinant and a static expression of general welfare. In view of the above, it is understandable that civil law is an area of the legal order with a substantial number of legal standards, particularly pertaining to property (neighbour) law, family law and inheritance law issues (e.g., observance of local customs, collective and individual prior possession, unworthiness to inherit, the best interest for the child, etc.).

Considering the conceptual framework of legal standards, there is a significant standpoint of German theoretician Jesch, which was originally aimed at establishing the distinction between the binding effect of law and the assessment of expediency; however, it actually reflects the essential function of legal standards in a legal order. It is the viewpoint on the meaning of a concept core (*Begriffskern*) and the penumbra or periphery of its meaning (*Begriffshof*): “The structure of indefinite legal concepts is characterised by the fact that the vestibule of the concept is unusually vast and diffuse, whereas the nucleus of the concept is extremely small. A solid concept core can only be formed by the judiciary, in the course of permanent judicial practice” (Jesch, 1957: 177, 182). Analysing Jesch’s viewpoint, Petrović concludes: “[...] the vestibule of a concept is a “diffuse area” that begins “at the edge of the concept nucleus”. Outwardly, it is not firmly limited; it is more closely defined by a subsumption or an exception_in pertinent places. The vestibules of concepts may also be cross-referenced so that the same state of affairs (circumstance) can be attached to one concept in one situation and to another concept in another situation [...] In the vestibule area, the one who applies the law has the freedom of choice between two or more options. Regardless of whether the standpoint is based on legal or non-legal measures, once chosen position represents a concretisation of a concept; it may also lead to expanding the concept core and narrowing its vestibule.” (Petrović, 1981: 40).

²⁸ By analogy, the *intra legem* in criminal law is the evidence that the factual being cannot be fully encompassed by a legal norm, although its application does not prejudice the principle of strict legality, as the governing principle of criminal law (Đurđić, Trajković: 2011: 1-22).

Considering the above, legal standards are general regulating legal attitudes; by their concretisation (as a form of direct legal regulation of the encompassing legal subject-matter), a general clause is turned into an individual legal attitude. There are legal standards as factual concepts²⁹ and legal standards as value-based concepts.³⁰

Prima facie, there are two distinctive traits of the legal nature of legal principles and legal standards. First, legal standards as regulating legal attitudes directly regulate the legal subject-matter in a legal order; legal principles as teleological legal attitudes primarily do not do that. Second, legal standards have a limited scope of application in a legal order; thus, a branch of one area of the legal order is usually the broadest area of their application.

As already noted, legal principles as teleological legal attitudes are applicable in the legal order as a whole or in one area of legal order. Essentially, there are another two important characteristic features distinguishing legal principles from legal standards. First, in legal standards as regulating legal attitudes, there is the concretisation of a general legal attitude and the qualification of an individual legal subject-matter; as we know, these features are not present in legal principles. This can be best seen when an individual legal attitude is assessed in relation to a legal standard and a legal principle; in terms of a legal principle, instead of examining the compliance of a subject-specific individual attitude with a legal standard, we can only examine the effect of an individual legal attitude upon a teleological legal attitude, but we cannot assess the (non)compliance of an individual legal attitude with a legal principle. Legal principles as teleological legal attitudes also have a significant role in establishing the core meaning (nucleus) of a legal standard as a regulating legal attitude.

Second, in legal standards as regulating legal attitudes, we can observe a correlation and balancing of the constituent elements of the subject-matter of legal regulation (facts, legal goods, and legal interests); such correlation results in the formation of an individual legal attitude. On the other hand, given that the entities of a legal order are connected and balanced by teleological legal attitudes, legal principles are developed as bundles of teleological legal attitudes and legal understandings, it is the result of a systemic and teleological concretisation of the written law, which is a characteristic of legally developed legal orders. The stated characteristic of legal principles may be best illustrated by referring to constitutional principles as the basic legal principles of a legal order, considering that legal principles in the jurisprudence

²⁹ To illustrate a legal standard as a factual concept, we may refer to the obligation of a car driver to adjust driving speed to the specific “conditions and characteristics of the road”, which is a significant circumstance in criminal proceedings in criminal offences against traffic safety. “Speed limit” is a concept prescribed by the law but observing the prescribed speed limit does not necessarily entail observing the legal standards on adjusting the driving speed to the road conditions; on the basis of findings and expert opinions, the court is obliged to assess the driver’s behaviour against these standards and the essential elements of the criminal offence.

³⁰ To illustrate a legal standard as a value-based concept with a clearly defined core, we may refer to the concept of “unworthiness to inherit”, envisaged in the Inheritance Act (*Official Gazette of the RS*, no. 46/95). The concept includes a solid core meaning and a narrow periphery (penumbra). Article 4 stipulates the circle of persons who are considered unworthy of succession, either on the basis of statutory law (intestate succession) or on the basis of the last will (testamentary succession); it includes: “1) anyone who intentionally killed or attempted to kill the deceased or testator; 2) anyone who, by use of coercion, threat or fraud, induced the testator to make or revoke a will or some of its provisions, or prevented him from doing so; 3) anyone who destroyed, concealed or forged a will with intention to prevent the testator’s last will; 4) anyone who seriously violated his legal obligation to support the deceased/testator, or deprived him/her of necessary aid.” Article 5 of the Inheritance Act envisages the possibility that the deceased/testator may forgive the unworthiness, but the act of forgiveness must be executed in a form which is required for a testamentary document. The “best interest of the child” (as a general clause applicable in family law) may illustrate a legal standard as a value-based concept with indefinite nucleus. *Inter alia*, a legal order also includes legal standards referring to the conduct of the subjects of the legal order (good administration, honesty and mutual trust, acting with due care/diligence, acting as a good host, a good businessman or a good expert, etc.).

of constitutional judiciary are formed as bundles of teleological legal attitudes and legal understandings. Anyway, from the point of view of the constitution in a formal sense and according to the letter of the constitution, constitutionality (as the supreme and most fundamental legal principle) represents a bundle of constitutional principles and constituent systemic legal attitudes which are not only developed but also formed in the jurisprudence of the constitutional judiciary. The legal attitudes of the constitution are of special importance for the principle of constitutionality (as the basic legal principle in a legal order); due to their prominent radiating effect, these legal attitudes are the cornerstone of the constitutionality of the legal order. In that context, we may refer to Article 18 of the Serbian Constitution, which provides for the direct implementation of the guaranteed substance of human and minority rights, as well as to Article 198 of the Constitution, which guarantees judicial control of individual legal acts. Additionally, legal attitudes (which serve as the basis for constitutionality as a legal principle) are also formed in the jurisprudence of the constitutional court. Thus, the Constitutional Court of the Republic of Serbia introduced the so-called interpretative decisions, by means of which the validity of contested legal provisions is recognised, upon the interpretation of their contents (Stojanović, 2016: 37-54).³¹ The method of forming a constitutional principle (as a bundle of teleological legal attitudes engendered in the jurisprudence of the constitutional judiciary) clearly illustrates the unity of the legal order as a constitutional principle in Serbian law. In the given example, the starting point of the Constitutional Court of Serbia is Article 4 (para.1) of the Serbian Constitution, which provides that the legal system is unitary. Taking this legal position as a starting point, the Constitutional Court of the Republic of Serbia formed and developed a legal principle of the unity of a legal order as a bundle of teleological legal attitudes. Thus, the basic legal position of the Constitutional Court of the Republic of Serbia reads as follows: “The Constitutional Court points out that, **although the current legal system in the Republic of Serbia does not make a distinction between the so-called organic, basic or other laws which have a stronger legal force than other ”ordinary” laws** (emphasis added by M.P.), as a consequence of which the Constitutional Court does not have jurisdiction to assess mutual compatibility of laws (under Article 167 of the Constitution), the constitutional principle of the unity of the legal order dictates that the fundamental principles and legal institutes provided in legislative acts systemically regulating an area of social relations shall also be observed in subject-specific legislative acts, unless a systemic legislative act explicitly prescribes the possibility of regulating these issues in a different manner.”³² On the basis of this legal position, the Constitutional Court formulated the unity of the legal order as a constitutional principle and, within its framework, further developed bundles of teleological legal attitudes and legal understandings (Prica, 2018: 113-123). All in all, the development of legal principles as bundles of teleological legal attitudes and legal understandings, brings to light the distinctive feature of legal principles as constituent laws of a legal order and canons of “the internal legal system”.

³¹ Jurisprudence of the Constitutional Court of the Republic of Serbia may also be credited for establishing and developing a fair trial as a constitutional principle, based on the guaranteed substance of the right to fair trial envisaged in Article 36 of the Constitution. Thus, for example, the Constitutional Court found that “arbitrary application of substantive law to the detriment of the applicant of a constitutional appeal may lead to the violation of the constitutionally guaranteed right to a fair trial; thus, in the course of the procedure on a constitutional appeal, in specific situations (primarily depending on the facts and the circumstances of a specific case as well as on the constitutional-law reasons stated in the constitutional appeals) there is a legal ground to assess the violation of the right referred to in Article 32 (para.1) of the Constitution) from the standpoint of application of substantive law.” Decision of the Constitutional Court, no. UŽ-3263/2010, dated 25 September 2013.

³² The Decision of the Constitutional Court UŽ-231/2009, dated 22 July 2010 (*Official Gazette of the RS*, 89/10).

3. LEGAL PRINCIPLES AS CONSTITUENT LAWS OF THE LEGAL ORDER AND CANONS
OF “THE INTERNAL LEGAL SYSTEM”: CIRCULAR FLOW OF THE LEGAL ORDER
AND THE “INTERNAL LEGAL SYSTEM

From the perspective of the states of the European-continental legal tradition, the circular flow of a legal order rests on the basic legal principles having a character of constituent laws.³³ These principles are: national sovereignty, parliamentary representative democracy, rule of law, separation of powers, law as an expression of general will, justice (as the balance of interests of the subjects of a legal order), solidarity, citizens’ freedom and autonomy of will in a civil society, equality before the law, legal security, and the imperative preservation of the public order.

Legal principles of substantive law should be differentiated from the legal principles of a legal order. For example, the separation of the state law from the church law is a generally accepted legal principle in substantive law of European countries, unlike the separation of the state from the church as a legal principle which has different significance and validity in the orders of these states. Due to the complementary nature of the institutional order of public authorities, the institutional order of state authorities and the institutional order of a territorial community, the difference between the basic legal principles of a legal order and the legal principles governing in specific areas of a legal order necessarily comes to light. In that regard, the strongest evidence is the difference in the application of the principle of legality in specific area of a legal order, including the principle of legality *stricto sensu*, the prohibition of an unlawful effect of legal transactions, and the area of a legal order where the activity of a subject of a legal order is above the law. Moreover, there are legal principles that are only valid in individual areas of a legal order (e.g., *in dubio pro reo* in criminal law, proportionality in administrative law, acting in good faith/conscientiousness and honesty in civil law, etc.). Considering the existence of different institutional orders, internal law cannot be formed as a closed system of teleological and regulating legal attitudes; consequently, the principle of justice is re-illuminated as a “relational category”; it is aimed at adjusting intrastate substantive law to the unpredictability of daily life and the objective spirit of the subjects of a territorial community. It means that the course and boundaries of relations between legal goods and legal interests of constituent subjects of a legal and political community are necessarily determined by the principle of opportunity; it implies that legal regulation and actions of state authorities must not excessively disrupt the balance of interest of constituent subjects of a territorial community, nor excessively interfere with their views on the world; otherwise, it may call into question the preservation of public order and peace and, thus, the public order as a whole. The objective spirit of a territorial community is the central blood vessel (“the carotid artery”) of the institutional order of public authorities, the legal order and the intrastate substantive law; for this reason, public order has to exist as a general clause, and intrastate law cannot be established as a fully closed system.

In terms of legal regulation of individual legal subject-matters, the direct legal effect of legal principles is not equal in all areas of a legal order. Thus, legal principles have the most distinctive effect in civil law, due to free will as a law-making source and a pervasive impact of regulating legal attitudes; thus, when examining the validity of legal transactions, the courts have to access their effect on legal principles of civil law (e.g., abuse of rights, equal value of received assets, reciprocity, etc.). Direct effect of legal principles in legal regulation of

³³ In his doctoral dissertation, Petrović elaborated on the constituent laws immanent to the institutional order (Petrović, 1981: 17-20).

individual legal matters is most insubstantial in the areas of a legal order under the rule of imperative legal norms (criminal and administrative law). There is no uniform answer to the question whether, in regulating individual legal matters, it would be correct to recognize the possibility that a legal principle might have a stronger legal force than an imperative legal norm. In that regard, the praetorian jurisprudence (*ius praetorium*) of French judicature advocates for allowing the primacy of a legal principle in relation to an imperative legal norm in resolving individual legal matters.³⁴ In the Serbian legal order, the answer to this question must be negative because, in legal terms, the principles of a democratic society in the law-making process and the principle of a law as an expression of general will prevail over the authority of courts or other decision-makers to determine (in the name of justice and fairness) the prevalence of a legal principle over an imperative legal norm.³⁵ Moreover, when addressing the above question, we should bear in mind the principle of the separation of powers, particularly in light of constitutional principles, constitutionality, the authority of the constitutional judiciary and its exclusive function to examine the mutual relations between teleological and regulating legal attitudes. Finally, in terms of addressing the above question, it is essential to take into account the general public as a “judiciary” of an institutional order of a territorial community. On the one hand, in the sphere of the irrational and unforeseeable in a legal order, judicial control of the activities of state administration bodies is narrowed down or reduced to a formal and legal minimum, which does not call into question either the legitimacy of a legal state or the preservation of a legal order. On the other hand, in the sphere of rational and foreseeable in a legal order, the competence of courts is limited by the principle of democracy and the principle of law as an expression of general will in a democratic society; hence, the court competence to directly regulate legal goods and legal interests in a legal order is not legitimate. In both presented situations, the rule of law is determined by the general public as a “judiciary” of the institutional order of a territorial community, whose activity entails: (1) participation in shaping the general will (e.g. passing and amending laws); (2) participation in resolving specific legal

³⁴ For example, in case of abuse (or exceeding the given authorities), the State Council took the stand that there is the right to appeal even if an appeal is not envisaged by the law (Braibant, 2002: 96).

³⁵ Yet, it should be borne in mind that the relationship between legal principles and imperative norms is determined by the complexity of a process of interpreting these norms, particularly due to the characteristic of general legal norms as an incomplete legal being. Hasanbegović says: “Legal reasoning is primarily problem-based, and only then system-based (under specific conditions). A specific legal case can be given a syllogistic form only after it has been solved as a legal problem. A legal problem cannot be solved with a syllogism; once resolved, it can be included into the system, whereby neither its syllogistic form nor its inclusion into the system have any logical or social value *per se*. There is no logical value because it cannot be a necessary but only a probable conclusion; there is no social value because the value of a legal order cannot be logically but only historically based” (Hasanbegović, 1988: 232). Given the nature of things, legal principles have the application *secundum legem* and *praeter legem* in relation to imperative legal norms, whereas there is not a single justifiable reason to apply *contra legem* adjudication in relation to an imperative legal norm by calling upon a legal principle. Starting from the “Radbruch formula” on statutory lawlessness and supra-statutory law, Bydlinski points out: “[...] the obligation to abide by the law ceases to exist when laws whose content, whereas grossly inhumane in a democratic legal state, is explicitly unjust or otherwise contrary to the idea of law; it deprives them of their legal character in a substantive sense although they were created in a formally correct procedure” (Bydlinski, 2011: 101). In no way could we agree with the presented standpoint. For, the rejection of substantive law character of a legal norm due to the violation of a legal principle is justified only if the effect of the legal norm calls into question the public order of a legal and political community. The assessment of likelihood of jeopardising the public order in the designated sense is not equally applicable to all legal orders, including the European-continental legal orders. Moreover, if an imperative legal norm is formally correct, its gross unjustness ought to be taken into consideration by the general public as a “judiciary” of an institutional order of a territorial community, including the right to resistance as the strongest power of such “judiciary”.

issues (e.g. establishing public interest for expropriation, considering urban-planning projects, etc.); and (3) public surveys, public criticism, protest, and resistance against the activities of the subjects of the institutional order of public authorities (as the most important activity). Therefore, instead of having an artificially shaped publicity as an instrument of governing powers, a strong presence of spontaneously shaped publicity is essential in a legal order.

The internal legal system emerges as a result of direct presence of jurisprudence in the process of creation and concretisation of the written law, as a system of legal attitudes, legal understandings, and the presence of legal concepts in court jurisprudence and in the legal consciousness of the subjects of a legal order. When the creation of legal rules reflects the continuous endeavours of legal professionals and legal scholars aimed at systemic and teleological understanding of law (as a feature of legally developed legal orders), then legal forms may be seen as a higher degree of legal regulation. The creation of legal concepts pertaining to a legal order is a result of the activities of legal scholars (on the one side), the activities of university legal education (on the other side), and the activities of legal professionals in the regulating legal order (on the third side). In that context, it is very important to make a clear distinction between the methods and goals of academic legal disciplines in understanding legal concepts and the methods and goals of understanding legal concepts in legal science (Prica, 2018: 111).

Calling upon the judiciary (judges) to be agents of direct (court) jurisprudence in a legal order is the cornerstone for constructing an internal legal system. In particular, the foundations for such a structure are laid down in places where prominent counter-position is observed between the entities of a legal order; it further ensues that the meaning of legal conceptions adopted in such places exceeds the frameworks of resolving individual legal subject-matters and spreads its radiating effect to legal consciousness of the subjects of a legal order. The knowledge of comparative law enabled Popović to learn the meaning of court jurisprudence: “The doctrine of judicial precedent is usually viewed as a product of the Anglo-Saxon legal system, but the precedent method primarily originates from an elementary sense of justice, which postulates equal treatment for all. If a judge establishes that the case at issue is equivalent to a formerly decided case, the judge naturally feels bound by the former decision” (Popović, 2005: 157-158). Popović concludes: “Yet, it would be incorrect to say that the precedent method finds its application in Anglo-Saxon system only. European-continental law has largely accepted this method; today, the significance of a court judgement is much greater in the countries of the European-continental legal tradition than it could have been assumed at the time of enacting significant legal codes, when the delivery of judgments was considered mostly a mechanical act of applying the law. More recent schools of interpretation of law in France, Germany and in other countries have changed the understanding of the relationship between the law and a court judgment. Nowadays, it is highly different than the one that prevailed at the time of big codifications in continental law. [...] In this regard, France was a very prominent example because entire branches of law are largely the product of case law. Administrative law is mainly based on the State Council decisions, while civil law largely rests on judgments of the Court of Cassation, whose creative jurisprudence adapted the norms of the old code to modern times” (Popović, 2005: 82-83; 2009: 221).

In the designated sense, court jurisprudence necessarily rests on legal principles since the legal ground of individual legal cases is determined by the understanding of teleological legal attitudes. Given that legal principles as bundles of teleological legal attitudes are formed and developed in court judgments, these legal attitudes are (*de rerum natura*)

expected to be enriched with legal conceptions, ranging from the justification of a teleological legal position to legal maxims as an expression of law-creating wisdom. On the other hand, in addition to presenting the rationale for a legal attitude in the disposition of the judgment and the assessment of evidence, the rationale of a court judgement is expected to contain the legal conceptions which served as the basis for understanding the legal nature of the legal issue that was the subject-matter of a particular case. Notwithstanding to what extent the judge is bound by legal norms as regulating legal attitudes, creativity of a judicial ruling leads to shaping an internal legal system based on legal forms.

Given the scope of this discussion, we may briefly refer to some examples of legal forms of an internal legal system. In terms of the legal subject-matter as a legal form, the essence is that a concrete legal subject-matter may also be observed as a typical legal subject-matter. It may directly occur when resolving the issue of qualification of a legal issue under consideration (e.g. whether a legal act in the specific case has characteristics of an administrative act in order to be the subject-matter of administrative court control; whether a legal act is an administrative act or an administrative contract, etc.). By contrast, when speaking about court jurisprudence, such consideration has to take place irrespective of whether the judicial assessment is necessary in the specific case for resolving the issue of qualification of the subject-matter.³⁶ The structure of subject-specific legal regulation includes a legal subject-matter, a law-making source, the legal being, and the *causa*; legal matters entail the compliance of the legal subject-matter (legal issue in a substantive sense) and the method of its legal regulation (legal issue in a formal sense). In the legal regulation of a legal subject-matter, legal form may change but a tidal wave of formal features reflects its legal character. In effect, court jurisprudence should be used for establishing the legal ground and the nature of the legal subject-matter pertaining to a legal issue in a substantive and formal sense.³⁷ Additionally, the rationale of a court judgment may also include the features of theoretical jurisprudence, which is the case when court jurisprudence calls upon general conceptions on legal matters and legal situations, disclosing legal institutes as narrower or broader wholes (entities) in legal forms. The disclosure of legal institutes comes as a consequence of the functional analysis of legal grounds, which ultimately contributes to disclosing the correlation of legal grounds between legal regimes in different areas of a legal order. For example, starting from the right of ownership as a legal object, deprivation and restriction of the right of ownership as a legal subject-matter, and on the basis of the principle of balance of legal interest (principle of excessive sacrifice)³⁸ as an

³⁶ Yet, it is completely ungrounded to represent the qualification of a legal subject-matter as a pure subsumption of a minor premise under a major premise of a general legal norm. Perelman says: "What is specifically legal in judicial reasoning is by no means a formally correct deduction of a conclusion based on the premises – according to which deduction in law is nothing special – but the reasoning that leads to establishing such premises within the framework of the current legal system" (Perelman, 1983 :95). In his inspirational monograph, while discussing a minor premise, Bovan develops a thesis on the interpretation of law which entails "filling out the necessary part of a legal norm with content, starting from the explanation of case facts and proceeding to their interpretation in a narrower or wider social context", which is an inductive logic operation (Bovan, 2016: 16; 18; 112-113; 127).

³⁷ Legal matter includes civil, political, legal, administrative and judicial subject-matter (Prica, 2016: 52-66).

³⁸ In the author's opinion, the principle of sacrifice embodies justice, i.e. a balance between legal goods, legal interests and purposes (goals) of a legal order. A legal order is like the scales, balancing order and peace on one side and chaos on the other side. For this reason, the principle of opportunity constantly surfaces in a legal order and a public order, given the need to ensure the balance of the two sides of the scales, which is actually a precondition for the existence of legitimacy of a legal state. Petrović says: "There are, indeed, two ideas of legal equality. One form of equality (equality *stricto sensu*) is an absolute arithmetic, democratic and egalitarian equality, the Greek *isonomia*, which can be designated both as equal rights and equal laws. Another form of equality is "good equality", the already

identical legal ground, in his doctoral dissertation the author of this paper presented his standpoint on the legal institute of expropriation as an entirety of legal matters and legal situations in different areas of a legal order (Prica, 2016: 83-365). The legal reasoning pursued in the doctoral dissertation presents a systematic and teleological conception of legal matters and their correlation based on legal grounds, which could not have been achieved solely by interpreting their legal grounds.³⁹

To conclude, the significance of court jurisprudence is determined by the existence of numerous law-making sources in a legal order and the distinctive feature of a general legal norm (regulating legal attitude) as an incomplete legal being (entity). As a result, legal conceptions emanated from the systemic and teleological understanding of legal principles in the judiciary develop as an attainment of direct consideration and deliberation on the correctness and fairness of written law. In that regard, the development and consistency of court jurisprudence, including legal principles as teleological legal attitudes that guide legal awareness in the direction of a moral and spiritual progress of a legal and political community, are a necessary condition for the establishment and development of the rule of law.

4. CONCLUSION

In conclusion, taking into account the flow of thought pursued in this discussion, we should draw attention to a circumstance of key significance for directing legal consciousness in a legal order. It concerns an intellectual activity and an eternal mission of intellectuals, focused on disclosing and opposing the “secret ruler”, in the name of freedom, truth, and justice. Bearing in mind all the *aporias* of positive law in a tragic historical situation, Radbruch said: “There are, therefore, principles of law that are stronger than any statute, so that a law conflicting with these principles is devoid of validity. These principles are generally called natural law or the law of reason. They certainly raise certain dilemmas, but centuries of human endeavour have given them such a solid core, while a far-reaching consensus of opinions brought them together in the declarations of rights of man and citizen, that only a deliberate sceptic can still entertain doubts about some of them” (Radbruch, 1980: 267). An important observation should be added to the noteworthy opinion of this respectable intellectual: the “law of reason” is not effective without the history of law. Anyone who has dared to study law of religion understands very well the meaning of history of law versus the “law of reason”, but religious law focuses on the relationship between the historical and the divine as an eternal and immutable law. In this sense, Christian canon law shaped at the councils of the Ecumenical Church expressed the need to adapt the God-man mission of the Church to a historical situation, without questioning the validity of the *dogmata* as an eternal and immutable law. For, that which is given as eternal is also given for time!

mentioned Solon's “*eunomia*” (good balance). It entails good and valid allocation and settlement in city states, “a policy of proper balance of equal and unequal”. Unlike *isonomia*, which is static and abstract, *eunomia* is concrete and dynamic, related to a specific situation. It embodies the primordial social and protective functions of law” (Petrović, 1981: 264). Thus, a fee for expropriation in a formal sense and quasi-expropriation is an example of Solon's *eunomia* (Prica, 2016: 174-178).

³⁹ Here, we may briefly refer to the form of legal reasoning in English law, which is based on the distinction between *ratio decidendi* and *obiter dictum*. The former implies the reasons constituting the rationale of the decision; the latter entails a legal understanding focused on theoretical consideration of a legal matter, its comparison with other legal matters, and its “systemic comprehensiveness” (Bydlinski, 2011: 133).

On the other hand, if there are eternal and immutable legal principles in life of a legal and political community, these principles must be considered in line with the actual historical situation, for the purpose of guiding legal consciousness in the direction of moral and spiritual progress of such a community. In the legal order of a contemporary pluralistic state of law (*Rechtsstaat*), a transition of economic and political power from states to multinational corporations is in full swing. The ruling method of the powerful elite holding large financial capital is undoubtedly aimed at destroying the rule of law and democracy, and putting them under complete control. In effect, the art of ruling actually implies that the “empty shell” of a legal state and parliamentary representative democracy modelled through the power of money is used by the financial elite as an ideal “cloak of legitimacy”. In light of formally recognised individual rights and freedoms, it is highly important in this ruling method to create an illusion of the existence of citizens, voters and consumers’ sovereignty.. Concurrently, having patronage over the state and its democratic political system, the powerful financial elite endeavours to establish an order where the freedoms of an individual are recognised but there is no collective power; it ultimately leads to a complete subordination of workers to their employers, consumers to manufacturers, voters to political parties, and autonomy (privacy) of an individual to state interventionism.

Nowadays, a process of formal observance but substantial obstruction of a legal state seems to be underway in the legal orders of a large number of contemporary European states; this process is reflected in making legal principles meaningless, suppressing virtue and controlling the (general) public by shaping the public opinion in an artificial way. The paradigm of making legal principles and a legal state meaningless could be depicted as follows: human rights without actual freedom, a party-based representative democracy without a democratic society, and the rule based on enacted laws without the rule based on law. Hence, there is a need for the resurrection of legal principles in the legal order of a contemporary legal state, both in formal (legal) sense and in historical and political sense. In that context, in the name of the *Rechtsstaat* doctrine, legal scholars have to consider all the *aporias* underlying the conceptual framework of a legal state in the current historical situation. Otherwise, we are most likely to observe with increasing clarity the insightful depths of Rousseau's standpoint that “laws and the judiciary are only a skill, shielding the powerful and the rich from just reprisals of the poor.”

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PRAVNI PRINCIPI KAO TELEOLOŠKI PRAVNI STAVOVI U PORETKU PRAVNE DRŽAVE

U članku se izlaže razlika između pravnih normi i pravnih principa. Naše gledište zasnovano je na razlikovanju regulativnih, sistemskih i teleoloških pravnih stavova u poretku pravne države. Pod pravnim principima podrazumevamo gradivne zakone pravnog poretka i oblasti pravnoga poretka. Pri tome, za razliku od pravnih normi kao konkretizovanih regulativnih pravnih stavova i pravnih standarda kao najopštijih regulativnih pravnih stavova, pravni principi su zračeci teleološki pravni stavovi. Uz to, kao rezultat sistemsko-teleološke konkretizacije pisanog prava, pravni principi kao osnovni teleološki pravni stavovi bivaju obrazovani kao snopovi teleoloških pravnih stavova i pravnih shvatanja. Pravni principi u poretku pravne države slede kružnu liniju funkcionisanja pravnog poretka, opredeljenu komplementarnošću institucionalnog poretka javne vlasti, institucionalnog

poretka državne vlasti i institucionalnog poretka prostorne zajednice, sledstveno čemu nužno na videlo izlazi razlika između osnovnih pravnih principa pravnoga poretka i pravnih principa vladajućih u oblastima pravnoga poretka. U članku se analizuju vidovi sistemske-teleološkog poimanja pravnih principa, osobito u odnosu na svojstvo pravnih principa kao izvora prava. Povrh toga, pravni principi su sagledani i kao kanoni neposredno zastupljene jurisprudencije u pravnom poretku, pod okriljem "unutrašnjeg pravnog sistema" zasnovanog na pravnim oblicima.

Ključne reči: pravni principi, pravni osnov, razlog pravnog uređivanja, cilj pravnog uređivanja, pravni standardi, pravne norme, pravne situacije, "unutrašnji pravni sistem"

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