

I. B. 1. The Structure of Legal Systems

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The Structure of Legal System

(The Concept of Multi-Layered Legal System)

Abstract. In the study the legal system is conceptualized as a meaning system which contains the text layer, the layer of the legal dogmatics, the layer of judicial precedents and in some modern legal system the layer of the constitutional rights is added to these. The study outlines the connections among these layers of law comparing the continental legal systems rooted in the Roman law to the common law systems. With this concept of law the study analyses the history of legal theory and makes a typology of the tightening concepts of law which emphasize only one layer of the law. For example, for the French école de l'exégèse in the 19. century the law was only the text, for the German Bergiffs-jurisprudenz the law was the layer of the legal doctrines, or for the legal realists the law was the judge made law; and newly for Ronald Dworkin and his followers the law is identified as the layer of the constitutional rights first of all.

Keywords: legal system, legal theory, legal dogmatics, constitutionalization

If one decides to make a comparative analysis of the various modern legal systems, one will inevitably encounter the following phenomenon; namely, that the very same component which one finds in the legal systems of different countries is of varying importance; in certain countries it plays a major role, while in others it is much less important. Such a comparative study which examines components of several different countries will reach a far more comprehensive result than research which only focuses on a single legal system. Therefore, an attempt to create an overall legal concept will be more precise if it is based on a comparative study of the various legal systems of the present, and further compared with the opposing influential legal theories of the last centuries. The result of such a comparison will show that these legal theories restrict the actually existing multi-layered legal systems. This can be easily integrated into an overall theory of law, which is the aim of this brief study.

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1. Restricting legal theories and multi-layered legal concepts

If one examines the development of the legal theories of the past two-hundred years, one observes the formulation of certain opposing legal concepts which identified law with phenomena that determined the rulings of court. Montesquieu's surprising statement, which declared that the judge is the mere mouthpiece of law, appeared in numerous tendencies of legal theory in the last two-hundred years. First, it was the French "école de l'exégèse" in the first half of the 19th century; later on it appeared in German legal theories by Julius Bergbohm and, some time later, by Hans Kelsen. Subsequently it made its appearance in the theories of the Soviets.

The legal concept which identified law with the text of the past decisions made by state bodies was opposed by the leading German legal concept of the 19th century, namely the pandectist jurisprudence, known under several designations, such as "Begriffsjurisprudenz" or "jurisdiction built on legal-doctrines", according to the terminology of its critics. This concept defined law as a "touched up", refined system of legal-terms. Its main representatives, Georg Puchta and Bernhard Windscheid, for instance, saw the determination of the judicial decisions through the hierarchical order of the legal terms, and when the first draft of the German BGB (civil code) was completed with the participation of Windscheid in 1884, the practicing judges of the time labeled it a "monstrosity of jurists."¹ It is impossible to deal with everyday cases, with all their tiny divergences, if legislation is based upon an abstract system of legal terms—this was the opinion of the practicing judges.

This clarity of legal notions and the identification of law with the clear-cut system of legal terms appeared in the United States in the 1870's, almost contemporaneously with Windscheid's works, through the participation of Christopher Columbus Langdell, the dean of the Faculty of Law of Harvard University.² It remained the leading tendency of the American legal practice and influenced works on legal science for the next several decades. An opposing tendency emerged which defined law as the collection of all judicial decisions. In Germany, it was supported by the members of the so-

¹ Finkentscher, W.: *Methoden des Rechts*. (Band I.: Romanischer Rechtskreis; Band II. Anglo-amerikanischer Rechtskreis; Band III. Mitteleuropäischer Rechtskreis) Tübingen, 1975; Larenz, K.: *Methodenlehre der Rechtswissenschaft*. 4. Auflage. Berlin—New York, 1979.

² Duxbury, N.: *The Theory and History of American Law and Politics*. *Oxford Journal of Legal Studies*. 1991/4. 589–597.; Grey, Th. C.: *Modern American Legal Thought*. *Stanford Law Review*. 1996.

called School of Free Law, while in the United States its representatives were the exponents of the trend of “legal realism”.

From time to time, although a few influential jurists appeared who endeavored to include the multiple layers of law in their legal concepts, although the authority of the ruling tendency always oppressed these random attempts. The authors of multi-layer legal concepts therefore abandoned their ideas, and they too adopted the mainstream direction. The German Carl Friedrich von Savigny can be mentioned, for instance, who, in his earlier works wrote about legal institutions and legal dogmatics which analyze them and formulate general rules. Later on, however, influenced by Georg Puchta himself, he also shifted his attention towards a legal concept built on legal terms in spite of being one of the main supporters of the idea of a school of legal history. Another example is Francois Gény who, at the end of the 19th century in France, opposed textual positivism propagated by the “*école de l'exégèse*”, and emphasized the importance of the multiple components of law. In 1921 in the United States, Benjamin Cardozo emphasized the role of the multi-layered legal components in his book “*The Nature of the Juridical Process*”.³ Later on, however, he adopted the views of the legal realists, who emphasized the central role of the rulings of the court.

Thus, these theories define law as a “textual layer”, “legal dogmatic layer”, and “a layer of judge-made law”, though it must be said that these theories only recognized one of the three layers as law at a time, and sometimes the coming into existence of one of these theories was in reaction to another.

Another layer of the law was emphasized by an emerging legal theory in the United States in the 1960's, which can be identified with the name of Ronald Dworkin.⁴ This theory found the essence of law in the fundamental constitutional rights and basic constitutional principles. Dworkin's thesis was set out in his book “*Taking Rights Seriously*”, though his legal theories are more clearly expressed if we paraphrase the title as “only basic rights should be taken seriously!”. In the United States from the 1960's the extension of the judicial process based directly on the constitution led to the relegation of simple laws to the background while, in parallel, the doctrinal conceptual system of certain legal branches also lost its importance. These developments, which began in the United States, have emerged in several other countries in the past years, while in the U.S. they fell into the background.⁵ The

³ Cardozo, B. N.: *The Nature of Juridical Process*. New Haven, 1921.

⁴ Dworkin, R.: *Taking Rights Seriously*. Cambridge, Mass. and London, 1977.

⁵ Posner, R. A.: *The Problems of Jurisprudence*. Ann Arbor, 1990; Grey: *Modern American Legal Thought. op. cit.*

textual layer, the doctrinal layer, the layer of judge-made law and, above all, the layer of fundamental constitutional rights—these notions summarize the most influential legal theories of the last two-hundred years. How is one to create an overall theory, a multi-layered legal concept out of these opposing legal concepts?

2. The layers of the law

If one examines the development of the modern legal systems, a striking feature of its progressive tendency is that the rules of law tended to take the form of decisions of the sovereign power, and that judicial decisions had to be made according to the texts of the state power. Based on the medieval continental European jurisdictions, which already possessed collections of customary laws, the legal practice that can be always amended by the central state power was rapidly accomplished with the influence of the absolutist rulers of the 1600's.⁶ Later on, with the sovereign power's growing democratisation and the development of parliamentarism, it was only the place of making the final decisions that shifted from the royal authority to the parliaments. With this progress, law became the collection of the decisions of the sovereign power, but it primarily became a collection of legislated texts in countries with a democratic political system. In England and in countries influenced by England's common law system, however, it was attenuated by allowing the high courts to create judge-made law.

With the adoption of a multi-party system and within the sphere of mass-media based on freedom of speech, the parliament became the culminating point of the society's political common will; so the law that appeared in legislative texts more or less depended on the will and majority opinions of society. The court decisions that depend on legislation fulfill society's self-governing nature: society itself decides when the judges apply these fixed laws in each individual case and dispute. Because law fundamentally appears in legislative texts and is a result of a democratic decision of the state power, it tends to express the empirical common will of society.

When textual positivism identifies law with legislative texts, it emphasizes an important aspect, but it also commits two fundamental mistakes. One of these concerns the following: in the complex and intricate social context, thousands and thousands of legal regulations have to be perpetually created

⁶ Caenegem, R. C.: *Das Recht im Mittelalter*. In: *Entstehung und Wandel rechtlicher Traditionen* (hrsg.: Fikentscher, W. A.). München, 1980. 606–667.

if they are to be consistent. If this is not done properly, they may end up canceling each other's effects through contradictory content. It might be well imagined what sort of legal chaos would result on the level of judicial case-law. It is only a carefully prearranged system of legal concepts that can provide harmony amongst the many thousands of legal regulations. Furthermore, it is the unified application of these concepts in many legal rules that can maintain this intellectual systemic quality and consistency in a heightened form. Thus without a legal dogmatic layer, the layer of legal texts cannot function. Overlooking this fact is one of the errors of textual positivism.

The other source of error is the failure to take into account the openness of the legal regulations. It is very typical of code-like laws to use overall, rather general notions and regulations, which renders divergence possible in its application. This could result in several different judicial decisions in a country in similar or even identical cases, which would easily create legal chaos. Thus without a Supreme Courts' use of concretizing precedents, the imprecise legal regulations could not properly function.⁷

Textual positivism, a concept of law built on legal dogmatics and the concept of judge-made law can be integrated into a multi-layer legal concept, if their striving for absoluteness is set aside. The textual layer of law, that can function as a consistent intellectual organization due to its prearranged doctrinal conceptual system, is connected to a democratic political common will, and among the existence of many thousands of legal provisions, it keeps the functioning of law in consistent order. The openness of the regulations that the texts of laws, that are formed from a legal-dogmatic point of view, contain, are counterbalanced by the jurisdiction of the Supreme Courts. It is a jurisdiction built on precedent, and together with the doctrinally formed texts of laws, it renders a unified law for each country.

The importance and function of the aforementioned three layers of law can be easily observed in continental European legal systems, as well as those built on the common-law system, though in different proportions. It can be stated, that the more abstract the codified law gets in a legal system, the more inevitable it becomes to concretize the doctrinal categories, and to shape the judicial processes accordingly. Furthermore, the loose regulations that the codes contain have to be concretized and updated with the current judicial precedents. In contrast, the more specific and concrete the legislative provisions, the less necessary it becomes to have a doctrinal layer or a

⁷ For the growing role of the precedents in the contemporary legal systems see *Interpreting Precedents. A Comparative Study* (ed.: MacCormick, N.—Summers, R. S.). Dartmouth, 1997.

concretizing body of judicial precedents. Accordingly, judicial precedent would instead function as a method of independent regulation, and not as a concretizing legal layer. The English legal system can be characterized as such a system, while the legislation of the United States started to shift in the last century towards that of the continental European countries' codified legal system and, compared to the English system, a stronger legal-dogmatic categorical system was established in certain fields of law.⁸ However, among the continental European countries' legal systems, a visible difference can be observed concerning the importance of each of the three legal-layers; while in the German legal system and in the other continental legal systems influenced by it, the doctrinal layer is of high importance, it is much less so in the French legal system.

There is a divergence amongst the continental legal systems with regard to the development of the layer of judicial precedent. Although its significance seems to be increasing everywhere in the course of the last few decades, it is mostly in the Scandinavian countries and Germany where it is of marked importance, while in the southern-European countries and France it is still not so highly emphasized.⁹ Among the post-socialist countries, it is in Hungary and Poland that a visible development can be observed concerning the importance of the aforementioned layer of judicial precedents.¹⁰ Besides the mere textual layer of official regulations, the layers of doctrine and judicial precedent are also an essential part of the legal systems of these countries. In Hungary, the empirical statistics which analyze the rulings of the courts prove that the position taken by the Courts is based on the texts of law, as well as on the interpretations of certain doctrinal notions, together with the precedents of the Supreme Court which provide solutions for some of the legal dilemmas which were left unsolved by the former legal regulations.¹¹ The cooperation of these three layers of law is not recent; it can be observed in the legal history of the past centuries and, in some countries

⁸ Dawson, J. P.: *The Oracles of the Law*. Ann Arbor: 1968.

⁹ See Alexy, R.—Dreier, R.: Precedent in the Federal Republic of Germany. In: *Interpreting Precedents. A Comparative Study. op. cit.* 17–64.; La Torre, M.—Taruffo, M.: Precedent in Italy. In: *Interpreting Statutes. A Comparative Study. op. cit.* 141–188; Peczenik, A.—Bergholz, G.: Precedent in Sweden. In: *Interpreting Precedents. A Comparative Study. op. cit.* 293–314.

¹⁰ Wróblewski, J.: Statutory Interpretation in Poland. In: *Interpreting Statutes. A Comparative Study* (ed.: McCormick, N.—Summers, R. S.). Dartmouth, 1991. 257–310.

¹¹ See Pokol, B.: Statutory Interpretation and the Precedent in Hungary. *East European Quarterly*. 2000. No. 3. 162–177.; Pokol, B.: Rechtsauslegung und höchstrichterlichen Präjudizien in Hungary. *Zeitschrift für öffentliches Recht*. 2000 Heft 3.

where a Constitutional Court was established, it was even accompanied by a layer of constitutional rights. If we do not accept Ronald Dworkin's overemphasizing attitude on this field, and we attempt to integrate fundamental rights into an extensive legal concept, as a recently established legal layer, the following connections have to be emphasized.

As a starting point it has to be stressed that this recent legal layer may have a different impact on the three already existing layers within the legal systems of various countries. Wherever the new legal layer comes into being with the establishment of a Constitutional Court, it inevitably influences the creation of the textual layer. A judicial decision which is declared unconstitutional loses its validity—this is the sole influence of the layer of fundamental rights. Its other important influence is due to the procedure of considering the essential normative basis of the previous constitutional decisions before issuing new judicial decisions.

A third influence can be observed if the fundamental constitutional rights and their concretizing constitutional restrictions are included in each legal branch's doctrinal activity, and the doctrinal system of legal terms of the criminal law, family law, labour law, etc. is (also) altered according to the legal layer of fundamental rights. If this is accomplished, the new legal layer, besides its effect on the textual layer, will have an influence on the doctrinal layer as well.

Finally, a third influence is that of fundamental rights on certain court rulings; either through its inclusion in the analysis of judicial decisions—together with other evaluations, or through their exclusion—or relegating the relevant judicial decision itself to the background, and issuing a ruling based on fundamental constitutional rights. If the latter occurs—as it did in the United States during the period of the activist Warren Court in the 1960's and 1970's, then fundamental rights push all other legal layers into the background. In most legal systems which have constitutional courts, the layer of fundamental rights only influences the layer of the legal text, and jurists also form their "de lege ferenda" suggestions that consider fundamental rights according to the legislation and not with the aim of influencing the judicial decisions.

In this restricted solution the traditional cooperation of the three legal layers remains, and the fundamental constitutional rights only slightly modify its final outcome. Aspects of righteousness, and influences that have a short-term pacifying effect on the empirical common will, improve the functioning of the legal system.

If the aforementioned ideal arrangement is established, the layer of legal texts, together with the layer of legal dogmatics and that of judicial

precedents and fundamental constitutional rights together provide a unified legal system. This is the goal of the concept of a multi-layered legal system. Besides defining the ideal concept of law, it also points out the shortcomings of other legal concepts that strive for the absoluteness of one of the legal layers.

3. The implications of the concept of the multi-layered legal system

The broadening of the concept of law and the recognition of other legal layers engenders the necessity of reconsidering several legal phenomena. In the following, we shall examine a few of these.

(The definition of law) One of the first aims of the necessary reconsideration has to be to redefine what law itself means. In other words, if we include the doctrinal system as an inevitable part of the law then, accordingly, it has to be expressed within the definition of law itself.

There is another aspect in which law differs from non-legal norms. Namely, it produces an intellectual system, and after a certain stage of development this emphasizes the notions and categories that are used by legal norms from other notions of everyday-thinking. The only way to eliminate the (possible) inconsistencies that might occur among the many thousands of legal norms is to deliberately create specific legal terms, expressions and classifications, and then systematically use these when dealing with any legal norm in question. Contrary to this, other non-legal, social norms rely on notions that are used in everyday-life, and the solutions based on these notions do not constitute a unified intellectual system.

Taking all this into consideration, the definition of law can be given as the following: law is a system of norms and their terms that express regulations and prohibitions which, failing all else, is sustained by coercion of the state.

(Legal dogmatics as a barrier of legislation) The prearranged system of legal terms that the legal norms are based on also has an influence on the modifiable nature of certain legal norms. Namely, the modified norm has to fit the already existing unified intellectual system and, for instance, a new legal norm can not use a classification that would clash with the classifications used by the already existing legal norms. For example, in the criminal law of most of the modern legal systems, the intentional character is separated from negligence when judging culpability—or rather these concepts are divided into different degrees. If a new legal rule contained a new classification of guilt, regardless of the already existing ones, the numerous restrictions of the criminal code would simply collapse. To replace a legal norm with a new one is only possible if it is doctrinally verified.

The emphasis of this connection sheds a different light on the ability to modify legislation and the role of legal dogmatics which ensures the law's intellectual unity.

Often it is sufficient to include well-trained lawyers in the parliamentary apparatus and legislative committees in the ministries in order to verify the consequences of certain amendments. But if a more significant amendment or a new enactment of the legislature is at stake, the consideration of the doctrinal questions should be done by a specialized legal experts in the relevant field. This is especially so in the case of codified laws.

Inasmuch as the politicians in parliaments often amend and interfere with laws which rely on a prearranged notional system, or rather establish new codes, and this does not affect the fundamentals of the legal-dogmatics, we have to hypothetically assume that there has to be a transformational-mediator sphere in existence between the legislation and the legal dogmatic sphere, that somehow connects legislators following a political logic and the legal dogmatic sphere itself. In order to verify this hypothesis, the following things have to be taken into consideration: the methods of codification, the political intentions of the parties, or rather the professional organizations of legislation. As a result, *the outlines of a legal-political sphere* can be detected which, in some form or another, is present in every modern democracy, particularly in the case of the continental European countries.

On the one hand, this legal-political sphere exists as a part of the legal subsystem that is directed towards politics, and on the other hand, some institutions can be found as part of the political subsystem that are involved with issues of legislation. Ideally, these two elements of the legal-political organization adopt parts of the "de lege ferenda"-type restrictions in a two-step transformational process, and in the course of a selected borrowing the political side gradually tables bills which were originally formed as part of a doctrinal activity, according to the logic of politics (for instance the method of aspiring to maximize the number of votes).

The part of legal-politics that is established as a part of the legal subsystem, typically consists of bodies and assemblies of the various legal professions. The conferences, programs, membership-meetings and publications of these bodies mostly emphasize proposals about amendments that react to the recent social problems, and that were previously outlined and supervised from a doctrinal point of view and already published in some of the legal periodicals. Thus, a part of the numerous "de lege ferenda"-type propositions that the legal experts of universities and the members of the high courts etc. outlined only from a juridical point of view, become the object of a certain filtering process. As a result, those propositions will come to the

foreground that are the reactions on the current social problems. At the same time, non-topical propositions that concern academic-scientific issues only excite attention in scientific circles and are the subject-matter of the legal periodicals, without having any influence on the functioning legal sphere.

The other part of the legal-political sphere that is founded as part of politics, consists of the legal experts of the parties, the legal groups of the parliamentary party-factions, and of the groups of the jurists who are the members of the so-called “background-institutions” of the political parties, such as the political foundations and party-schools. Though the aspirations of the parties are mostly determined by the maximization of the votes (and due to this they try to include motions in the party’s program that are likely to enhance the number of votes), the adequacy of the programs inquires aspirations that are more or less workable. On account of the latter reason, the legal experts of the parties can only choose from propositions concerning amendments that are adaptable from a legal-dogmatic point of view. Although it becomes very important method to start looking for such motions among the lot that would fit the interest of a certain party the best, or rather to look out for those that would be against their interest the most. The jurists of the parties mostly concentrate on those “de lege ferenda”-type regulative propositions that were already emphasized on the assemblies and conferences of the associations of the lawyers, and the social consequences of which were already stressed in relation to certain propositions. Thus with a double transformation—despite the pushing of the pure legal-dogmatic point of view into the background and emphasizing the logic of politics—those regulatory models will appear in legislation, that do not violate the intellectual coherence of law. The legal experts of parliamentary committees are continually on the watch for motions concerning amendments that would violate the established legal-dogmatic system.

It is only this legal-politic sphere that mediates between law and politics, that can assure the proper operation of legislation, and the intellectual systematic character of law.

(The expansion of the circle of legal sources) The inclusion of more legal layers into the concept of law requires the expansion of the circle of legal sources. As the multi-layer legal concept can be best observed in the legal systems of the continental European countries, let us look at their legal sources.

It is the state bodies that are in charge of the textual layer of law, and the sources of the textual layer are those forms of decision making, that contain the textual layer of law. The most characteristic of these are the forms of decision making in the case of parliamentary acts, the forms of decision

making of the governmental orders, the orders of the ministers, or rather the locally prevailing forms of decision making of the local authorities.

The first outcome of these forms of decision making is a series of open legal norms, that can only be accurately interpreted according to the legal-dogmatic categories that the norms contain. The reduction of the occurring disparate possibilities and the establishing of a more unified interpretation can be achieved with the consensus of the legal profession. The employment of the accepted legal opinion in legal case-decisions, and—due to juridic decisions that refer to these—also the legal-dogmatic works that express legal consensus, all contain characteristics of legal source. This is typical of Germany, for instance, where in the case of legal dilemmas that have to be decided by the Supreme Court, the judges often refer to works of certain jurists.¹² It is characteristic of numerous countries that when a decision has to be made about a legal dilemma, it is the commentaries of the law that they refer to, and not directly to the law as it applies to the case. According to this—although on a comparatively small scale—, some systematizing legal-dogmatic works may also serve as a kind of a legal source in certain legal systems.

The legal textual layer's regulations—even if it is amplified with the legal-dogmatic interpretations—still remain open, and the layer of the concretizing judicial precedents that supplements it and creates a further legal source, has to be perpetually observed by lawyers, if they want to know what they should expect in their cases. These judge-made laws, that gained considerable importance in the legal systems of the continental European countries, were mostly created by the Supreme Courts of the countries in question, and the forms of decision making of these judicial forums function as a legal source.

Finally, wherever a constitutional court is in existence, its concretizing decisions concerning fundamental constitutional rights and basic principles also serve as a legal source. These constitutional decisions have to be separated from the concretizing precedents that concern basic legal decisions, because the fundamental rights that these are based on are not systematized dogmatically, they are usually more abstract and compared to certain legal restrictions their openness is greater, or the fundamental rights contradict each other in some cases, respectively. This is one of the various reasons why, based on these, in the continental countries it is the constitutional court that decides in these cases, and their influence is reduced to

¹² Alexy, R.—Dreier, R.: Statutory Interpretation in the Federal Republic of Germany. *Interpreting Statutes. A Comparative Study.* (1991) *op. cit.*

legislation, furthermore, they do not directly affect the judicial decisions. Naturally, there are great differences between the degree of influence that they have on a countries' legislation, and apart from most of the countries where the impact of fundamental rights and the decisions of the constitutional court (that serve as the interpretations of them) is restricted to the role of controlling legislation, in Germany they also influence certain judicial decisions. In theory the judge, based upon the constitutional court decisions and the constitutional basic rights, could simply set aside the given judicial provisions that should be applied under those circumstances and directly refer to these in a constitutional case, as it was achieved in "the rights revolution" in the United States in the 1960's.¹³ (However, this did not become customary in Europe. In other respects, if this is not established, then it can result in the falling of the other legal layers to the background, and furthermore, in the course of the re-politicization of the law it can lead to the corrosion of the predictable judicial decisions—as it could be seen as one of the consequences of the "rights revolution" in the United States.¹⁴ The existence of these degrees show that the constitutional court-decisions would only be of full value as a legal source if they had direct influence on certain judicial decisions, though this only appears as an exception in the continental legal systems. In most places their impact is narrowed down to the control of legislation, therefore their function as a kind of a legal source is limited.

(Broadening the methods of statutory interpretation) Having included numerous other legal layers into the theory of law and the legal system, and the discovery of the determined relations between them, influences the ways of legal interpretation as well. Let us look at a few connections visible on this field.

The recognition of the importance of the textual layer of law brings forth the recognition of the primary importance of grammatical interpretation. It is the parliament, as the chosen representative of society's political common will, that is in charge of the proper interpretation and usage of the textual layer of jurisdiction, therefore to take the grammatical meaning of the text seriously is identical with taking the empirical common will seriously. The several ways of interpretations that rely on the other legal

¹³ See Epp, Ch. R.: *The Rights Revolution*. Chicago and London, 1998.

¹⁴ For the politicization of the law in the United States; see Scheingold, S.: *The Struggle to Politicize Legal Practice: A Case Study of Left-Activist Lawyering in Seattle*. In: *Cause Lawyering. Political Commitments and Professional Responsibilities* (ed.: Austin, S.—Scheingold, S.). New York, 1998. 118–150.

layers can only advance as far as it does not contradict the clear grammatical meaning of the legal text.

The legal-dogmatic layer and the emphasis on the intellectually systematic character of law in the course of the functioning of legislation impels the employment of those ways of legal interpretation, that, beyond the grammatical meaning of the textual layer, help the judge in decision making in a given case. One of the possibilities is the interpretation based on the use of legal-logical maxims, that, starting from the text's perceivable meaning, but not encroaching it or using judicial autocracy, manages to control the judicial procedure. The so-called "argumentum a minore ad maius" (to reach more from the less by inference), and the "argumentum a maiore ad minus" (to reach the less from more), their collective designation is "argumentum a fortiori", or the "argumentum a contrario" (induction from opposites) etc. can control jurisdiction with the extrapolation of the text's perceivable meaning. In order to remedy a situation when a legal gap occurs, the judicial decision that relies upon analogies shall also end up leaning on the legal-dogmatic layer, as it constructs the verdict directly from the legal principles (this process is called legal analogy), or it transfers a legal provision that was created in a similar case, so to base the current regulation on the former example (the method of statutory analogy). As to the doctrinal interpretation, it implements the embedding of the notions found in the textual layer, therefore it binds the textual and the legal-dogmatic layer together, in relation to the current case.

The interpretation based upon precedents connects the textual legal layer with the layer of judicial precedents, and it specifies the open regulations, and therefore assures the nationwide unity of jurisdiction. Thus, this is of primary importance in the concept of the multi-layer legal system.

From the multi-layer legal system's point of view it can be qualified as dangerous, when in relation to a current case, the verdict relies on an interpretation that is based on such constitutional court decisions that concretize fundamental constitutional rights and basic principles. The American legal practice that carried this into effect is a proper example to show how this process "re-politicizes" law, and how it instigates to push the other legal layers—besides the layer of the fundamental rights—into the background.¹⁵ The German legal practice is also liable to experience

¹⁵ See MacCann, M.—Silverstein, H.: Rethinking Law's "Allurements": A Relational Analysis of Social Movement Lawyers in the United States. In: *Cause Lawyering. Political Commitments and Professional Responsibilities* (ed.: Austin, S.—Scheingold, S.). New York, 1998. 261–292; Scheingold S.: The Struggle to Politicize Legal Practice. *op. cit.*

such a shift, and the only reason why it has not yet shown such negative signs is because—despite having accepted the fundamental rights as directly prevailing through the German constitution—in practice they are rarely included into the current judicial procedures.

In Central Europe it was in Poland where, for only a few years, the Constitutional Court's legal interpretations were obligatory, that is, the judges were bound to take it into account. But the judicial opposition to the functioning of a re-politicized Constitutional Court led to its exclusion from the new constitution of 1997.¹⁶ The Hungarian constitutional court—even on an international scale—has a very great competence, and it has a right to eliminate laws, though the Constitutional Court decisions do not directly influence judicial decisions. In fact there are some lawyers and smaller groups of legal experts who—based on the American pattern achieved by “the rights revolution”—support the introduction of the Constitutional Court's direct influence on judicial decisions, but this has not been put into practice yet.

Thus in order to conclude, the concept of the multi-layered legal system supports the idea of a law on a larger scale, accepting the parallel operation of several methods of legal interpretation at the same time, therefore it is against legal concepts that place a single legal layer into the center.

¹⁶ Poplawska, E.: Constitutionalization of the Legal Order. *Polish Contemporary Law Quarterly Review*. 1988. N° 1–4. 115–133.