PUBLIC LAW AND LEGAL THEORY OF DISCOURSE

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Abstract: The theory of legal discourse as the search for meaning in the legal model dialogue is challenged especially in view of the validity of the public-law sphere. Indicates that discursive theory can only private law relevance, while public law there is a kind of monologue position - state orders, and persons perform. Where it comes to question for State Imperium, there is no equality of arms, there is no need agreement, which excludes dialogue as an explanatory model. These views reflect a misunderstanding of the nature of the discourse; purpose of this article is to clarity in this direction and show that legal discourse is form, equally valid for both the private and the public law.
Keywords: law, dialogue, interactions, social order, policy, public sphere.

Jurgen Habermas's concept of communicative action set in the center of its social theory.[1] Communicative action inherently resist target of Weber's rational action.[2] Last seen in prism of a single subject- individual is a separate participant, who with different means tries to achieve its objectives in the surrounding social environment. From the perspective of the individual's his subjective intentions determine purpose and meaning of social action - his rationality. But social existence does not mean isolation but interaction with others. Achieving personal goals in the social space is only possible intersubjective - with using the act or omission of at least one subject. This puts the need to coordinate individual behaviors. Any attempt by people to coordinate their actions, can be successful only when pursued objectives are achieved by the same means. For describing this type of coordination of behaviors, Habermas uses the term communicative action. Communicative action, back benchmarks, is action, but not focus on success, but to understanding. It is a manifestation of communicative sense of common agreement to follow certain rules.[3]

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[1] Tobias Lieber, Diskursive Vernunft und formelle Gleichheit, Tuebingen, 2007, s.9
[2] Max Weber on social action look like as a basic unit of empirical social reality and output category of sociology. Looking at the different types of social action reveals varying intensity of their social nature- conventional operation is greater compared to social affective, value-rational as compared with conventional, etc. According to Weber, this "social intensification" is actually an expression of rationalization whose end is the perfect type of targets rational action

Discourse theory examines the legal dialogue as a model of mutual action, structured in three components: good - (subject to any necessary dialogue), parties (in particular quality) and position of the parties (their attitude towards good as subject). So the objective law is understood as "A plurality of models of discourse corresponding to multiple goods, properties and positions established and institutionalized in regulations. " Dialogue is a way of exchange senses- not individually achieve sense- understanding and collective generated sense- Understanding.

As a model of order legal dialogue is an ideal rather than actual, psychologically driven communication. Consent, a prerequisite for legal dialogue is not particularly subjective accord, which a person expresses signing a contract. Consent from the perspective of discourse is understood as an objective condition. It is an expression of the general recognition of the meaning of positions , occupying entities - particular position in relation to goods understood and accepted in a certain way - like power, duty, responsibility and so on. From this perspective, the agreement that bears the dialogue is rather than with a particular faith as a social practice.[4]

Legal dialogue is not an expression of a particular consensus, nor expressed specifically measured, specifically due. It is the form, the frame in which fit specific interactions, expression is the order in them as opposed to arbitrariness, randomness and violence. As an objective system of semantic codes through which participants understand each other, the right is resistant line, which can not be swayed by separate, individual dissent and valid regardless of the situation. This applies to both the private and the public law.

Legal discourse is a form that appropriately reflect the social nature of the right, its bidirectional, and symmetry. Dialogue implies positioning of participants in a particular way. So legal interactions take place not at random, but by position of position and relative position counter. Parties in the dialogue are depersonalized - take formal, impersonal roles that are logically correlated and interdependent apart. Thus the actual inequality opposes equality

in law - each participant can be used only by benefits that provide loans' legal role ", this role is simultaneously available to everyone else.[5] The aim is to achieve a neutral and stable environment for social interaction. Both public and private law can also be seen as an expression of functional and role differentiation.

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[3] Tobias Lieber, Diskursive Vernunft und formelle Gleichheit, Tuebingen, 2007, s.10 и O. G. Madung, Poltik und Gewalt – Giorgiu Agamben und Jurgen Habermas im Vergleich, Muenchen, 2007, s.77.
[4] Consent to the right stabilize expectations of legal subekti- everyone believes that others will observe matching rules and this is decisive basis for his own behavior. Thus the right is made up of generally accepted grounds for action that people use in their relationship related to the distribution and exchange of goods.
[5] The actual inequality between individuals in society right must oppose equality. This achieves homeostasis, - balance in the society. Otherwise society is threatened by dissolution as a result of the contradictions of the individuals composing it. " G.Boychev, Rule of Law (Legal Aspects Philosophy) S. 1994, p. 39

Behind the division public law - private law stands distinguishing state (political) and public (civil) sector. In theory, public law is most often defined as a set of legal rules concerning the relations between citizens and the state and between public bodies. Since one side by public relationship is always medium power, public law is characterized by concepts related to power-Imperium, coercion, command, and so on. In fact, as a function of power immanent social realities [6] is to ensure public order as a whole, in its political (public law) and civil (private law) dimension.
It should be possible right may be established and enforced , but the seller has the same power to require payment as the tax authority. Both claims (Private and public) are protected by the legal order and "weigh" equally. When we talk about law and compulsion should be noted that coercion is inherent in the law, but it does not make it important. Otherwise, the rule would be any arbitrary, but involuntary. In fact, not coercion determines prevail over the right and back - fact that the law is important and remain such, requires the introduction of compulsion. "Prevail over the law legitimized coercion." Actually rule stability is guaranteed by coercive means, but in the long perspective right can not be built on coercion, but requires a common understanding, recognition and enforcement by the social partners. The Law represents legitimate right order, then when accepted and followed by a large majority- when backed by a broad consensus, social efficiency and hence authority. Content legally due (Sollen) is determined by social and political being (Sein), but there are outstanding legal existence only when predominantly recognized, and should want as due.[7] So power and coercion are related to the right, but not its hallmark.
It should be noted that often the state government, the budget is cited as basic concepts of public law but actually these are not legal concepts comparable to the legal fact the persons rights, obligations and so on. "Country", " government " is much more political terms. Transfusion of concepts should impurities of legal and political system. Public law-making processes of binding decisions by public authorities (legislative, executive and judicial) and their implementation. Conversely, as indicated by Niklas Luhmann, a function of the political system it self "creating collectively binding decisions, ensuring the availability of power in its quality universal resource." [8] The policy is structured by the opposition between management and managed, its subject is the exercise of power. For its part, function of law is to be an organizer and stabilizer of the normative expectations of society. From there the Law, framed and organized political processes (public law) can be seen as a means of forecasting the state government. Discourse, seen as a model of order, valid both in private law, and publicly owned area.

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[6] Power, regardless of its form, is a phenomenon inherent in any social group. According to G. Byurdo, "the evolution of forms of power begins with the anonymous power in primitive societies passes through individualized power in medieval monarchies, to get to the institutionalized power which is characteristic of countries formed in Western Europe in early modernity. " G.Byurdo, state, S., 2007, p. XIV
[7] Alfred Katz, Staatsrecht, Heidelberg, 1994, s.12.
[8] M.King, K.Tornhil, Niklas Luhmann on law and politics, S., 2008, p.85.

He is the eternal and unchangeable element of the right, while legal content is politically and socially conditioned. Discourse shows how to organize interactions in society to call them legal, - he wears mostly functional sense. Under the law is to provide opportunities where social Connectivity to accept one and not another form and organization, as the strength of the policy is to ask specific topics of communication between individuals and institutions. Law reflects and stabilize the existing social and political order; in its entirety it is a synthesis of public resources and political objectives pursued. Legal discourse has a limiting function as intermediary in public and private spheres. It creates the restrictive framework of social interactions and making processes collectively binding decisions, which shows how public and private communications apply as law.
So if the discourse does not exhaust the question of what is right, it at least shows how it is possible right.

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[6] Madung, O. , Poltik und Gewalt – Giorgiu Agamben und Jurgen Habermas im
[7] Vergleich, Munchen, 200