SOFIA UNIVERSITY "ST. KLIMENT OHRIDSKI"
FACULTY OF LAW
DEPARTMENT OF THEORY AND HISTORY OF STATE AND LAW

LYUBOMIR PETROV STOYANOV

SPECIFICITIES OF THE PROCEDURAL LAW

AUTHOR'S SUMMARY

of a dissertation

for awarding the educational and scientific degree "Doctor"
in a professional direction 3.6 Law "Theory of the state and law. Political and legal teachings (General Theory of Law)

Scientific Supervisor: Assoc. Prof. Daniel Vasilev Valchev, PhD

Sofia, 2023

CONTENT:

I. General characteristic of the dissertation.

1. Problem statement. Relevance and significance of the study.

The term "procedural law" is an immutable part of lawyer's language, regardless of whether it concern problems of theoretical or applied nature. Procedural law is used in the classification of the components of the macrostructure of the legal order as a part of the terminological pair substantive/procedural. The amount of procedural law branches is constantly growing. The number of specialized procedures, arranged outside our procedural codes, is also increasing.

Indeed, the term "procedural law" is widely used in theoretical and applied context, but at the same time the problem of identifying the specificities of the procedural law, doesn't enjoy the necessary attention by the General Theory of Law. The typical theoretical approach to a general concept of procedural law reveals two main characteristics. The first one is that the procedural law is determined by its distinction from the substantive law. The second characteristic is that the General Theory of Law rests primarily on knowledge that has been achieved through generalization of the knowledge from the disciplines that are studying the individual procedural branches of the law.

The distinction between procedural and substantive law is made by trying to clarify their content directly, by introducing philosophical categories such as "*matter*", "*essence*", "*form*". Thus, the concepts of substantive and procedural law "inherit" the high degree of abstractness, that characterizes these philosophical categories. At the same time, since the terms "*substantive*" and "*procedural*" law are an immutable part of the terminological apparatus of a number of authors, the impression is created, that with the two terms are named concepts which content since long has been subject of scientific consensus. In fact, as shown in the dissertation, the high degree of abstractness that characterizes the language of the different authors, makes it rather difficult to establish that the concepts that different authors name with these terms are not identical to one another. In this way, especially for the students, the illusion of consensus is created where researchers, in reality, sometimes hold mutually exclusive views.

Of course, there are some attempts for overcoming the high degree of abstractness of the current general concepts of "procedural law". But, as it was already mentioned above, this is achieved by generalization of the knowledge of the disciplines that are studying the

individual procedural branches of the law. This kind of knowledge derivation is typical for the early stages of development of the General Theory of Law. Although extremely useful, such knowledge-gathering approach has limited general theoretical potential. Its limitations do not arise from deficiencies in the knowledge of the individual procedural disciplines itself, rather from the nature of the tasks that these disciplines set for themselves. These disciplines always study distinct subsets of norms within a given legal order. This presupposes the lower degree of generalization that their knowledge reveals. Nowadays, this approach has been overcome on almost all fundamental issues, concerning the subject of the General Theory of Law.

In an attempt to explain the above mentioned characteristics, we analyzed the state of modern legal theory, through the conceptual apparatus of Thomas Kuhn. Thus we came to the conclusion that the legal theory is still in its pre-paradigmatic period. This period characterizes with numerous competing schools and sub-schools, each of which lays on a particular metaphysical foundation and points to as paradigmatic observations, that group of phenomena, which the relevant theory explains best.[1] According to Kuhn in this period there are "…frequent and deep debates over legitimate methods, problems, and standarts of solution, though these serve rather to define schools than to produce agreement"[2]. We think that the variety of opinions on a number of fundamental issues, including that of the distinction between substantive and procedural law, is a reliable indicator that the legal community is still in its pre-paradigmatic period.

In the dissertation, we are searching the reasons for the difficulties in establishing a paradigm in the legal theory. Our opinion is that these difficulties are a consequence from the normative characteristics of the law as an object of scientific study. If we consider the science as a tool for knowledge, we will see that its initial purpose is to identify and explain the causal connections around us. Relatively recently, the focus of scientific interest has shifted to a phenomena of a normative nature. The specificities of the normative connections require specific point of view and specific conceptual apparatus. At the same time, they are limiting the possibility of using the traditional methods for description of causal connections. This explains, why processes such as the formation of a scientific paradigm or its shift, have already taken place in the scientific communities, that explore causal connections. It also explains why the same processes have not yet taken place among the legal scholars, who study normative phenomena.

---

[1] ***Kuhn, T. S.*** The Structure of Scientific Revolutions. Third Edition. C.: The University of Chicago Press, 1996, p. 12-13.
[2] *Ibid*., p. 47-48.

From the stand point of the General Theory of Law it is equally unsatisfactory both the abstract expression of the concepts content and the relying solely on knowledge from the individual legal branches. These considerations have determined the direction of our research efforts. We have set ourselves the goal to seek and propose an approach that achieves the abstraction from the specifics of the individual procedural-legal phenomena, by formulating detailed statements about their commonalities, while preserving their general-theoretical character.

2. Ontological framework of the study.

The need for clarification of the ontological framework of the study is a direct result of the lack of an established paradigm in legal theory. The clarification of our ontological positions provides the other researchers with a foundation from which they can check the logical soundness of our further conclusions.

We adopted the ontological framework of the model-dependent realism as it is defined by Hawking and Mlodinow. Their view is that our perceptions of a certain object of study are always mediated by a particular model.[3] This framework describes extremely well the complicated methodological situation in the legal theory that arises from the specificities of the normative connections. The nature of these connections excludes the possibility of their interpretation in the categories such as true or false.

3. Objective and methodology of the study.

3.1 Objective of the study.

The objective of the dissertation is to identify the normative features that are common to all procedural phenomena and, on their basis, to further develop the concept of "procedural law". Thus the place of this concept in the conceptual apparatus of the General Theory of Law will be clarified further.

In the focus of our interest are the normative specificities of the procedural law. Other specificities that follow from the interpretation of the procedural law as a sociological, political or, for example an economic phenomenon, are beyond the scope of the present study. By normative we mean those specificities that arise from the normative connections between

[3] **Хокинг С., Млодинов Л.**, Великият дизайн, С.: ИК Бард ООД, 2012, p. 56.

the elements that build up the law as a phenomenon. We are interested in identifying only those normative specificities *that are common to all procedural-legal phenomena*. The goal is to obtain general legal knowledge that can be integrated into the conceptual apparatus of the General Theory of Law.

3.2 Methodology of the study.

Like other researchers before us[4] we take it for granted that our models of the surrounding reality can refer either to phenomena bound together by causal connections or to phenomena bound together by normative connections. Complex models built from both types of connections are also possible. In such cases we adopt a limiting methodological constraint. These models must have a logical structure that allows the elements of the normative reality to determine which elements of the causal reality belong to a given complex model. One cannot go vice versa.

This way, we provide a basis for using the juridical method as the main one in the study.

The study of the normative specificities of the procedural law requires an internal point of view towards the researched object. Therefore we have adopted the juridical method as the main method of the research, because it uses the legal norm as a main scheme of interpretation. The particular version of the juridical method that we use we called "weak". Two of the axiomatic assumptions that are hallmark features of the typical juridical method are limited. The first one is that the basis for the validity of the legal norms should be sought only within the legal order itself. The second one is the assumption that the validity of a legal norm follows not from causal but from normative connections. For the purposes of the study we assume that the validity of any legal norm *for which within a given legal order exists a norm of a higher hierarchical level* will be sought only within this order and only as a matter of normative connections. As for the norms located at the highest hierarchical level within a given legal order, we accept their validity as an axiomatic assumption.

The latter axiomatic assumption is related to the theoretical-interpretative framework of the study. The internal viewpoint of the juridical method puts us in the position of a

[4] *Cfr. e.g.* ***Вълчев Д.*** Лекции по Обща теория на правото, част 1. С.: Сиела, 2016, p. 25-26; **Гройсман С.** Право и власт. От неограничената държава до постмодерното върховенство на правата, С.: Сиела, 2020, p. 26-29.

relatively detached observer. We describe ourselves in the process of applying the norm. But the adoption of the procedural norm as a main scheme of interpretation presupposes a general concept of a "procedural legal norm". Therefore we propose a working hypothesis of the concept of "procedural legal norm". We have formed this concept on the basis of the opinions available in the doctrine so far. For this purpose we needed an appropriate theoretical-interpretative framework in which the different opinions could be compared and systematized. This role is fulfilled by Venelin Ganev's concept of the "legal phenomenon". Venelin Ganev accepts that the issue of the validity of norms, above which there is no higher hierarchical level in the legal order, should be approached from a different point of view and also not necessarily with the juridical method.[5] Therefore, in order to preserve the logical consistency of our methodology, we introduced the above-mentioned axiomatic assumption.

In order to derive a general concept of procedural norm, we need to gather initial data from which to draw our initial conclusions. This includes a study of the origin of the division of law to substantive an procedural and the theses of the various scholars on the subject. The aim is to understand the genesis of the concept of procedural law. Obviously the point is to trace the history of the theoretical conceptualisation of an idea that has developed in the context of changing socio-economic conditions. Therefore, this problem must be approached by methods other than the juridical one. These methods suppose an external point of view towards the legal order. That is why at the beginning of our study, in the process of collecting the initial data on the problem, we use the historical, the sociological and also the philosophical methods.

4. Object of the study.

In our study, we derive the object of research, after defining the objective and the main methodology of the study. The reason for this is the adopted ontological framework of the model-dependent realism. As it has already been mentioned, this concept boils down to the idea that our perception of reality is always mediated by some model that we construct or take for granted. Therefore, we adopt the view that the very construction of the research object

[5] *Cfr. e.g.* **Ганев В.** Право и държавна принуда. – В: ***Неновски Н. (съст.)*** Венелин Ганев. Трудове по обща теория на правото. С.: Сиби, 1998, p.22. As well as **Ганев В.** Извори на положителното право. – В: ***Неновски Н. (съст.)*** Венелин Ганев. Трудове по обща теория на правото. С.: Сиби, 1998, p. 287.

doesn't precede, but is a significant part of the scientific cognitive process.[6] As a result, in relation to the object of study, we use the term "constructing".

If we look through the prism of the procedural legal norm, we'll see the conditions that give rise to the legal consequences provided for in it. We'll also see what these consequences are, to whom they apply, in relation to what goods they arise, and what follows if the required consequences are not fulfilled. In other words, we construct the procedural legal phenomenon as object of our study. The construction of the procedural legal phenomenon begins in the first chapter of the study, were we derive a working hypothesis of the concept of "procedural legal norm". It ends at the very end of chapter two, where we adopt our final concept of a procedural legal norm, which in turn constitutes the elements of the procedural legal phenomenon as object of our study. The specificities of this phenomenon are the subject of the third chapter of the study.

5. Structure of the dissertation.

The dissertation is structured in three chapters, each containing several paragraphs, that separate the main stages of the study. Each of the paragraphs is organized into points and sub-points, which are thematically titled and demarcate the individual theses and sub-theses of the study. In this way, we provide the ability of more precise referencing between the individual parts of the dissertation, which we often do in order to avoid repetition. In several places, most often at the beginning of the individual paragraphs, the reader will find short expositions that retrospectively outline what has been done up to that point and, in addition, announce what lies ahead in the study. The purpose of these expositions is to facilitate the reader in following the general logic of the dissertation.

The first chapter of the study *is devoted to the procedural law as object of research of the General Theory of Law.* In **§ 1** we present the ontological framework of the study, its objective, research object and methods, which we have already covered in detail above. In ***§ 2 of this chapter*** we begin to apply the described methodology. Here, we generate the initial data on the basis of which we build our working hypothesis of the concept of "procedural legal norm". We also are trying to establish the origin of the division of law to a substantive and a procedural one. The paragraph continues with an overview of the main opinions on the nature

[6] ***Кискинов В.*** Правната система. Част I. Онтология и методология. С.: УИ „св. Климент Охридски", 2006, p. 150-151.

of the division. Although extremely heterogeneous, they allow some generalizations to be made. Perhaps the most significant of these is that most authors draw the distinction on the basis of the specific functions that substantive and procedural law performs within the legal order. In ***§ 3*** we derive a working hypothesis of the concept of "procedural legal norm". Considering our conclusions from the previous paragraph, we accept that at the basis of our definition, we must include a sign regarding the specific functions that these norms perform within the legal order. For this purpose, we interpret the division of norms into substantive and procedural, within the context of Hart's idea of primary and secondary rules, because it also rests on a functional distinguishing criterion. This is how we derive our working hypothesis of the concept of "procedural legal norm", *according to which procedural legal norms are secondary, public norms with a law-applied nature.* In the course of our work, we found that outside the defined set of procedural legal norms, some norms remains, which can also be assumed to reveal a certain procedural nature. This is due to their significant similarity with what we defined as procedural norms. However, these are norms of the private law, which is why they remain outside the volume of our working hypothesis of the concept of "procedural legal norm". These norms require us to check and, if necessary, redefine the derived definition.

Chapter II of the dissertation entitled *"Procedural law in the system of the juridical procedures"* is dedicated to solving this problem. In ***§ 1***, we analyze some other theses, which also assume that beyond the set of substantive legal norms there lies another, which is significantly broader and contains norms that don't necessarily correspond to the traditional understanding of a procedural legal norm. Therefore, before deriving a working hypothesis of the species concept of "procedural legal norm", we derive a generic concept that covers all norms revealing a certain procedural nature. Similarly to the Russian's scholar Protasov, our goal is, in the context of this generic concept, to propose e species classification of legal procedures and to interpret the procedural law as a specific kind of juridical procedures. The general concept that covers all norms revealing a certain procedural nature is derived in **§ 2**. In **§ 3** we carry out the above-mentioned classification of the juridical procedures and in its context we interpret our working hypothesis of the concept of "procedural legal norm". Based on the conclusions drawn and after redefining some of the signs of our working hypothesis of the species concept of "procedural legal norm", we derive our final concept of a procedural legal norm. The latter actually finally constructs the procedural legal phenomenon as object of our study.

Its specificities are the subject of **Chapter III of the study.** Before moving on to the actual analysis of the specificities of the procedural legal phenomenon in **§ 1** we discuss two

important, from a methodological standpoint, issues. The one of them refers to our view that, according to Venelin Ganev, the sanction is an essential and necessary element of every legal phenomenon. Thus its specificities, as part of the procedural legal phenomenon, should be given independent attention. The second question concerns sharing our own point of view regarding the division of law to a substantive and procedural and the significance of this classification in its current form for clarifying the specificities of the procedural law. In **§ 2** we present and further develop our conclusions about the specificities of each of the elements of the procedural legal phenomenon.

II. Exposition of the dissertation

Chapter one.

Procedural law as object of research of the General theory of law

In the first chapter of the study, we set ourselves the tasks of clarifying the methodology of the study, tracing the development of the theoretical understanding of the concept of procedural law and deriving a working hypothesis of the concept of "procedural legal norm".

1. Methodology of the dissertation.

It is represented in **§ 1.** It covers the ontological and theoretically-interpretative frameworks of the study. It also covers the studies objective, its methods and our view on the nature of the research object and its construction. Since in the previous points of this abstract, we already discussed these issues in sufficient detail, we'll not devote further attention to them here.

2. Historical origin and development of the ideas.

In **§ 2**, of the first chapter, we trace the development of the theoretical understanding of the concept of procedural law. This is necessary in order to assure the initial data on the basis of which we'll derive our working hypothesis of the concept of "procedural legal norm". In the course of our work, we came to the conclusion that there are three main theses regarding the origin of the theoretical idea of dividing the law into substantive and procedural. The earliest dating of the classification links it to continental European jurists from the first half to the middle of the 13th century. The second theses connect the division with the name of William Blackstone and his "Commentaries on the Laws of England". The third theses assume that the author of the division is Jeremy Bentham with the manuscript "Of Laws in General" discovered after his death.

Our opinion is that a given legal concept, as the concepts in any other scientific field, rarely appears as a result of the purposeful activity of a single person, whose goal is precisely the formation of this particular concept. In their formation, most scientific concepts pass through an intuitive and rational stage of their development. These stages usually involve

multiple individuals. That's why we look at the three theses about the origin of the substance/procedure dichotomy, not as alternatives, but as stages towards the theoretical understanding of the law as composed of two branches – substantive one and procedural one. In this context, the thesis of medieval origin of the classification can be seen as referring to the intuitive stage of the formation of the two concepts. Subsequently, in Blackstone's work, the dichotomy perhaps reflects the initial stages of rationalizing and theorizing this idea. Only a few years later, under Bentham, the actual scientific understanding of the idea and its transformation into a theoretical model for explaining and modeling the legal order took place.

We also provide arguments in support of our view. Some of them rest on the opinions of earlier authors that the theoretical understanding of the concept of procedural law presupposes the prior existence of a theoretical concept of legal right. The other arguments are related to the fact that when a legal-theoretical idea develops, to a sufficient extent, it is very likely to cause a certain restructuring in the legal systems. In this particular case, only about two decades after Bentham's work in 1806 the French Code of Civil Procedure was adopted.

In this paragraph of the study, we also systematize the views regarding the division of the law into substantive one and procedural one. The classification that we propose divides the views on the issue based on whether the division reflects any objective characteristics of the legal order or is entirely subjective in nature and doesn't reflect such characteristics. Thus we divide the views into *positive* and *negative.* Next, within the views of objective nature of the division, we distinguish *theories of the equivalence* and *theories of the non-equivalence* between the substantive and the procedural law. The criterion we use is whether the authors consider the relationship between these two branches of the law as one of subordination or of equality. As a final step of systematization, within the subset of views that see objective grounds for the classification and understand the relationship between the two branches as one of subordination, we define two other subsets. One is the subset of theories that give primacy to the substantive over the procedural branch of law, and the other is the subset of theories that give primacy to the procedural over the substantive branch of law. Prevailing are the *theories of the equivalence* between the substantive and the procedural law. According to these theories, the two branches of law are in a complementary relationship.

3. Derivation of a working hypothesis of the concept of "procedural legal norm".

Based on the conclusions made in § 2, in the last **§ 3** of the first chapter, we derive our working hypothesis of the concept of "procedural legal norm".

From the history of the division and the analysis of the various authors, we came to the conclusion that the content of our working concept of "procedural legal norm" should include a sign regarding the specific functions that procedural norms perform within the legal order. For this purpose, we interpret the division of norms into substantive and procedural, within the context of Hart's idea of primary and secondary rules, because it also rests on a functional distinguishing criterion. In preparation for this, we thoroughly analyze Hart's vision of the law as unity of primary and secondary rules. In the course of our work, we further develop the generally accepted understanding that in every legal order there are two subsets of norms, which are at different levels from each other an respectively perform different functions. We argue that, in essence, the subsets of primary and secondary rules relate to each other as a system to a metasystem. Thus, comparing the characteristics of primary and secondary rules with the characteristics that different authors attribute to procedural norms, we come to the conclusion that *procedural norms belong to the subset of secondary rules.* Based on this, we derive our *working hypothesis of the concept of "procedural legal norm"*, according to which:

- *procedural legal norms are secondary, public norms with a law-implementing nature.*

In the process of deriving the definition, we make the important conclusion that outside the defined set of procedural legal norms, there remain other norms that have extremely inhomogeneous characteristics. Putting them all under a common denominator is unsatisfactory from the point of view of the research task we have set ourselves. Especially considering that among them there are also norms that reveal a certain procedural nature. Due to their private law nature, however, they remain outside the scope of our working hypothesis of the concept of "procedural legal norm". Thus arises the need to check, and if necessary, redefine the latter. The **second chapter** of our study is devoted to solving this problem.

Chapter two.
Procedural law in the system of the juridical procedures

The previous chapter ends with the conclusion that outside our working hypothesis of the concept of "procedural legal norm" there are other norms that also reveal a certain

procedural character. Therefore in Chapter two of the study, we direct our efforts in two directions. The first is clarifying the essence of the norms that also reveal a certain procedural character. The second is the verification of our working hypothesis of the concept of "procedural legal norm" and adoption of a final concept of a procedural legal norm.

1. The division of the law into substantive and procedural is not without reminder.

Our conclusion that there are private law norms, that also reveal a certain procedural character, directs us to look for different points of view to clarify their essence. We ask ourselves the question, if a norm belongs to the private law, does it necessarily mean that it also belongs to the substantive branch of the law?

In an attempt to provide an answer, we turn our attention to the language of the practitioners. In this regard, we analyze some judicial decisions that refer to the application of the norms governing the activity of the general meeting of the joint-stock company under our Commercial law. Our conclusion is that the court finds it appropriate, in relation to these norms, to "bring" to the sphere of private law, part of the terminological apparatus used in procedural law branches. At the same time, there is no reason to claim that, according to the court, the norms relating to the activity of the general meeting of the joint-stock company actually belong to any of our procedural legal branches. We perceive the analyzed judicial decisions as an indicator that the division of norms into material and procedural is not exhaustive. Probably, in this case, the intuition of the practitioners points us to a subset of norms for which the prevailing understanding of the division of the law into substantive and procedural doesn't offer a sufficiently detailed explanation. This leads us to the assumption that beyond the set of the procedural norms, alongside the material ones, there are also other norms that reveal a certain procedural nature. However, due to their private law nature, these norms also reveal significant differences from the classical understanding of a procedural norm. Based on this, we set ourselves two tasks. The first is *to deepen our understanding of these norms*. The second is *to carry out a new assessment and, if necessary, to redefine our working hypothesis of the concept of "procedural legal norm"*. Only then can we proceed to the construction of the procedural legal phenomenon as object of our study.

To clarify the situation, we turn our attention to the Russian theory where there is a rich tradition in general theoretical studies of the procedural law. This tradition dates back to the end of the 19th and the very beginning of the 20th century. In their initial stages of

development, these studies represent an attempt to discover the principles that are common to the various procedural disciplines. Around the beginning of the second half of the 20th century, the idea evolved into attempts to bring all norms that possess some procedural essence under a single set. This is how the concept of "procedural law in a broad sense" was born. Over the years, this broad concept of procedural law has been subjected to criticism related, above all, to the extraordinary variety of norms that fall within its scope. In order to overcome the criticism, there are systematic attempts to work out a generic concept for all norms that reveal a procedural character. Then, within this generic concept, a number of species concepts should be distinguished, which helps to take into account the different specificities of the norms. One of these attempts, that of Protasov, is further developed into the idea that within the framework of the General Theory of Law, a General Procedural Legal Theory can be distinguished. Thus, in our research, we distinguish three main directions in the development of the general theoretical analysis of the procedural law in Russia. These are the idea of Judicial law, the idea of "procedural law in a broad sense" and Protasov's idea of General Procedural Legal Theory.

The idea of Judicial law, as an independent legal discipline dealing whit the commonality between all of the procedural branches, is reached through a comparative legal analysis[7] between the civil, penal and administrative procedural law. It is considered that the procedural law is always related to court's activity.

The idea of "procedural law in a broad sense" arises as an alternative to that of Judicial law. The aim is to reach general theoretical knowledge that covers the whole variety of proceedings, including non-judicial ones. In this way, the theory begins to speak of procedural law in the broad and narrow sense of the word. In a narrow sense, it refers to proceedings that take place before a court. In a broad sense, it refers to all proceedings before a state body, whether judicial or not. The main criticisms leveled at the idea of a "procedural law in a broad sense" are twofold. According to the first one, the broad understanding of procedural law leads to the concept losing its definiteness. The other criticism is that of Protasov, who draws attention to the fact that the boundaries of the concept of procedural law are unjustifiably narrowed, leaving out of it these procedural norms and relations that are not related to law implementation.[8]

[7] In this sense **Солдатова О. Е.** Юридический процесс как категория общей теории права. – Известия Алтайского государственного университета, 2014, p. 154.
[8] ***Протасов В.Н.*** Основы общеправовой процессуальной теории. М.: Юрид. лит., 1991, p. 50.

Protasov's idea of General Procedural Legal Theory doesn't rest on a complete negation of the idea of "procedural law in a broad sense". On the contrary, it represents an alternative approach that actually further expands the range of norms that fall within the scope of scientific interest. It's based on his idea that any general procedural legal theory must define theoretical positions that relate to all procedural phenomena and offer a criterion for distinguishing the substantive from the procedural within the legal system.[9] Protasov clarifies the concept of "procedural law", placing it in the context of a broader concept – that of "juridical procedure". He divides juridical procedures into law-implementing and law-making.[10] As a next step, Protasov divided the law-implementing procedures into substantive and procedural, depending on the nature of the legal relationship that they implement. At the base of the substantive juridical procedures the author places the regulatory legal relations, and at the base of the procedural ones – the substantive-protective legal relations.[11] Thus, he comes to the conclusion that the distinction between the substantive and the procedural within the legal order, must be made, inside, the set of the juridical procedures, between those who implement regulatory legal relations and those who implement substantive-protective legal relations.[12] In turn, Protasov divides the substantive juridical procedures depending on their relationship to law implementation. Thus, substantive juridical procedures are divided into those that aren't related to law implementation and those that are related to it. The juridical procedures that are related to the law implementation are characterized by the participation of a person who exercises governmental competence. In turn, procedures not related to law implementation, according to him, are characteristic of civil law regulation, such as the procedures by which the contracting parties create their rights and duties.[13] Protasov successfully shows that there are also phenomena in private law that reveal a certain procedural nature. Thus, compared to the ideas of procedural law in a broad and a narrow sense, Protasov offers a significantly more systematized and extensive conceptual apparatus.

The Russian author's conclusion about the existence of private law phenomena, which also reveal a certain procedural nature, is confirmed by our own analysis of some court decisions discussing the implementation of disciplinary liability under the Labor Code in force in our country.

---

[9] *Ibid.*, p. 4.
[10] *Ibid*, p. 29-31.
[11] **Протасов В. Н.** Основы общеправовой..., p. 31.
[12] In this sense, *Ibid.*, p. 36.
[13] *Ibid.*, p. 32-33.

The confirmation that the multitude of phenomena that reveals a certain procedural nature exceeds the sphere of public law also predetermined the next steps of the study. In order to assess whether to continue to adhere to our working hypothesis of the concept of "procedural legal norm", according to which these are norms of the public law, we, as Protasov does, also derive a generic concept for all norms that reveal a procedural nature, and in its framework we define species concepts. The task is to interpret our working hypothesis of the concept of "procedural legal norm" in the context of the obtained classification of the types of the juridical procedures, and to answer the question, is it necessary to redefine or specify it.

2. Concept of "juridical" procedure". Procedural law in the system of the juridical procedures.

§ 2 of this chapter of the study is concerned with the derivation of a generic concept of juridical procedure.

The paragraph begins with preliminary remarks of a methodological nature. This is necessary because the derivation of a generic concept that covers all norms revealing a certain procedural nature is a position that we adopt from Protasov's methodology. Therefore, it's necessary and useful to discuss in advance what we can take from his work as a whole without creating logical contradictions in the methodology of the dissertation.

We find some problematic moments in the two classifications of legal relations that Protasov uses to systematize juridical procedures. The division of legal relations depending on whether their genesis is outside or inside the legal mechanism is characterized by high uncertainty arising from the abstract distinguishing criterion by which it is derived. In addition, the division is carried out from a perspective external to law, which is incompatible with the juridical method that is central to our study. The other classification, divides the legal relations into regulatory and substantive-protective ones. Although it is made on the basis of an internal point of view, relative to the legal order, it remains with unsatisfactorily clarified fundamentals. One thesis is that the classification rests on the functional specificities of the norms that give rise to the two types of legal relations. The other is that it reflects specificities in the juridical technique used to form the linguistic expression of the legal provisions that objectify the norms. We show that regardless which one of the theses we adopt, we'll not be able to fully reconcile the classification with Hart's primary and secondary rules, on the basis

of which we derive our working hypothesis of the concept of "procedural legal norm" – *secondary, public norms with a law-implementing nature.*

Thus, we come to the conclusion that in order to derive a generic concept for all norms that reveal a procedural nature and to interpret the procedural legal norms within its framework, it is necessary to take an internal point of view when defining a criterion for the classification of juridical procedures. That requires that we do not to use the classification of legal relations depending on whether they have their genesis outside or inside the legal mechanism because it is carried out from a point of view external to law. Nor should our criterion rest on the division of legal relations into regulatory and substantive-protective ones, because this classification does not have the degree of definiteness necessary for the purpose.

Another reason to look for an alternative to the approach chosen by Protasov is related to the juridical method, adopted by us as the main one. From the point of view of this method, the legal relationship is a derivative of the legal norm. Therefore, we prefer to base the classification on specific features of the legal norms. That's why:

- *in deriving a generic concept for all norms that reveal a procedural nature, and in the subsequent classification of the juridical procedures, we will stick to the conclusions we made while interpreting procedural law in the context of Hart's primary and secondary rules;*
- *we'll distinguish the procedural from the rest of the legal norms by using a criterion based on the forms of law realization, because the forms themselves are distinguished from each other based on the specifics of the norms that have been realized through them.*[14]

The first essential step towards the derivation of a generic concept for all norms that reveal a procedural nature is the selection of initial data from which to reach the concept of interest. Our starting point is Protasov's concept of "legal procedure and Stalev's concept of "proceedings". We compare the two concepts in order to answer the question, which of them cover the group of juridical facts of the contract. In this regard, a significant difference between proceedings and juridical procedure stands out. According to Protasov, the group of juridical facts of the contract can be defined as a juridical procedure. He uses it as an example of substantive juridical procedure unrelated to law implementation.[15] Stalev, for his part,

[14] *Cfr*. Chapter two, § 3, item. 2.1 of the dissertation.
[15] *Cfr*. *op.cit***.** Основы общеправовой..., p. 32.

accepts that although it belongs to the category of complex, sequentially occurring groups of juridical facts, the group of juridical facts of the contract does not fall within the scope of the concept of proceedings.[16]

We agree that the group of juridical facts of the contract is not a dynamic one. However, we do not share all the arguments that Stalev gives in this sense. group of juridical facts of the contract possesses much more of the signs of the concept of proceedings than Stalev accepts. The closeness of the group of juridical facts of the contract to the nature of the dynamic groups of juridical facts allows a conclusion to be drawn. It is that *the derivation of a generic concept for all norms that reveal a procedural nature requires a more detailed intra-species division, within the set of complex, sequentially occurring groups of juridical facts.*

Therefore, as a next step toward the derivation of *a generic concept for all norms that reveal a procedural nature, we compare the concept of proceedings to the* group of juridical facts of the contract, which also reveals a certain procedural nature. Our choice is determined by the extremely small number of steps that make up the minimally required content of this group of juridical facts. This guarantees that the signs of the concept of dynamic group of juridical facts, which are also manifested in the group of juridical facts of the contract, will outline the minimally required content of *the generic concept for all norms that reveal a procedural nature.* If we choose a group of juridical facts that includes more steps, there is a greater risk for our generic concept to include signs that are species rather than generic ones. Thus, we come to the conclusion that within the set of complex, sequentially occurring groups of juridical facts, a subset can be singled out, that defines itself by the following signs:

- *sequentially occurring;*
- *legally secured;*
- *multifaceted;*
- *gives rise to three types of legal consequences;*
- *reveals an internal legal relevance of the actions included in them;*
- *possess the capability of pendency and possibilities of being separated into phases and stages;*
- *possess capability of suspension.*

[16] ***Сталев Ж.*** Производството като динамичен фактически състав. – В: Годишник на СУ „Св. Климент Охридски”, ЮФ, т. LVI, 1965.

We call the groups of juridical facts that have these features "procedural groups of juridical facts". Based on this, we derive a generic concept for all norms that reveal a certain procedural nature. According to it:

- *these are norms that belongs to a system of norms, the hypotheses of which contain juridical facts, that in their unity, build up a procedural group of juridical facts.*[17]

3. Procedural law in the system of the juridical procedures.

§ 3 of the second chapter of the dissertation deals with the derivation of a classification of the juridical procedures. It is also concerned with the interpretation of our working hypothesis of the concept of "procedural legal norm" in its context and the adoption of a final concept for the purposes of the study.

The derived generic concept for all norms that reveal a procedural nature distinguishes legal phenomena that reveal certain procedural nature from all others.

We carry out the classification of the juridical procedures depending on which of the forms of law realization the norms governing a given juridical procedure are aimed at. Keeping in mind, by which form of law realization the norm of a certain juridical procedures has been realized, we achieve a systematization of the juridical procedures, which is entirely deducible through the juridical method.

Therefore, before carrying out the systematization itself, we present our view on the forms of law realization. Our thesis is that law realization is carried out through three, which we call "direct" and two, which we call "indirect" forms. The direct forms are *obedience*, *execution* and *use*. The indirect forms are law implementation and creation of legal norms outside the activity of law implementation. Our view rests on Kelzen's understanding that there is no fundamental difference between the general and the individual norms and that, except for the creation of the basic norm and the norms that could be directly realized, the realization of all other norms is both application and creation of law.

All juridical procedures are realized through the indirect forms of law realization. At the highest level of abstraction, we divide juridical procedures into law implementing and juridical procedures outside law implementation. The criterion is whether a given procedure regulates the creation of norms by the state or regulates such creation of norms that is not a

[17] *Cfr*. Chapter two, § 2, item 3 of the dissertation.

state activity. As a next step, depending on the nature of the rule of conduct, we divide law-implementing juridical procedures into *those through which general legal norms are created and those through which individual legal norms are created.* Law-implementing juridical procedures, which establish individual legal norms, are, in turn, divided in to judicial and non-judicial ones. Finally, judicial procedures are divided depending on whether they take place before the court or before another authority.

We interpret our working hypothesis of the concept of "procedural legal norm" in the context of the classification and thus we arrive at the conclusion that:

- *procedural law these are the law-implementing juridical procedures.*

As a last step in this chapter, we derive our final concept of procedural legal norm. The interpretation of procedural law as type of a juridical procedure allows us to use the signs of the generic concept for all norms that reveal a procedural nature to refine our working hypothesis of the concept of "procedural legal norm". In this way, we derive our final concept of procedural legal norm, according to which:

- *the procedural legal norm is a public law norm that belongs to a system of norms, the hypotheses of which contain juridical facts, that in their unity, build up a dynamic group of juridical facts.*

Through this concept, we construct the procedural legal phenomenon, as an object of our study.

Chapter three.
Specificities of the procedural legal phenomenon

This chapter of the study is concerned with analyses of the specificities of the elements of the procedural legal phenomenon. But before this, we are dealing with to other issues. The first one is our view of the sanction as an independent and necessary element of the legal phenomenon. The second one is our methodological point of view to the question of the ratio between the substantive and the procedural in law.

1. Concept of procedural legal phenomenon.

1.1 The sanction as element of the procedural legal phenomenon.

Our view is that essential and necessary elements of the legal phenomenon are the juridical fact, legal consequences, legal entity, object of the right, the legal norm and *the sanction*. Regarding the first five elements, there is no disagreement in the doctrine. However, this is not the case with the sanction. Some authors consider it as a non-independent element belonging to one of the first five that we mentioned. It is for this reason that it is necessary to argue in detail why we consider the sanction to be an independent, essential and necessary element of every legal phenomenon.

At different places in his work, Venelin Ganev spoke in different ways about the sanction. This leaves room for different interpretations. In some places, he talks about sanctional legal consequences. In other places, he talks about sanctional subjective rights, and also about sanctional legal norms. In our opinion, each of the different contexts in which he uses the term "sanction" describes different aspects of the concept. According to Venelin Ganev, "the non-handover, for example, of the purchased object is not the constitutive sociological element of the legal phenomenon of sale, but a sociological and legal prerequisite for seeking damages and losses, sociological elements of a new group of legal phenomena, of unlawful and sanctional legal phenomena".[18] If we perceive the sanction as a legal phenomenon, it becomes completely clear why the author talks about sanctional legal consequences, sanctional subjective rights or sanctional legal norms.

We also discuss the question of whether the interpretation of the sanction as a complete legal phenomenon does not lead to contradiction with the author's thesis that all legal phenomena contain the sanction as their essential and necessary element. We give a negative answer to this question, because the sanctional legal phenomenon can be considered, not as independent phenomenon, but as independent *recursive element* of another legal phenomenon, whose normal realization it ensures. Recursive is that element of a system whose structure represents a reduced model of the structure of the entire system.[19] From this point of view, the sanction, as an element of the legal phenomenon, itself, represents a legal phenomenon that is functionally subordinate to the legal phenomenon of which it is a part.

---

[18] ***Ганев В.*** Учебник по Обща теория на правото. Част първа. Второ допълнено издание. С.: 7М График, 1990, p. 19. Italics in the quote are mine (n. auth.).

[19]For details on the concept of "recursiveness", *cfr*. ***Хофстатър Д.*** Гьодел, Ешер, Бах. Една гирлянда към безкрайността. С.: Изток-Запад, 2011, p. 235-267.

The legal phenomenon, to whose elements a given sanctional legal phenomenon is counted, we call a basic legal phenomenon.

1.2 On the substantive and procedural aspects of the law.

In this part, we discuss our methodological perspective on the relationship between the substantive and the procedural aspects of the law. Briefly, our view is that the in-depth understanding of the procedural law that our study offers does not automatically leads to a deeper understanding of the substantive law too. We justify our view with the combined manifestation of two circumstances. One is the presence of juridical procedures outside the procedural law. The other is the high degree of uncertainty of the concept of substantive law. These two considerations do not allow us to simply assume that substantive law encompasses all phenomena that remained outside the procedural law.

The only thing we can reasonably assume is that the legal phenomena that remain outside the set of the procedural legal phenomena can be qualified as non-procedural, because they do not possess all the signs of the concept of a procedural legal phenomenon. The question of whether they are all substantive, in our opinion, requires the preliminary derivation of a concept of substantive law, with a methodology analogous to that of the present study. Only then, from a purely juridical point of view, could a scientifically substantiated statement be offered regarding the relationship between the substantive and the procedural aspects of the law.

2. Specificities of the procedural legal phenomenon.

The rest of the study is devoted to some of the specificities of the individual elements of the procedural legal phenomenon.

Thus, with regard to the juridical facts, we identified the following specificities:

- *the hypotheses of procedural legal norms function as dynamic groups of juridical facts, therefore*
- *they possess the property of recursion;*

- *the legislative procedural presumptions and fictions can be subdivided depending on which one of the three groups of legal consequences of the dynamic group of juridical facts they give rise to;*
- *the legislative presumptions and fictions, which give birth to initial or intermediate legal consequences of the proceedings, cannot, at the same time, directly give rise to consequences outside the dynamic group of juridical facts;*
- *the legislative presumptions and fictions, which give birth to the consequences of the final act, can, at the same time, directly give rise to consequences outside the dynamic group of juridical facts.*

These conclusions can serve as a practical tool in the interpretation of the procedural legal norms that contain presumptions and fictions.

Since they arise from the realization of dynamic groups of juridical facts, the procedural ***legal consequences*** are three types. First are the consequences that set the beginning of the group of juridical facts. They are followed by the intermediate ones. And last are the consequences of the final act. As a contribution, we consider the specificities of the intermediate legal consequences that we derived, namely that:

- *all rights included as an intermediate legal consequence in a given dynamic group of legal facts are relative ones, therefore*
- *intermediate procedural legal consequence cannot be realized through legal connection.*

Thus, the traditional understanding of the procedures as a legal relationship receives another theoretical argument.

Among the specificities of ***the procedural legal sanction*** we identified:

- *its recursive character;*
- *the inevitable participation of a person exercising governmental power as a sanctioning authority;*
- *persons that are external to the main procedural legal phenomenon may also suffer a procedural sanction;*
- *the purpose of the legal sanction is limited to the framework of the proceedings. This reflects on the variety of sanctions. It is significantly poorer;*

- *the object of protection of the procedural sanction is the main procedural phenomenon of which the procedural sanction is itself a part.*

Among the specificities of ***the persons of the procedural legal phenomenon*** are:

- *the fact that at least one of the participants is a person who exercises state power;*
- *the figure of the special representative that is unknown outside the procedural law.*

Specificity is also established regarding **the object as an element of the procedural legal phenomenon:**

- *the legally-relevant good, on the occasion of which it develops, is the extra-procedural relationship, on the occasion of which, in turn, the procedural legal phenomenon itself takes place.*

We also discuss the thesis that also a specificity of the procedural law is that the same proceeding is used in the event of a violation of regulatory norms and relations from different branches of law. It is our opinion that this cannot be highlighted as specificity, because the validity of the statement depends on the level of abstraction in its interpretation and on the legislative approach in constructing the legal framework.

We devoted the last point of the study to the ***procedural legal norm.*** As its specificities we highlighted that:

- *"procedurality" is not an entirely intrinsic quality of the procedural norms. It arises as a combination of specifics of the norm and factors external to it, such as the specific way of organizing it into subsystems with other norms;*
- *procedural legal norms have metasystemic character in relation to Hart's primary rules;*
- *the new procedural norms have retroactive effect stricto sensu and constitutes an exception to the principle of prohibition of retroactive effect.*

Of course, we do not pretend that the listing of specificities is exhaustive. However, we believe that in their combination, these features are quite sufficient to propose a general-theoretical distinction of procedural from all other legal phenomena. This fully satisfies the objective of the study.

III. Summary of the main contributions.

1. The dissertation deals with the problem of the specificities of the procedural law from a completely general-theoretical point of view.
2. The used methodology offers a completely juridical point of view. This overcomes the need to clarify the specificities of the procedural law by direct reference to philosophical categories.
3. The methodology of the dissertation allows it to be applied to other general-theoretical problems.
4. The dissertation offers a conceptual apparatus which, due to the fact that it has been derived by using the juridical method, can be easily integrated into the system of concepts of the General Theory of Law. Such are the concepts of *procedural group of juridical facts, the generic concept of all norms that reveal a certain procedural nature* and *the concept of procedural-legal norm.*
5. A number of specificities of the individual elements of the procedural legal phenomenon are identified.
6. We make specific methodological conclusions that can serve in future research of the specificities of the substantive law and its relation to the procedural law.
7. The argumentation that we present in support of the fact that in the theoretical-interpretative framework of the legal phenomenon, Kelsen's concept of an individual norm, can also be used without logical contradictions is also a contributing point.
8. The proposed systematization of the views on the substantive\procedural division of the law is also a contribution.

IV. Publications on the subject of the dissertation.

1. Report *„The Sanction as an Element of the Legal Phenomenon of Prof. Venelin Ganev”*, Collection of the reports of scholarly readings: “Sanctions in the Law”, Sofia, 2019, University Press „St. Kliment Ohridski“, p.164-176;

2. Summary of speech *„The importance of procedural law for the mechanism of legal regulation in modern legal systems“*, placed in Korotkova's Scientific Message *„Quo Vadis, Justitia? Development of legal systems from the perspective of law faculties“*, Journal “State and Law”, 2019, № 9, p. 166;

3. Report *„Procedural Law and Juridical Procedure”*, Collection of the reports of scholarly readings: „Law and Borders“, Sofia, 2018, University Press „St. Kliment Ohridski“, p.128-136;

4. Report *„A Distinction Between the Procedural and Substantive Law by Analyzing Their Purpose in the Process of Legal Regulation”*, Collection of the reports of a scientific conference „Current Problems of Legal Regulation of Business ”, Sofia, 2019, Publishing Complex – UNWE, p.321-331;

5. Report *„The Procedural Norms in the Context of the Classification of Norms of Primary and Secondary*, Collection of the reports of scholarly readings: “Legal Norms and Legal Principles”, Sofia, 2017, University Press „St. Kliment Ohridski“, p.521-532.