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UDC 34:929 Lukić R.
34:929 Taranovski F.
Original Research Article
Received: 07. 05. 2025.
Accepted: 01. 06. 2025.

THE LEGAL NORM IN PRE-WAR AND POST-WAR SERBIAN LEGAL THEORY: RADOMIR LUKIĆ BETWEEN FEDOR TARANOVSKY AND ĐORĐE TASIĆ

ABSTRACT: The subject of this paper is the analysis and identification of the differences in the understanding of the concept of the legal norm by Radomir Lukić in his post-war textbook *Introduction to Law* (1974), and by two pre-war legal scholars, Đorđe Tasić and Fedor Taranovsky, in their respective *Encyclopedias of Law*. Two methods were applied in the research: The descriptive method, used to present the established findings, and the comparative method, used to compare those findings. The initial hypothesis of the paper, which was confirmed through the research, is that Lukić's understanding of the legal norm in *Introduction to Law* differs significantly from the understanding of the legal norm found in the works of the other two analyzed legal theorists.

KEYWORDS: *Radomir Lukić, Fedor Taranovsky, Đorđe Tasić, legal. norm, sanction.*

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1. Introduction

What makes this research relevant today? Radomir Lukić, Đorđe Tasić, and Fedor Taranovsky are prominent scholars of Serbian legal science in the field of legal theory. They produced their work in different historical periods and social contexts, which makes them deserving of scholarly attention.²³⁴ The Encyclopedias of Law represent fundamental literature through which generations of lawyers were educated between the two world wars. Lukić himself was a student of Tasić. In his doctoral dissertation *The Binding Force of the Legal Norm and the Problem of the Objectivity of Law*, which he defended in 1939 at the University of Paris, Sorbonne, Lukić states that he was “motivated by the desire to view the norm simultaneously as a fact and as an ideal, and to connect the fact and the ideal” (Lukić, 1995: 267). He adds that “in this sense, he was particularly inspired by the example of our eminent professor, Mr. Tasić, Dean of the Faculty of Law in Belgrade, to whom we owe the general direction of our method” (Lukić, 1995: 267). Lukić’s *Introduction to Law* was taken as the starting point in this paper due to its significance for contemporary Serbian legal theory. Namely, “in terms of its structure, definitions, choice of topics, and methods of explanation, the textbook set standards that are still widely accepted and discussed” (Božić, 2020: 46). Additionally, for the purposes of this paper, an analysis of Lukić’s doctoral dissertation was conducted and compared with his later work, given that there is a noticeable shift in his theory from the early period of his academic development to his post-war contributions, as will be demonstrated through examples in this study.

² Radomir D. Lukić – (Miloševac, August 31, 1914 – Belgrade, May 31, 1999) – Professor at the Faculty of Law, University of Belgrade, and member of the Serbian Academy of Sciences and Arts.

³ Đorđe Tasić – (Vranje, November 7, 1892 – Belgrade, August 25, 1943) – Professor and Dean of the Faculty of Law, University of Belgrade.

⁴ Fedor Vasilyevich Taranovsky – (Płońsk, May 24, 1875 – Belgrade, January 23, 1936) – Professor of law in Warsaw, Petrograd, and Belgrade. After the October Revolution, he left Russia and came to Belgrade in 1920, where he became a professor of the History of Slavic Law and the Encyclopedia of Law.

The subject of this paper is the concept of the legal norm. Most legal theorists define the legal norm as the most essential part of law. Lukić even defines the very concept of law as “a set of norms sanctioned by the state” (Lukić, 1974: 198). The reason why the concept of the legal norm was chosen as the subject of this research lies in the fact that, after studying various legal concepts in the aforementioned literature, a significant difference was observed in the understanding of the legal norm itself and its structure. While Lukić, in his *Introduction to Law*, defines the legal norm through four elements, and Taranovsky identifies two elements of the legal norm, Tasić does not engage with the structure of the legal norm at all, nor does he approach the concept in the same manner as the other two. However, Tasić does address topics that can be classified as related to the concept of the legal norm in certain parts of his *Encyclopedia of Law*, even though he does not explicitly define them as such, as will be demonstrated in this paper. For these reasons, the chosen subject of this study remains relevant even today. In this paper, for the purposes of this research, other legal theorists, whether prewar or postwar, were not included in the study. The authors mentioned were selected as the subject of study due to their significance for Serbian legal theory, both historically and in the present day. The aim of this paper is to show to what extent these legal scholars, whose teachings formed the foundation of Serbian legal theory during their time, differ in their views, using the concept of the legal norm as an example, while Professor Lukić's theory is still applied today.

2. Theoretical Framework

To understand how the three legal theorists examined in this paper viewed the legal norm, it is necessary to explain the theoretical foundations on which their teachings were based. Lukić, in his postwar *Introduction to Law*, combines Marxist legal theory with Hans Kelsen's normativism. Marxist legal theory, which belongs to sociological theories of law, explains law as a class construct. “According to Marx, Engels, and interpreters of their thought (especially Lenin), the social character of law can only be understood and explained through class struggle and

its class content” (Vukadinović & Mitrović, 2020: 294). Hans Kelsen’s normativism, which belongs to positivist legal theories, states that legal norms, “arranged according to their legal force, constitute a coherent positive system of norms within themselves” (Vukadinović & Mitrović, 2020: 286). At the top of such a legal system is a fundamental norm whose existence is presumed (Grundnorm), with which all other lower legal norms must be consistent.

Marko Božić (2020) states that “Lukić’s *Introduction to Law*, as well as his theory in general, combines a sociological approach with normativism to explain the legal rule as a social fact without denying its normative dimension” (p. 46). Lukić uses a synthetic method in his dissertation to explain the binding force of the legal norm. With this method, which he calls “positivist to the highest degree” (Lukić, 1995: 267), Lukić argues that the legal norm is both a fact and an ideal at the same time. Lukić states in his dissertation: “Our method, by establishing the existence of an ideal that cannot be reduced to causal laws, but which has a real influence on the facts that comply with these laws, remains positivist because it relies only on phenomena that can be established either through external observation or introspection” (Lukić, 1995: 267–268). In the same passage, Lukić notes about Tasić that “he attempted to achieve a synthesis of these two methods in his work *Introduction to Legal Sciences*, a book rich in thought and full of suggestions [...]” (Lukić, 1995: 267).

Tasić introduced the sociological method into Serbian legal science, following the example of French sociological theory. “Opposed to strict disciplinary confinement of law and legal science, Tasić, already in the early decades of the twentieth century, was an advocate of multidimensional research of law as a multi-layered phenomenon. His ‘multi-method approach to law’ provides the basis for speaking of ‘Tasić’s jurisprudence’ (Vukadinović & Mitrović, 2020: 388–389). However, as Lukić also emphasized in a speech on the anniversary of Tasić’s death, ‘the fact that Tasić initiated a new sociological direction in legal science by no means indicates that he neglected the previous classical dogmatic approach’ (Lukić, 1977: 2).”

Regarding Taranovsky's *Encyclopedia of Law*, Tasić states that "it is, in fact, a philosophy of law" (Tasić, 1995: 445). As the basis for his *Encyclopedia of Law*, released in 1923, Taranovsky used an earlier edition he had published in Russia, which he significantly expanded and supplemented. Taranovsky particularly focused on the history of law and the history of legal institutions, so in his *Encyclopedia* he writes about the development of law from Roman times up to the contemporary theories of his era. In Taranovsky's *Encyclopedia of Law*, "it is easy to notice that he used history merely as a framework and foundation for presenting his own theory and philosophy of law" (Vukadinović & Mitrović, 2020: 388). If Taranovsky were to be placed within a specific theoretical framework, studying his *Encyclopedia of Law*, it could be said that, alongside the historical method which he used extensively, he developed under the influence of positivism while combining the sociological method.

3. The Concept of Legal Norm

For Lukić, the legal norm represents the most important part or element of law. For him, it is the very essence of law. "The legal norm could be called the legal atom. It is the final, simplest element of law, which can no longer be broken down into simpler legal elements" (Lukić, 1974: 200). In the *Introduction*, Lukić considers force, the state apparatus of coercion, an inseparable part of the definition of the legal norm. Thus, he defines the legal norm as "a rule of human behavior that is protected by the state's apparatus of coercion" (Lukić, 1974: 200). Lukić's position is reflected throughout several parts of his *Introduction*. Lukić describes a sanction as "the very coercive measure applied by the state authority against the violator [...]" and states that it is "the part of the legal norm which gives it its specifically legal character" (Lukić, 1974: 215). The sanction, as an element of the legal norm, will be discussed in the following section.

However, it seems that Lukić did not always consider the sanction to be the element that gives the norm its specifically legal character. In his dissertation, Lukić (1995) states that "a norm that is applied sole-

ly because of the sanction attached to it does not, in our view, possess binding normative force; in such a case, one cannot even speak of binding force, but rather of mere force; just as one cannot say that any fact has binding force simply because it operates necessarily and in accordance with natural laws” (p. 269). He further adds: “the sanction is such an important element that some have even taken it to be the essential characteristic of law: only what is sanctioned will be considered law. Our position has already been stated: law cannot rest solely on sanction; a legal system that has no firmer foundations than sanction cannot function” (p. 385). In *The True Meaning of the Legal Norm* (1960) Lukić notes that the true meaning of the legal norm is “the meaning which, among all possible meanings of a norm in a given case, best protects the class interest” (p. 270). Thus, Dajović (1995) observes that “at certain points, it may be noticed that Professor Lukić is not entirely consistent, that he changes his position on a given issue, and so on. However, it seems that he cannot be reproached for this, as Professor Lukić wrote so extensively and presented so many ideas that it would be a real ‘miracle’ if they were completely coherent and formed a non-contradictory whole” (p. 109).

Contrary to Lukić, Tasić does not employ such a systematic presentation of the material in *Introduction to Legal Sciences* or *Encyclopedia of Law*, so references to the concept of legal norm, as a rule of behavior, are dispersed throughout the texts. In the *Encyclopedia*, he does not provide a specific definition of a legal rule or norm, but rather describes it as general rules and individual acts. Regarding individual acts, he states that the law achieves its purpose through them, namely its application in real life. Compared to Lukić, this understanding of the legal norm aligns with the concepts of general and individual legal acts.⁵ That Tasić (1995) views the norm much more broadly than Lukić is also evidenced by his negative definition of the concept, where he states: “Excluded from the concept of norm are only acts of material execution (such as tradition – handing over things, debt payment, construction, etc.)” (p. 207). Elsewhere in his *Encyclopedia*, Tasić defines the norm as a command.

⁵ See: Đ. Tasić (1995), *Pravno pravilo kao opšte pravilo i kao konkretan akt* [A Legal Rule as a General Rule and an Individual Act].

“When we say norm, rule, or imperative (command), we always mean force of obligation” (Tasić, 1995: 161). However, in the same passage, he criticizes the mistaken notion that law is characterized by absolute force. Lukić’s understanding of the legal norm expressed in his dissertation aligns closely with Tasić’s perspective, more than the understanding he later presented in *Introduction to Law*.

Taranovsky addresses the internal nature of legal norms and their function in his *Encyclopedia of Law*. Unlike Tasić, who worked around the same time as Taranovsky, he provides a definition of the legal norm. For him, “legal norms represent rules of conduct for individuals in society” (Taranovsky, 2003: 154). However, unlike Lukić, who includes sanction in his definition of legal norm, Taranovsky does not. From Taranovsky’s definition, it is clear that he does not consider sanction to be an element of the legal norm. While Taranovsky discusses sanction in the *Encyclopedia of Law*, he does not treat it as part of the legal norm.

For Taranovsky, the legal norm has a dual nature. It simultaneously functions as a command requiring someone to act, as well as a claim, that is, the power of the claimant to demand the fulfillment of an obligation. He thus defines that “the function of the legal norm is therefore twofold: it always contains both a command and an authorization. For this reason, it can be said that the function of the legal norm is always imperative-attributive” (Taranovsky, 2003: 157). Taranovsky, in this interpretation of the nature of legal norms, disputes the position of legal theorists who distinguish between two types of legal norms – imperative (those that prescribe behavior) and permissive (those that grant permission). Thus, he asserts that “in all cases, the true substance of every legal norm lies in a command” (Taranovsky, 2003: 156). It becomes evident that when Taranovsky discusses the imperative-attributive nature of the legal norm, he asserts the same idea as Lukić in *Introduction to Law*, and since legal norms represent rules of human behavior in society, every obligation on one side simultaneously constitutes an authorization on the other.

4. Elements of the Legal Norm (Structure of the Legal Norm)

The greatest differences among the three legal theorists analyzed can be found in their views on the structure of the legal norm. While Lukić breaks down the legal norm into four elements and Taranovsky into two, Tasić does not address this issue in the same manner as the other two. Even though the third section of Tasić's *Encyclopedia of Law* is titled "Essential Elements in the Legal Rule," it would be inaccurate to claim that Tasić addressed the structure of the legal norm. The only notable similarity lies in the fact that, within this section, Tasić addressed the sanction of legal provisions, which will be discussed in more detail below. Nonetheless, it cannot be argued that he considered the sanction to be a constituent element of the legal norm.

Lukić's legal norm is composed of four elements: (1) the assumption or hypothesis of the disposition, (2) the disposition itself, (3) the assumption or hypothesis of the sanction, and (4) the sanction. It should be noted that not every norm consists of all four elements, only conditional legal norms do. Unconditional legal norms lack the hypothesis of the disposition and thus contain only three elements. According to Lukić (1974), unconditional legal norms are "norms enacted for situations that already exist" (p. 201), whereas conditional norms are "norms enacted for situations that are yet to occur" (p. 201). The disposition and the sanction are rules of conduct that stand in an alternative relationship – either one or the other is applied. Compliance with the disposition precludes the application of the sanction. Non-compliance with the disposition gives rise to an obligation on the competent state authority to impose a sanction on the individual who has breached it. The sanction as such represents a secondary disposition, "a disposition that comes into force and becomes obligatory only when the primary disposition is violated, and which is designed so that it can always be enforced through state coercion" (Lukić, 1974: 204).

To apply the disposition, the facts described within the norm itself must be fulfilled. This description of facts is made in the part of the disposition called the hypothesis of the disposition. For Lukić, the hypothesis of the disposition is not a rule of conduct but rather a description

of the factual situation. He (1974) explains it as follows: “Therefore, the hypothesis is not a norm, not a rule of conduct, but merely a description of the facts that serve as a condition for the application of the disposition, which means that the disposition is to be applied only if the facts described in its hypothesis occur” (p. 203).

According to Lukić (1974), the disposition is the central part of the norm, “the rule of human behavior itself” (p. 203). Defined differently, the disposition is “a command regarding human behavior [...]” (Lukić, 1974: 205). However, the disposition itself does not yet possess legal character. It lacks sanction. A command can take the form of an order, a prohibition, or an authorization. Thus, Lukić (1974) distinguishes three types of disposition: “The commanding disposition orders the subject to behave in a certain way, that is, it commands them to perform a specific positive action (an act)” (p. 205); “Prohibitive dispositions forbid the subject from performing a certain action, that is, they order a negative action (omission)” (p. 205); “Authorizing dispositions empower the subject to engage in a certain behavior, neither ordering nor forbidding it” (p. 205). Lukić (1974) thus asserts that since legal norms are rules governing human behavior in society, “every duty, every obligation for one party simultaneously appears as an authorization for the other party involved in that relationship (which, by its very nature, must be bilateral)” (p. 206). Here Lukić asserts the same as Taranovsky when he states that the nature of the legal norm is imperative-attributive.

Regarding the disposition of the legal norm, Lukić makes the same claim as Taranovsky, stating that the true content of the legal norm is a command. This is evident when Lukić (1974) states that “this dispute is also irrelevant, because, as we said, every disposition contains a command.” However, that command does not always have to be expressed in an imperative form (whether as an order or a prohibition) (p. 205).

The third element of the legal norm according to Lukić is the assumption of the sanction. Every legal norm has the assumption of sanction. Lukić calls the condition for applying the sanction a violation or a delict. The assumption of sanction contains the description of the violation of the disposition itself. When the condition is met, the sanction

is applied. Lukić thus distinguishes two main types of delicts – criminal law delicts in the form of criminal offenses and civil law delicts in the form of infliction of damage. Taranovsky does not recognize this element of the legal norm.

The fourth and final element of the legal norm according to Lukić is the sanction. It represents the part of the legal norm that gives it its specific legal character. However, Lukić did not claim this from the very beginning of his legal work. “Obviously, Lukić’s four-part formula did not arise from nothing. Innovative, but not original, it was more an important part of the Soviet legacy than his own original teaching” (Božić, 2020: 50; *translation by the author*). Lukić differs most from Taranovsky in his concept of sanction, as Taranovsky considers only the hypothesis and disposition to be the essential parts of the legal norm. Lukić defines sanction as a secondary disposition, a concept absent from Taranovsky’s theory. For Taranovsky, sanction represents the coercive enforcement of a right, or a secondary consequence, as will be shown. According to Lukić, a sanction simultaneously relates both to the violator of the disposition and to the state authority obliged to apply the coercive measure. When the sanction concerns the state authority, it does not represent a secondary disposition, but rather “designates the coercive measure that the state authority applies to the violator of the disposition” (Lukić, 1974: 215). Approached in this sense, the sanction is not part of the legal norm and does not constitute a rule of behavior.

Unlike Lukić, Taranovsky bases the structure of the legal norm on classical theory. The legal norm consists of two parts: the hypothesis or condition, and the disposition or rule. Sanction is not considered an element of the legal norm. This is where Lukić and Taranovsky differ the most. Taranovsky describes the hypothesis as the descriptive part, and the disposition as the prescriptive part of the legal norm. On this point, Taranovsky and Lukić do not differ. According to Taranovsky (2003), “the hypothesis implies the existence of a factual relationship between two persons. The disposition, on the other hand, determines the duty and claim that must arise from that relationship” (p. 160). Taranovsky criticizes the view held by some legal theorists that legal norms are conditional statements, arguing that the

hypothesis is an essential part of every legal norm and that there are no unconditional norms in law. He also rejects the theory that a norm is conditional or hypothetical merely because it contains a hypothesis.

He states that “the function of the hypothesis is entirely different and consists in specifying the conditions under which a factual relationship between two persons arises, which is why the disposition determines the obligation and the claim” (Taranovsky, 2003: 162). For this reason, in his opinion, all legal norms are hypotheticalal.

However, Taranovsky himself defines the structure of a criminal law norm differently. For him, the hypothesis of such a norm represents the disposition, while the disposition represents the sanction. As Taranovsky (2003) states, “the hypothesis of a criminal law norm defines the elements of a crime, and its disposition prescribes the punishment for the crime” (p. 166). According to him, the elements of a criminal offense contained in the hypothesis actually serve as a command to the addressees to refrain from prohibited behavior. For Taranovsky (2003), “punishment represents a type of secondary consequence caused by the violation of a right. The determination of such consequences for the person who violated the law is referred to as a sanction” (p. 166). From this, we can once again observe that Taranovsky does not regard the sanction as part of the legal norm, but rather as a secondary consequence.

What Lukić considers a sanction, Taranovsky views as a compulsory enforcement of law. According to Taranovsky, when the command contained in the legal norm is not complied with, the law acts to ensure that duties are fulfilled. This paper will not explore the mechanisms of enforcement, as the legal nature and essence of the concept are of primary importance. In this regard, Taranovsky argues that the sanction of the legal norm is, in fact, a threat, that is, physical coercion directed at the subject of the duty.

Tasić does not address the structure of the legal norm and does not engage with this issue in any way. Nevertheless, certain parallels between him and Lukić may be drawn when Tasić discusses the sanction of legal provisions. Although he does not refer to the sanction as a formal element of the legal norm, Tasić (1995) considers that “every legal provision, as a rule, also contains a sanction, so that, in addition to the

main, primary provision that defines rights and duties, there is always a secondary provision, which prescribes sanctions” (p. 201). It can be said that, regarding the sanction of the legal norm, Tasić is closer to Lukić than to Taranovsky. Tasić also notes that sanctions may be directed either against individuals or against acts.

5. Conclusion

By comparing the views of the three authors through the lens of the concept of the legal norm, it has been established that Lukić’s post-war legal theory significantly differs from that of Tasić and Taranovsky. Lukić’s understanding of the legal norm, as presented in his *Introduction to Law*, is of particular importance due to its influence on contemporary Serbian legal theory, which is why his work was taken as the starting point of this research. The comparison with the other two authors was carried out because of their significance and the importance of their *Legal Encyclopedias* for the legal theory of the time in which they wrote, as well as the fact that Lukić acquired his legal education during the period when both Tasić and Taranovsky were lecturing on their legal theory at the Faculty of Law in Belgrade. Another reason is the fact that Lukić adopted the fundamental method of his own theory from Tasić. If we consider Lukić’s work from the pre-war period, the differences are not substantial, which is understandable. What we aimed to examine is the extent to which Lukić diverges from Tasić and Taranovsky in his post-war legal doctrine, which was also grounded in Marxist legal theory.

The identified differences range from the very concept of the legal norm to its internal structure, where the most significant distinctions are observed. The greatest divergence lies in the structure of the legal norm. Drawing on Soviet legal theory, Lukić incorporates the sanction as an integral part of the legal norm. In doing so, the structure of the legal norm in Lukić’s theory comprises four elements. On the other hand, Taranovsky, following classical legal theory, upholds the view that the legal norm consists of two components – the hypothesis and the disposition. Although Tasić does not explicitly address the structure of legal

norms in his doctrine, it is noted that certain topics, such as the issue of legal sanctions, can be classified as an institute of the legal norm according to contemporary understanding. This brings us to a fundamental difference in Taranovsky's doctrine compared to Lukić's, which is the legal nature of the sanction. For Lukić, a sanction constitutes a secondary rule of conduct (a secondary disposition) that is applied when the primary disposition is not followed and that imposes an obligation on a state authority. In contrast, Taranovsky views the sanction as the coercive enforcement of rights. For Lukić, the sanction is an essential element that gives the legal norm its specifically legal character, whereas Taranovsky and Tasić argue that legal norms can still exist even when they are not backed by sanctions.

Regarding the definition of the legal norm, their theories are somewhat closer, as all three view the legal norm as a command. However, Tasić, who does not provide a more precise definition of the legal norm, interprets legal rules much more broadly than Lukić, including both general rules and individual acts under this term. The greatest difference in the concept of the legal norm is found in Lukić's theory, which defines it as a rule backed by the state apparatus of coercion. Neither Taranovsky nor Tasić regard state coercion as an essential feature of the legal norm. On the contrary, both of them argue that there are legal rules that are not enforced by state coercion.

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