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General Principles of Law as Common Constitutional Traditions of the European Union Member States

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The article examines the notion of “common constitutional traditions” of the European Union Member States looking for the content of this open-ended term. It is agreed and even on the international level that fundamental rights are the part of the common constitutional traditions, but in this article, it is suggested to connect the notion with the notion of the general principles of law thus obtaining more comprehensive and elaborate understanding of what the content of the common constitutional traditions really involve. General principles of law are a common source of law to all the legal arrangements of the European Union Member States as they are derived from the same Basic Norm – democratic state based on the Rule of Law, and fundamental rights are only one part of the general principles of law as they are much wider notion. That is why looking from the perspective of the general principles of law as common source of law of all the legal arrangements based on the Basic Norm – democratic state based on the Rule of Law common constitutional traditions besides the human rights involve also legal methods and those general principles of law which govern the system requirements for the legal arrangement.

Keywords: general principles of law, common constitutional traditions, Basic Norm, constitutional identity, values.

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Introduction

What we know exactly about the meaning and content of common constitutional traditions is that it is an open ended term left in the text of the law by the legislator in a form of an intentional gap in law, and thus should be filled with the contents by the applier of a legal norm using the legal method of *praeter legem*¹. Nevertheless, this gives us the possible content of the term within the typology of cases or typical cases methodology. It means that although the norm applier is the one who fills the content of the open ended term in the given case at hand the content is already pre-set by the similar – typical cases and it has to ensure the same values and legal interests which are protected in those other similar cases.

One of the main questions, which could be raised about common constitutional traditions is whether they involve only fundamental rights which, of course, are general principles of law or the term is broader and involves also other elements of the Rule of Law. Further, if it does involve other elements of the Rule of Law then what are they exactly? According to the opinion of the Venice Commission² besides the respect for human rights the Rule of Law involves also legality (supremacy of the law), legal certainty, prohibition of arbitrariness, access to justice before independent and impartial courts, and non-discrimination and equality before the law. Legal doctrine in Latvia has gone much further than that in finding the true content of the Rule of Law and connects it directly with the notion of the general principles of law.³

The author of this paper suggests to put the general principles of law in the centre of the discussion on what the common constitutional traditions are, in connection with the legal arrangement of the state which is based on the Basic Norm – democracy and the Rule of Law – as all the Member States of the European Union are – and answer to the above questions would come straightforward from the meaning and application practices of the term “general principles of law” and that for sure would include all the aforementioned elements of the Rule of Law agreed on by the Venice Commission, but also even some more legal provisions.

1. Modern legal theory and legal arrangement

The notion of common constitutional traditions is mentioned not only starting with the early case law⁴ of the Court of Justice of the European Union (the Court),

¹ On *praeter legem* method see extensively in: *Sniedzīte, G. Tiesību normu iztulkošana praeter legem I, II, III (Interpretation of the Legal Norms Using Praeter Legem Method)*. Likums un Tiesības, 2005, Nr. 10, 325.–331. lpp., Nr. 11, 351.–358. lpp., Nr. 12., 374.–382. lpp.

² Report on the Rule of Law. European Commission for Democracy through Law (Venice Commission). Adopted by the Venice Commission at its 86th plenary session (Venice, 25–26 March 2011). Available: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2011\)003rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)003rev-e) [last viewed 10.04.2022].

³ See extensively on the theory of general principles of law in: *Rezevska, D. Vispārējo tiesību principu nozīme un piemērošana [The Meaning and Application of General Principles of Law]*. Rīga: D. Rezevska izd., 2015.

⁴ In the *Internationale Handelsgesellschaft* case (Judgment of 17 December 1970, *Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel*, C-11/70, EU:C:1970:114) the Court stipulated for the first time that the protection of fundamental rights at the Community level, “inspired by the constitutional traditions common to the Member States, must be ensured within the framework of the structure and objectives of the Community.” Or even before that, looking at the reasoning in the *Algera* judgment of 1957, where after discussing the possibility of revoking unlawful administrative acts, and having clarified that this was “a problem which is familiar in

but also it is *expressis verbis* referred to in the Article 6 (3) of the Treaty on European Union⁵ as “the constitutional traditions common to the Member States”. From the text of the Article it is clearly to be concluded that fundamental rights are by no means a part of these common constitutional traditions. But what else this notion covers? To understand that it is necessary to consider the notion of the values of the legal arrangement, namely values protected within the particular legal arrangement. The term “legal arrangement” is used here to refer to the system that encompasses the broadest possible issues of law in a given country: all the legal phenomena of that country’s society, including both legal and institutional issues. Thus, the legal arrangement covers: 1) all sources of law, including legal acts adopted (issued) or otherwise binding in the state; 2) all institutions that are in some way related to the application of law (both judicial and administrative institutions); 3) all the legal relations that have arisen and exist in this arrangement.⁶

At the same time, it is crucial to understand the meaning of a legal norm in the contemporary legal theory. Modern legal theory holds that there are two radically different and incompatible ways of understanding legal norms – the hyletic understanding and the expressive understanding of legal norms.⁷ These, in turn, are based on the concept of natural law and the concept of positive law respectively. The hyletic approach holds that legal norms are conceptual units which exist irrespective of language but can be expressed linguistically – for example, through sentences which possess a prescriptive meaning. The expressive understanding holds that legal norms are instructions, which is the result of the prescriptive use of language.

This article is based on the fundamental postulate that in a democratic country, where the Rule of Law prevails, a legal norm is no longer viewed exclusively in the context of a normative legal act. Rather, it is seen as a prescription, with respect to which legal arrangements that are based on sovereign’s will regulate legal relationships on the basis of general principles of law in a specific country, irrespective of whether the legislature has managed to verbalize the norm to an adequate degree. A legal norm is more than just the text, and in terms of its scope it can coincide with the written text or not coincide with it.

the case-law and learned writing of all the countries of the Community, but for the solution of which the Treaty does not contain any rules,” the Court concluded that “unless the Court is to deny justice it is therefore obliged to solve the problem by reference to the rules acknowledged by the legislation, the learned writing and the case-law of the member countries.” (Joined Cases C-7/56, 3/57 to 7/57, *Algera v. Common Assembly of ECSC*, ECLI:EU:C:1957:7, Judgment of 12 July 1957, para. 55).

⁵ “Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union’s law.” The Treaty on European Union. Available: https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF [last viewed 10.04.2022].

⁶ See similar in: *Rezevska, D.* Legal Methods in Latvia’s Legal Arrangement and European Integration. In: *European Integration and Baltic Sea Region: Diversity and Perspectives. Collection of Papers of International Conference held by the University of Latvia.* Riga: The University of Latvia Press, 2011, pp. 222–234.

⁷ *Weinberger, O.* The Expressive Conception of Norms: An Impasse for the Logic of Norms. In *Normativity and Norms: Critical Perspective on Kelsenian Themes.* Paulson, S. L. (ed.). Oxford: Clarendon Press, 1999, p. 413. See also: *Alchourron, C. E., Bulygin, E.* The Expressive Conception of Norms. In: *Normativity and Norms. Critical Perspectives on Kelsenian Themes.* Paulson, S. L. (ed.). Oxford: Clarendon Press, 1999, pp. 384–385.

1.1. The Basic Norm – democratic state based on the Rule of Law

What is common to all the legal arrangements of the Member States of the European Union is that they all are founded on the basis of the same Basic Norm⁸ – democratic state based on the Rule of Law, proclaimed by the respective sovereigns – the people. Otherwise, they would never be able to join this union, and at the same time it sets compulsory quality features to the legal arrangements of these countries. It means that to continue to be the Member State of this union it is not enough that at one point in history the state corresponded to the criteria established by the Basic Norm – democratic state based on the Rule of Law, but it has to continue to obey these requirements and to function and develop on the basis of these requirements constantly and continuously. What are these requirements? They are general principles of law – unwritten legal norms as from the point of view of natural law doctrine, but as generally binding as any positive law as also recognized by the legal positivism – thus serving as a conciliator phenomenon between these two doctrines. General principles of law are derived from this particular Basic Norm, governing the legal arrangement of the state, setting limits to the legislature, executive, and the courts but also to the sovereign itself.⁹ The Constitutional Court of the Republic of Latvia (the Constitutional Court) has recognized the doctrine of the Basic Norm – the sovereign’s will which defines the content of the respective legal arrangement, namely, it speaks to the type of country in which the sovereign wishes to live, and in its case law (starting 2016) has *expressis verbis* stated:

The principle of the protection of legitimate expectations derived from the Basic Norm – democratic state based on the Rule of Law, and embodied in the scope of Article 1 of the Satversme protects only those rights which are based on legal, justified and reasonable expectations, which are the core of this general principle of law¹⁰

or

One of the general principles of law derived from the Basic Norm democratic state based on the Rule of Law is the principle of the rule of law. It requires the existence of such a system of law where the legal regulation that does not comply with the Constitution or other legal norms of higher legal force would

⁸ On the original notion of basic norm see: *Kelsen, H.* Introduction to the Problems of Legal Theory. A Translation of the First Edition of the *Reine Rechtslehre* or Pure Theory of Law. Oxford: Clarendon Press, 2002, pp. 58–59. In his “Pure Theory of Law: Introduction to the Problems of Legal Theory”, Hans Kelsen argued that all norms gain their legal force from a basic norm, or *Grundnorm* in German. This is an unwritten norm from which even a formal constitution draws its power. The basic norm, as Kelsen understands it, is a hypothetical assumption of the regulations which define the procedure for approving the initial constitution or a new constitution is there has been a revolutionary breakdown in the system of state. Moreover, the basic norm is propounded as the means of giving unity to the legal system and enabling the legal scientist to interpret all valid legal norms as a non-contradictory field of meaning. For more on this see also: *Pleps, J.* Normatīvo tiesību aktu hierarhija: profesors Hans Kelsens un mūsdienas (I) [The Hierarchy of Acts of Legal Norms: Professor Hans Kelsen and the Present Day]. *Likums un Tiesības*, 2007, Nr. 2, p. 49.; *Morton, P.* An Institutional Theory of Law: Keeping Law in Its Place. Oxford: Clarendon Press, 1998, p. 7.; *Freeman, M. D. A.* Introduction to Jurisprudence, Sweet & Maxwell Ltd., London, 1994, pp. 282–289.

⁹ See more detailed on this: *Rezevska, D.* Legal Methods, pp. 222–234. This conclusion is also based on the principle of militant democracy; for example regarding this, see: *Rijpkema, B.* Militant Democracy. The Limits of Democratic Tolerance. New York: Routledge, 2018.

¹⁰ Decision of the Constitutional Court of the Republic of Latvia in case No. 2016-03-01 on 21 October 2016, para. 13. Available in Latvian: www.satv.tiesa.gov.lv [last viewed 10.04.2022].

*be eliminated as completely as possible [...] The principle of the rule of law in a democratic state based on the Rule of Law also imposes requirements on the legislative process [...] These requirements form the content of the principle of good legislation derived from the principle of the rule of law.*¹¹

Nevertheless, it is suggested that legal arrangements of the European Union Member States regarding their systems of fundamental rights protection, despite having a handful of similarities, have some core differences. Namely, that each has their own history which has led to its own specific legal language and legal tools. All of the differences can undeniably lead to divergences in the judicial interpretation of the same fundamental right, which can naturally lead to, among other things, different standard of protection of the said right and to differences in balancing it with other interests and other fundamental rights.¹² But is it really so? Can these legal arrangements, which are based on exactly the same Basic Norm, have core differences in the “interpretation of the same fundamental right”?

Author of this article strongly suggest that it cannot be the case. Moreover, it cannot be true, if the justifying argument for this is their “own specific legal language and legal tools”. In fact, with this type of arguments we can see that the discourse of written legal norms versus unwritten is brought to the centre of this argumentation. Namely, legal thinking based on the legal positivism versus legal thinking based on the natural law doctrine. What prevails – the written legal norms as they are positivized by the legislature in the texts of the constitutions, or the unwritten legal norms which are derived from the Basic Norm – democratic state based on the Rule of Law, as well as exist and are valid before the legislature, and set limits to the discretionary power of the legislator including the power to decide on the contents of the written legal norms. As these contents are already determined by the Basic Norm – these written legal norms should correspond to the Basic Norm and general principles of law derived from it.

Following this way of thinking – based on the natural law doctrine, one can clearly see that unwritten norms derived from the same Basic Norm cannot differ in their core from country to country, but what can be different actually are the wordings of the texts of written legal norms adopted by the specific legislator. At the same time, it does not and even cannot change the content of the unwritten legal norms as written text of the articles of the constitutions in parts where they describe general principles of law are only guidelines to the content of these general principles of law, and thus are subordinated to the unwritten legal norm – general principle of law.

1.2. Legal arrangement and natural law thinking

The doctrine of the general principles of law is based on the natural law doctrine¹³ and the hyletic approach to the concept of legal norms as only within the natural law thinking philosophy it is possible to reach the ultimate goal of the democratic and

¹¹ Judgement of the Constitutional Court of the Republic of Latvia in case No. 2018-11-01 on 6 March 2019, para. 18.1. Available in Latvian: www.satv.tiesa.gov.lv [last viewed 10.04.2022].

¹² Cafaggi, F., Moraru, M., Casarose, F., Fontanelli, F., Lazzerini, N., Mataija, M., Martinico, G., Podstawa, K., Pitea, C., Perez, A. Final Handbook Judicial Interaction Techniques – Their Potential and Use in European Fundamental Rights Adjudication. Fiesole: Centre for Judicial Cooperation, 2014, p. 14. Available: <http://pak.hr/cke/pdf%20eng/JUDCOOP%20Final%20Handbook%20-%20Use%20of%20Judicial%20Interaction%20Techniques%20in%20the%20field%20of%20EFRs.pdf> [last viewed 10.04.2022].

¹³ On natural law as valid and applicable legal norms see: Šulcs, L. Dabisko tiesību jēdziens [The Meaning of Natural Law]. Jurists, Nr. 1/2, 1937.

Rule of Law based legal arrangement – just and reasonable decision in each and every case. It can be reached only following the basic postulates of natural law thinking such as that the system of laws comprises of written and unwritten legal norms, and that it is objectively complete so to be able to resolve each and every case brought in by the sovereign. This legal thinking is not uncommon also for the European Union legal system as it is recognised that a general principle, as inspired by common constitutional traditions, is capable of having a scope or an expansive potential that is broader than the codified version of the right in the Charter of Fundamental Rights of the European Union¹⁴ (the Charter). Namely, general principles can apply to situations that fall beyond the scope of the corresponding rights contained in the Charter.¹⁵

The Basic Norm as the act of will of the sovereign determines the character and structure of the legal arrangement of the particular state. General principles of law are derived directly from the Basic Norm – democratic Rule of Law based state and only from this Basic Norm. Respectively, such source of law as general principles of law is inherent only within this legal arrangement. Thus, general principles of law are not simply values or some recommendations, or some supplementary source of law – general principles of law are directly applicable generally binding unwritten legal norms that being derived from the Basic Norm – democratic state based on the Rule of Law determine the content of the legal arrangement and impose limits on the state power.¹⁶

2. The values

On the other hand, looking from the perspective of the values, we know that the values have a culturally determined meaning that provides them with a particularistic significance that effectively severs the idea of values from any universalistic claims.¹⁷ To prove this, one usually refers to the texts of the constitutional documents, which, in their turn, refer to the values and emphasize on the history and tradition.¹⁸ Thus, references to the state's (nation's) history, traditions, language, conditions of the establishing and development of the country are “encoded” (directly or indirectly) in the constitutions.¹⁹

But then, there are values introduced into the legal arrangement by the Basic Norm – democratic state based on the Rule of law and this part of the values is protected by the general principles of law derived as unwritten legal norms directly from the Basic Norm proclaimed by the sovereign. For example, the Constitutional Court has recognized that:

The State of Latvia is based on such fundamental values that, among the rest, include basic rights and fundamental freedoms, democracy, sovereignty

¹⁴ Charter of Fundamental Rights of the European Union. Available: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT> [last viewed 12.05.2022].

¹⁵ Fichera, M., Pollicino, O. The Dialectics Between Constitutional Identity and Common Constitutional Traditions: Which Language for Cooperative Constitutionalism in Europe? German Law Journal, No. 20, 2019, pp. 1097–1118.

¹⁶ Rezevska, D. Vispārējo tiesību principu nozīme, pp. 47–55.

¹⁷ Jacobson, G. J. Constitutional Values and Principles. In: The Oxford Handbook of the Comparative Constitutional Law. Rosenfeld, M., Sajo, A. (eds). Oxford: Oxford University Press, 2012, p. 785.

¹⁸ Par Latvijas valsts konstitucionālajiem pamatiem un neaizskaramo Satversmes kodolu [On the Constitutional Foundations of the State of Latvia and the Inviolable Core of the Constitution]. Opinion of the Constitutional Law Commission. 17 September 2012. Available: http://blogi.lu.lv/tzpi/files/2017/03/17092012_Viedoklis_2.pdf, para. 163 [last viewed 07.04.2022].

¹⁹ Pleps, J. Baltijas valstu konstitucionālā identitāte [Constitutional Identity of The Baltic States]. Jurista Vārdi, Nr. 34, 2016.

*of the State and people, separation of powers and Rule of law. The State has the duty to guarantee these values and they cannot be infringed by introducing amendments to the Satversme, or by adopting the law.*²⁰

A distinct set of values can be recognized, for example, in the judgement of 4 June 2021 of the Constitutional Court, where it continued to explore the notion of constitutional identity in connection with the notion of values. It becomes apparent that between the values like traditional Latvian folk wisdom or Christian values, and the values mentioned above – democracy, Rule of Law or separation of powers, exist some differences. The Constitutional Court stated:

*Each state is characterised by its constitutional identity, which allows differentiating it from other states. The formation of identity, inter alia, constitutional identity is a long process that depends upon the historical circumstances. [...] It follows from the above, in turn, that the constitutional identity is not static. The constitutional identity comprises the state's legal identity that characterises a state and the identity of the state's order. It provides an answer both to the question what the particular state is like, i.e., reflects the classical constitutive elements of the state recognised in international law – territory, nation and sovereign state power, and to the question what the particular state order is like. In reflecting the territory of the state, the nation and the state power in the Satversme, such **extra-legal factors** as history, politics, national, cultural and other factors that identify the respective state are taken into account. Whereas the identity of the particular state order is determined by the general overarching legal principles that characterise this order of the state. Hence, constitutional identity is a broad phenomenon, deep as to its content, consisting of elements that are different as to their nature, of which only a part is the generally binding legal norms. Such are, for instance, **the overarching principles of democracy, rule of law, nation state and socially responsible state that determine the identity of Latvia's order of the state**. Whereas the references included in the constitution to, inter alia, **the history of the state and the nation, traditions, circumstances in which the state was established, purposes of the state and other elements**, which, from the perspective of constitutional law, help to recognise the particular state, ascribes a specific meaning to it, characterise it, are elements of the state's identity on which the particular state is founded [...]. These elements comprise both references to the legal principles of the particular state and to values which determined the path in which the constitutional identity of this state evolved; however, per se, these are not generally binding legal norms.*

[...] It is mentioned in the Preamble to the Satversme, inter alia, that the identity of Latvia in the European cultural space, since ancient times, has been shaped by Latvian and Liv traditions, Latvian folk wisdom, the Latvian language, universal human and Christian values. Loyalty to Latvia, the Latvian language as the only official language, freedom, equality, solidarity, justice, honesty, work ethic and family are the foundations of a cohesive society. These findings characterise the roots of the cultural identity of the Latvian people – this identity is rooted both in Latvian traditions and folk wisdom and in universal values, which are derived from the ideas of the Enlightenment and Christian values

²⁰ Judgement of the Constitutional Court of the Republic of Latvia in case No. 2008-35-01 on 7 April 2009, para. 17. Available: http://www.satv.tiesa.gov.lv/wp-content/uploads/2008/09/2008-35-01_Spriedums_ENG.pdf [last viewed 10.04.2022].

*which have influenced the entire European cultural space. [...] Harmony should be ensured between the values reflected in the Preamble to the Satversme, inter alia, Christian and universal values and Latvian folk wisdom and the general principles of law included in the Satversme, respecting the will of the Latvian sovereign, the people, to live in a democratic state governed by the rule of law [all the emphases here added by the author].*²¹

Consequently, the constitutional identity of the country actually enshrines two types of values – those are: 1) the values which are historically and culturally connected with the given sovereign and 2) the values which are introduced into the legal arrangement by the Basic Norm – democratic state based on the Rule of Law.²² And while the first type of values – the ones which are historically and culturally connected with the given sovereign – are particular and specific, and characteristic only to the given sovereign and given country, the second set of the values introduced by the Basic Norm – democratic state based on the Rule of Law is **common and universal** to all the Member States and thus cannot have core differences. And this is why there cannot be a situation where there is a lack of the common constitutional traditions in the part of protecting the values introduced by the same Basic Norm as they by no doubts exist even if they are on an unwritten normative level in a form of general principles of law and maybe the legislators have not been able to write them down appropriately into the written law. If we are speaking about the plurality of constitutional cultures,²³ then it can be referred only to that part of the values, which are historically and culturally connected with the given sovereign and not to the part introduced by the same Basic Norm.

Saying that, there is an obvious question arising regarding the Court's approach to the issue of constitutional (national) identity, and namely, how principle of respect for human dignity being the general principle of law derived from the Basic Norm – democratic state based on the Rule of Law and inherent to all the legal arrangements of the Member States – can have “a particular status as an independent fundamental right” in Germany as referred to in “Omega case”²⁴? And the answer is – it cannot. In turn, it is a common constitutional tradition. And the fact that human dignity was *expressis verbis* written in the text of the German Basic Law (*Grundgesetz für die Bundesrepublik Deutschland*²⁵) does not mean that it is not a common constitutional tradition of all the Member States as they all are proclaimed on the basis of the Basic Norm – democratic state based on the Rule of Law, and thus human dignity as an unwritten legal norm – a general principle of law and human right is inherent legal norm of all these legal arrangements.

²¹ Judgement of the Constitutional Court of the Republic of Latvia in case No. 2020-39-02 on 4 June 2021, para. 14. Available: [https://www.satv.tiesa.gov.lv/web/viewer.html?file=https://www.satv.tiesa.gov.lv/wp-content/uploads/2020/08/2020-39-02_Judgement.pdf#search=\[last viewed 10.04.2022\]](https://www.satv.tiesa.gov.lv/web/viewer.html?file=https://www.satv.tiesa.gov.lv/wp-content/uploads/2020/08/2020-39-02_Judgement.pdf#search=[last viewed 10.04.2022]).

²² Rezevska, D. Ideology, Values, Legal Norms and Constitutional Court. In: The second collection of research papers in conjunction with the 6th International Scientific Conference of the Faculty of Law of the University of Latvia “Constitutional Values in Contemporary Legal Space II”. Riga: University of Latvia, 2017, pp. 72–78.

²³ Lachmayer, K. The Constitution of Austria in International Constitutional Networks: Pluralism, Dialogues and Diversity. In: Albi, A., Bardutzky, S. (eds). National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law. The Hague: Asser Press, 2019, p. 1304.

²⁴ Judgment of 14 October 2004, Omega, C-36/02, EU:C:2004:614, para. 34.

²⁵ Grundgesetz für die Bundesrepublik Deutschland. Available: <https://www.gesetze-im-internet.de/gg/BjNR000010949.html> [last viewed 10.04.2022].

3. The general principles of law

The values, which are historically and culturally connected with the given sovereign, serve as the basis for the sovereign when expressing its will in the form of the Basic Norm. Hence, the Basic Norm of the given legal arrangement is the act of will of the respective sovereign. When sovereign's will is formulated in a basic norm, the legal arrangement in the relevant country is governed by the principles emanating from that norm. In case of a democratic state based on the Rule of Law, these are a specific source of law called general principles of law. In deciding to create a democratic state based on the Rule of Law, the sovereign subsequently cannot affect the existence and content of these general principles of law.²⁶

Thus, general principles of law define the content and structural elements of the legal arrangement of the relevant country and are unwritten though real and directly applicable legal norms consisting of legal content and legal consequences and having generally binding effect or legal force. Why general principles of law are generally binding legal norms? The courts refer to the general principles of law in the cases of legislative gaps. A system of laws being a part of a legal arrangement of a democratic state based on the Rule of Law is objectively (impartially) complete and consists of all written and unwritten legal norms which can resolve every case arising in the given legal arrangement as evidenced by the general principle of law – prohibition of legal obstruction.²⁷ General principles of law have also all the features of the generally binding legal norm: 1) the application of general principles of law is ensured by state authorities and officials, namely, the violation of principle leads to coercive measures enforced by the state, and 2) they are applicable to an unlimited number of persons in all such of a kind factual situations. They also are valid and directly applicable legal norms as they have a structure of legal content – “If...” and legal consequences “then ...”. For example – *if* state institutions, if have passed normative act (*legal content*), *then* [they] in their activities as regards this act, shall be consistent (*legal consequences*)” – principle of the protection of legitimate expectations; or – *if* persons, if in similar and comparable situations, then have the right to similar outcomes – principle of equality; or – *if* court, if applying written legal norm, then uses interpretation methods (as literal, historical, systemic, teleological) to find the true content of the legal norm – principle of reasonable application of legal norms.²⁸

General principles of law have two distinctive features in order to separate them from other principles of law: 1) general principles of law are derived directly from the Basic Norm – democratic state based on the Rule of Law, and 2) they function (operate in a full capacity) only in a democratic legal arrangement based on the Rule of Law.

Consequently, general principles of law define the content and structural elements of the relevant legal arrangement – the norms which must exist in the legal arrangement so as to settle all disputes that may emerge. These principles can be divided into three groups in terms of what they address:

- 1) Those, which identify the highest values of a legal arrangement, i.e., which reflect a certain way of living. Here we find all human rights norms, those which present the individual as being of **the highest value** in a democratic country where the Rule of Law prevails; it includes the right to equality, right to

²⁶ Rezevska, D. *Vispārējo tiesību principu nozīme*, pp. 39–46.

²⁷ *Ibid.*, pp. 47–55.

²⁸ Rezevska, D. *Vispārējo tiesību principu nozīme*, pp. 47–55.

- fair trial, legal certainty (clarity and legitimate expectations); and the principle of justice as an ultimate goal of the legal arrangement;
- 2) Those which define the systematisation of the legal arrangement. These are general principles, which define **the structure of the legal arrangement** and system of laws, for example – the principle of separation of power – how the power is distributed among the legislative, executive and judicial branch of government, the hierarchy of legal norms;
 - 3) And finally – those which determine to the institutions applying the legal norms how the norm is to be identified, examined, interpreted, etc. Here we find the general principles of law which speak to the process of the application of legal norms in a democratic state based on the Rule of Law – **the legal methods** – interpretation methods, further development of law methods, collision norms, methods of argumentation and reasoning, etc.²⁹

Thus, the general principles of law in a form of unwritten legal norms protect the Basic Norm – the Sovereign's will to live in a democratic state based on the Rule of Law. As they are introduced to the legal arrangements of all the Member States of the European Union by the same Basic Norm, general principles of law are common and universal to all the Member States. Thus, common constitutional traditions contain all three types of general principles of law (human rights, system principles and legal methods) and they do not have core differences even if the written texts of the normative legal acts adopted by the legislators would suggest otherwise. On the other hand, that part of the constitutional identity which is based on the values historically and culturally connected with the given sovereign indeed can present particularities and differences among the Member States asking for the protection of their constitutional (national) identity.

Summary

1. Modern legal theory holds that there are two radically different and incompatible ways of understanding legal norms – the hyletic understanding that legal norms are conceptual units which exist irrespective of language, but can be expressed linguistically, and the expressive understanding of legal norms that legal norms are instructions, which is the result of the prescriptive use of language. In a democratic country where the Rule of Law prevails, a legal norm is a prescription with respect to which legal arrangements that are based on sovereign's will regulate legal relationships on the basis of general principles of law, irrespective of whether the legislature has managed to verbalize the norm to an adequate degree. A legal norm is more than just the text, and in terms of its scope it can coincide with the written text or not coincide with it.
2. Based on the natural law doctrine, the unwritten norms derived from the same Basic Norm cannot differ in their core from country to country as it is a case in the European Union Member States, but what can be different actually are the wordings of the texts of written legal norms adopted by the specific legislator.
3. General principles of law derived from the Basic Norm – democratic state based on the Rule of Law – are unwritten legal norms and thus they are common and universal to the Member States of the European Union even if some of them are not written down in the texts of the constitutions.

²⁹ Rezevska, D. *Vispārējo tiesību principu nozīme*, pp. 31–32.

4. Common constitutional traditions contain all three types of general principles of law (human rights, system principles and legal methods) and as they are protecting the set of the values introduced by the Basic Norm – democratic state based on the Rule of Law they are common and universal to all the Member States and thus cannot have core differences even if the written texts of the normative legal acts adopted by the legislators would suggest otherwise. Thus for example human dignity as an unwritten legal norm – a general principle of law and human right is inherent legal norm of all these legal arrangements notwithstanding that it would not be written down *expressis verbis* in the texts of some of the constitutions. It also applies to the system principles and legal methods.
5. The values, which are historically and culturally connected with the given sovereign, are particular and specific, and characteristic only to the given sovereign and given country, thus asking for their protection through the protection of the constitutional (national) identities of the Member States.
6. Plurality of constitutional cultures within the European Union can be referred only to that part of the values, which are historically and culturally connected with the given sovereign and not to the part introduced by the same Basic Norm.

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