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Article

# Historical-Legal Study on the Methodology of the Legal and Judicial Act Seen Through the Prism of Educational Values

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**Abstract:** Historical and Legal Study on the Methodology of Legal and Judicial Acts Viewed through the Lens of Educational Values. The paper titled "Historical and Legal Study on the Methodology of Legal and Judicial Acts Viewed through the Lens of Educational Values" addresses the integration of concepts of law, education, and methodology, exploring how these fields have mutually influenced each other throughout history. This work will focus on the importance of educational values in the legal and judicial process, as well as on how these values can shape and enhance the acts and decisions encountered in the realm of justice. The methodology applied in the development of this paper involves a qualitative analysis of the aforementioned concepts through observation and content analysis, specifically examining the notions of "legal act", "judicial act", and "education", with the aim of identifying the origins of these concepts and the context in which they emerged and were applied. Likewise, our research has pursued the effects of the connections between law and education, emphasizing the importance of educational values in forming a fair and equitable legal system. By promoting an education that emphasizes human rights, equality, and justice, we can contribute to the evolution and development of the society we all aspire to achieve.

**Keywords:** methodology; legal act; judicial act; education; legal education

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## Introduction and Methodology

The methodology of legal and judicial acts can be viewed from multiple perspectives. Among these perspectives, education and the values imparted by it allow for a thorough analysis of both types of acts, especially if our focus is directed towards understanding these concepts and, subsequently, towards their correct application. Consequently, the analysis we propose considers the context in which certain legal acts arise, the manner in which these acts are drafted, and their correct application—a process that brings us into the realm of procedural law, where we encounter the concept of the judicial act.

To begin, our study examines the concepts of legal and judicial acts, highlighting their role within the legal system. We start from the premise that both types of acts are fundamental, that they pertain to legal order, and are influenced by rules and principles found even within the field of education.

A central aspect of this topic is the "methodology of the legal act," which involves the application of specific methods and techniques in the interpretation and application of legal norms. Key components of this methodology include the analysis of norms, the evaluation of doctrine and jurisprudence, as well as the interpretation of legal texts, all of which are influenced by the values of education.

We consider these issues because education plays a special role in the training of lawyers in general, and educational values such as respect for human rights<sup>1</sup>, justice and fairness are essential to ensure optimal, fair and responsible legal practice.

Our study also examines the impact of education on the behavior of legal professionals and law enforcement officers. Education not only prepares them to understand the complexity of legal norms but also equips them to approach cases with empathy and responsibility. It contributes to shaping judges' convictions and influences their decisions, which must take into account not only the letter of the law but also the moral and ethical principles that guide justice.

Another important component of our analysis is the historical evaluation of the role of education in the development of legal systems. Over time, legal education has evolved, reflecting social and cultural changes. Our study highlights that, in different eras, education has served as a tool for promoting justice and, at times, even equality, influencing the way laws have been conceived and applied.

## Results and Discussion

### 1. General Considerations on the Concepts of "Legal Act" and "Judicial Act"

#### 1.1. Overview of the Concepts of "Legal Act" and "Judicial Act"

To fully understand the concepts of "legal act" and "judicial act," it is necessary to analyze their origins, the methodology behind their development, and their practical applicability. We will explore each aspect of these concepts in detail.

In Romanian law, the notion of a "legal act" originates from the legal norms that govern relationships between legal subjects, whether natural persons or legal entities. Legal acts are viewed as expressions of will aimed at producing legal effects, specifically the creation, modification, or extinguishment of rights and obligations.<sup>2</sup>

On the other hand, the concept of a "judicial act" is closely related to the activity of the courts. A judicial act represents a decision issued by a court in the exercise of judicial authority, with the purpose of resolving a legal dispute between parties. Its origin lies in the organization of the judicial system and the role of the judiciary in applying the law to specific cases, ensuring the observance of legal norms, protecting rights, and providing a means of expressing legal acts.<sup>3</sup>

It is also worth noting that doctrine has found it necessary to both define these two concepts and to classify them according to various criteria. From here, we proceed to another stage in addressing the two types of acts, specifically examining the techniques involved in the development and application of these acts.

We observe that in each era, throughout history, a normative act has taken the form of either a written or unwritten rule, regulating the conduct of individuals in relation to one another as well as their relationship with public authority. The method of drafting these acts includes a material component (determined by the actual content of the act) and a formal component (found in the form of expression of the respective act).

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<sup>1</sup> Rotaru, Ioan-Gheorghe. "A look at how the concept of human rights has evolved over time", in *Journal For Freedom of Conscience (Jurnalul Libertății de Conștiință)*, vol 11, nr.2 (2023), pp.825-874.

<sup>2</sup> Boroi, Gabriel; Anghelescu, Carla Alexandra, *Course in Civil Law. General Part*, Bucharest, Hamangiu Publishing House, 2011, p. 105.

<sup>3</sup> Marin, Marilena; Botină, Mădălina, *Ad validitatem and ad probationem forms in notice of real-estate sale, Contemporary Readings in Law and Social Justice*, Addleton Academic Publishers, vol. 5/2, 2013, pp. 618-624.

## 1.2. The Methodology of Drafting Legal and Judicial Acts

Creating a legal act requires the free expression of the will of the involved parties and adherence to fundamental principles of private law, such as the principle of consent and the principle of good faith, as well as respect for human rights<sup>4</sup>. The parties may determine the content of the act through negotiation, while observing the applicable legal norms, and the act must meet the conditions of validity – the parties' capacity to contract, freely expressed consent, a defined or determinable object (as applicable), and a lawful and moral cause.

Legal acts can be drafted in various forms and with certain formalities, depending on their nature (written, verbal, authentic, etc.), and must comply with the legal formalities required to produce the intended legal effects. Legislators or contracting parties may impose limitations on legal acts or through legal acts, thereby restricting certain rights that could impact the established legal order.<sup>5</sup>

The drafting of a judicial act is a structured process that requires a more rigorous approach than that of a legal act. The judicial process includes well-defined procedures, starting with the filing of a legal complaint and proceeding through procedural steps that include the hearing of parties, the administration of evidence, and deliberation, during which the judicial decision is made. Judges apply the law to the specific case at hand, issue a decision, and provide reasoning, thereby ensuring the principles of law are upheld and the decision is just.

Courts must strictly adhere to the principles of legality and impartiality, and judicial acts are issued in accordance with the laws in force and the procedures applicable to the subject matter of the dispute. In drafting judgments, the judge considers the evidence admitted and examined during the trial, based on which the judicial decision is rendered and will be enforced. The enforcement act is also regarded as a judicial act, as it represents the conclusion of the litigation.

## 2. Legal Act and Judicial Act – Historical and Legal Evolution

The evolution of the concept of the "legal act" over time has been influenced by social, economic, and cultural transformations across various eras. We will present the development of this concept starting from ancient Rome, moving through the influences of the Middle Ages, the codifications of the modern era, and up to contemporary approaches, also analyzing the differences from the "judicial act".

### 2.1. The Ancient Era – Roman Law

In ancient Rome, the concept of the "legal act" emerged as a source of law, foundational to the relationships between parties. The earliest forms of legal acts were typically referred to as "negotium" and "contractus". During this period, Roman law was highly formalistic, and strict adherence to formal expression was deemed essential for the validity of a legal act and, more generally, for the stability of the legal order. The application of a legal norm began with its communication to the community.

In Roman law, the term "negotium" broadly referred to any act involving the manifestation of will with the aim of producing legal effects. It was used to describe a wide range of transactions, including both commercial and personal acts. At this stage, the legal act was strictly formalized and rigid, with its execution requiring precise legal rituals.

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<sup>4</sup> Mitra-Niță, Mariana, *The Legal-Criminal Protection of Human Dignity as a Social Value*, Bucharest, Universul Juridic Publishing House, 2023, pp. 149-156; Buzescu, Gheorghe, „The concept of human rights and freedoms”, *The international scientific conference, 5th edition, communication, context, interdisciplinarity, Section Social sciences*, Târgu-Mureș, 2018, pp. 325-332.

<sup>5</sup> Brașoveanu, Florica, “Social and economic implications of restrictions on individual rights and freedoms”, *Eximia Journal*, nr. 12/2023, Târgu Jiu, pp. 549-555.

The term "contractus" marked a significant step in the understanding of legal relations between parties. Contractus was a type of negotium, entailing the obligation to fulfill a specific performance, thus providing a foundation of trust in Roman transactions. Although early Roman contracts were unilateral and rigidly regulated, they eventually evolved to allow for more flexible and adaptable agreements.

Roman legal acts emphasized strict adherence to formalities (for instance, "mancipatio", which referred to the transfer of property, specifically its actual conveyance or remission) and thus served as precursors to modern concepts of contractual law.

It is also noteworthy that the Romans regarded a contract as the "law of the parties", equating it with the concept of "law", much as we do today.

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## 2.2. The Middle Ages—Influences of Canon Law

In the medieval period, legal acts were strongly influenced by canon law and religious thought. Great importance was placed on the idea of the "will of the parties" in the formation of legal acts. The conditions of formation were influenced by the moral and religious principles promoted by the Church.<sup>7</sup>

In the Middle Ages, legal acts began to be viewed through the lens of the internal will of the parties, an innovative shift away from the rigid formalism of Roman law. Thus, what the parties intended to accomplish was seen as more important than the strict observance of external forms or the formal expression of their will. During this period, the concept of "intention" became increasingly important for the validity of an act and can be regarded as a precursor to the modern theory of consent.

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<sup>6</sup> Popa, Vasile, *The Legal System of the Roman City, 2nd edition – compendium*, Timișoara, Romanian University Press, 2001, p. 36.

<sup>7</sup> Drîmba, Ovidiu, *The History of Romanian Culture and Civilization*, vol. II, Bucharest, Scientific and Pedagogical Publishing House, 1987, p. 404.

The Church and canon law<sup>8</sup> played an essential role in shaping legal acts, holding (at least in theory) that individual will should be free from any vices and should adhere to moral and ethical principles. Yet, practices such as the saying "a beating is a gift from Heaven"<sup>9</sup> or the custom of the "noble child's beating at the top of the stairs" remained present in medieval society and families across all social classes, though sometimes appearing merely as formalities rooted in tradition.

Nonetheless, during this era, tentative steps toward legal evolution began. In addition to the notion of "free consent", rules emerged regarding the absence of coercion and the necessity of good faith, which became essential elements in the validity of medieval legal acts. Thus, the Middle Ages represented a shift from Roman formalism to a more flexible approach based on expressed will and the morality of legal acts<sup>10</sup>.

### 2.3. The Modern Era—Codification and the Influence of Legal Philosophy

The modern era was marked by the codification of law, with the French Civil Code (Napoleon's Code, 1804) playing a crucial role in defining the modern concept of the "legal act". Legal philosophy and Enlightenment ideas contributed to the formulation of new principles that transformed the legal act into a fundamental concept of modern civil law.

The French Civil Code was the first major attempt at the systematic codification of civil law norms and had a significant impact on the development of the notion of a legal act. The French Code defined the legal act as a manifestation of the will of the parties to create, modify, or extinguish rights and obligations. Through these provisions, the French Code promoted the principle of autonomy of will, establishing that any person has the right to freely dispose of their assets and rights as long as public order or good morals are not violated.

The Enlightenment, along with philosophers such as Montesquieu (who argued that in his natural state, separated from any religion, amidst his conflicts, man knows no other law than that common to all animals, the right of the strongest...)<sup>11</sup> and J.J. Rousseau, emphasized the ideas of personal autonomy and social contract, principles that were incorporated into the concept of the legal act. Autonomy of will, a pillar of Enlightenment philosophy, became foundational to the modern legal act, underscoring individuals' right to make decisions freely. "The Social Contract" is the first political philosophy treatise in which humans are not objects but subjects of discourse.<sup>12</sup>

Thus, the modern era laid the foundations for the concept of the legal act as we understand it today<sup>13</sup>, shaping a more structured approach and incorporating new concepts.

### 2.4. The Contemporary Era—Classical Justice vs. Digitalized Justice

In the contemporary era, the concept of the "legal act" has continued to evolve under the influence of globalization, European law, and modern legal diversity. The legal act is no longer

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<sup>8</sup> Rotaru, Ioan-Gheorghe, *Drept Bisericesc (Church Law)*, Cluj-Napoca, Risoprint Publishing, 2014, pp.51-205.

<sup>9</sup> Mitra, Mariana, *Family Education through Violence*, Bucharest, Didactic and Pedagogical Publishing House, 2014, pp. 189-199.

<sup>10</sup> Marcu, Liviu P., *The History of Romanian Law*, Bucharest, Lumina Lex Publishing House, 1997; Firoiu, Dumitru V., *The History of the Romanian State and Law*, Bucharest, 1993, p. 33.

<sup>11</sup> Rousseau, Jean-Jacques, *The Social Contract*, Bucharest, Cartex Publishing House, 2020.

<sup>12</sup> Montesquieu, *On the Spirit of the Laws*, vol. 1, Bucharest, Scientific Publishing House, 1964.

<sup>13</sup> Cernea, Emil; Molcuț, Emil, *The History of the Romanian State and Law. Terminology of Old Romanian Law*, Bucharest, Universul Juridic Publishing House, 2013, p. 280.

merely a tool for creating rights and obligations between parties, but also a means of regulating complex relationships in a dynamic society.<sup>14</sup>

Today, laws and legal collections worldwide have incorporated numerous innovations and adapted traditional concepts to new realities. The legal act has been reconsidered in terms of consumer protection, electronic contracts, digital rights, and personal data protection. As a result, we can now speak of legislative and legal innovations, new branches of law, and the intervention and role of artificial intelligence in legal relationships or in the conclusion of legal acts.

At the level of the European Union, the harmonization of legislation among member states has led to a standardization of the concept of the legal act including in terms of the conclusion and interpretation of various legal acts at the cross-border level. During this period, we also find the foundation for the application of sanctions, as well as the state's right to impose and enforce punishments.<sup>15</sup>

In this context, it can be said that the regulation of legal acts within European law has opened a new perspective for member states, including various judicial procedures. This undoubtedly involves discussions on the concept of the judicial act.

As for the legal and judicial acts in the contemporary context, a clear distinction is made between the legal act, as a manifestation of the parties' will to create rights and obligations, and the judicial act, which involves the intervention of a jurisdictional body to resolve a dispute. Therefore, we note that the legal act is the expression of private will and concerns substantive law, while the judicial act is the manifestation of public authority, dealing with procedural law<sup>16</sup> and the judicial process in general, ways in which legal acts are validated, modified, or annulled, or where sanctions are applied in case of a legal breach.

In fact, various legal professionals have expressed opinions on the judicial act, including aspects encountered in civil procedure, as well as in comparative law approaches.<sup>17</sup>

Also, we can see how the concept of the legal act has evolved significantly, adapting to various cultural and legal influences. From the formalism and rigor of ancient Rome to medieval flexibility, then to modern systematization, and up to the complex regulations of the contemporary era, the legal act has become a fundamental tool for regulating social relations. The difference from the judicial act is even more pronounced today. In the context where judicial acts intervene to resolve disputes or to ensure the application of the law, these acts have a public authority character, as opposed to the legal act, which represents agreements between parties based on their autonomy of will. In the contemporary era, the concept of legal acts continued to evolve under the influence of globalization, European law, and modern legal diversity. Legal act is no longer merely a tool for creating rights and obligations between parties, but also a means of regulating complex relationships in a dynamic society.

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<sup>15</sup> Mitra-Niţă, Mariana, „The Basis of Punishment. The State’s Right to Punish”, *RAIS Conference Proceedings*, March 1-2, 2021, pp. 161-170.

<sup>16</sup> Buzescu, Gheorghe, „Procedure of public acquirement”, *Ars Aequi Revue*, vol. 12, 2023, pp. 382-391.

<sup>17</sup> Mihaela Cristina Mocanu, „Comparative law approaches regarding the remedy of reexamination in romanian and french civil procedures”, *SGEM2014 Conference on Political Sciences, Law, Finance, Economics and Tourism*, www.sgemsocial.org, SGEM2014 Conference Proceedings, ISBN 978-619-7105-25-4, ISSN 2367-5659, September 1-9, 2014, Vol. 1, pp. 539-546.

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### 3. Education and Its Values from a Legal Perspective

#### 3.1. Reflection of Education in Legal Terms

In the context of analyzing the values of education, a legal interpretation highlights the importance of the norms governing the drafting, interpretation, and application of legal and judicial acts related to education. This involves both the recognition and protection of fundamental values through normative acts, as well as their implementation in practice through specific regulations, without neglecting the importance of social awareness<sup>18</sup>.

Throughout our study, we made a distinction between analyzing the concepts of legal act, judicial act, and the methodology for drafting and enforcing these acts on the one hand, and on the other hand, considering the promotion of educational values within and through the legislative system. In this way, we addressed both approaches that could have been analyzed within our study.

As far as the legal act in general is concerned, we can recall the way in which the people of ancient Rome understood impose on their children, during their schooling, the learning of the rules of conduct contained in the Law of the Twelve Tables. This allowed the formation of rigorous conduct in the knowledge, observance and application of the legal rules from generation to generation. We may also note that some ideas, concepts and principles that we are tempted to attribute to the people of ancient Rome are of Greek inspiration. The Roman element or the intervention of the Romans, those who took over and adapted these notions, transmitted these ideas, concepts, principles to other corners of the world through the process of Romanization.

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<sup>18</sup> Tătaru, Oana, „The Congency of Social Mindset”, *Proceedings of the 22nd International RAIS Conference on Social Sciences and Humanities*, 2021, pp. 98-102.

Proof of this is to be found in the terminological origins<sup>19</sup> of words and expressions that we still use today in the fields of education and law.

Nowadays both in Romania and across borders (whether we speak of the European space or extend our view beyond the EU borders), the values of education are deeply influenced and protected through a legal framework designed to guarantee equitable access to education, promote quality, and support inclusion. However, the interpretation and application of these values vary depending on the cultural, historical, and economic particularities of each country, the education system, mental structures, and types of learning<sup>20</sup>, with the role of legal norms being essential in maintaining and adapting them to the needs of contemporary society.

### 3.2. Educational Values in the Education System

In the analysis we set out to undertake, as mentioned earlier, education and its values were essential. According to certain opinions with which we agree, from classical antiquity to the present day, there have been many philosophies of signs and interpretation, sometimes alternative, other times complementary, largely sensitive to very different issues, reflecting the times<sup>21</sup>. The very concept of "methodology" implies a series of explanations that connect us to the realm of knowledge, to the way in which a certain activity can be carried out, to science or research, and we can say that all of these have a didactic component.

Consequently, from the perspective of the Romanian education system, we consider and present some of the educational values<sup>22</sup>, such as: accessibility, quality, respect for diversity, competence development, lifelong learning, culture, and national identity.

Obviously, not all these values are found exclusively in the Romanian education system, nor can we attribute these values solely to one nation. Each person has its own vulnerabilities and seeks to protect certain rights<sup>23</sup>. At the level of the European Union, common educational legislation and legislative recommendations facilitate the integration of fundamental educational values that complement those applied at the national level, aiming to build an inclusive and accessible educational framework.

As a result, we recognize that each person contributes to the development of these values through initiatives, particularities, and their own culture, aiming to implement them with the goal of optimally training those they professionally educate.

We initiated this approach in relation to the theme of our study, to highlight how the rules imposed by the teaching process contribute to the drafting of legal acts, methodologies, and procedures. The clarity, accuracy, and objectivity with which the relationships between people are viewed, both from the perspective of a legal act and when referring to the conduct of a process or the adjudication of a dispute, ensure that the legal order is maintained at the societal level.

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<sup>19</sup> Dafinoiu Cristina-Valentina, *Learn Greek without teacher*, 3rd Edition, Constanța, Steaua Nordului Publishing House, 2010, pp. 188-190.

<sup>20</sup> Hattie, John, *Visible learning - a guide for teachers*, Bucharest, Trei Publishing House, 2014, pp. 29; 303-305.

<sup>21</sup> Eco, Umberto, *Dall'albero al labirinto: Studi storici sul segno e l'interpretazione*, Milano, Mondadori, 2007, p. 135.

<sup>22</sup> Rotaru, Ioan-Gheorghe, "Valences of Education", in *Proceedings of the 23th International RAIS Conference on Social Sciences and Humanities*, August 15-16, 2021, Princeton, NJ, United States of America, pp. 190-196.

<sup>23</sup> Mititelu Cătălina, „The Human Rights and the Social Protection of Vulnerable Individuals”, *Journal of Danubian Studies and Research*, vol. 2/1, 2012.

## Conclusions

Having reached the conclusion of our study, we will summarize our findings regarding the methodology of legal and judicial acts, as viewed through the lens of educational values as perceived by the legal field throughout different epochs. We will focus on the essential aspects of the concept of an "act" from a legal perspective, as well as the connection between the types of acts (legal and judicial) and educational values.

We note that legal acts and judicial acts are two fundamental concepts in law, which, while interconnected, are distinguished by purpose and functionality. A legal act is a tool through which parties express their will to create, modify, or extinguish rights and obligations, while a judicial act represents a decision issued by a jurisdictional body designed to resolve conflicts and restore legal order. The methodology for drafting these acts involves a rigorous process grounded in clear norms to ensure adherence to the principles of law and fundamental legal values, as well as well-defined rules derived from methodology and didactics.

The historical study of legal and judicial acts reveals the profound transformations these concepts have undergone across different periods, along with the rigor, limitations, and interdisciplinary influences they encountered. In ancient Rome, law had a pragmatic and formalist character, based on clear rules and strict adherence to procedures. During the Middle Ages, the influence of canon law introduced moral and ethical elements, imbuing the law with a spiritual and educational dimension. The modern era, through the codification of law and the influence of legal philosophy, brought forth fundamental concepts of justice and equity, while the contemporary era, marked by digitalization, emphasizes accessibility and transparency in the administration of justice. This chronology highlights the continuous adaptation of law to the needs of society and evolving social and educational values.<sup>24</sup>

It is evident that education plays a fundamental role in the understanding and proper application of the law, and educational values such as fairness, integrity, respect for diversity, and social responsibility are essential in shaping future legal professionals and maintaining legal order. The reflection of education in the legal sphere is evident in the growing importance of educational law and the necessity for continuous training of those involved in the judicial process. The education system has the duty to promote these values and contribute to the development of individuals who are aware of their civic and legal responsibilities.

From the perspective of a historical-legal study, it is clear that the evolution of legal and judicial acts reflects the needs of a changing society and a commitment to the values of education and justice. In the contemporary era, the challenge lies in integrating legal education with new technologies without compromising the fundamental principles of law. Looking ahead, the focus on legal education must encompass both technical preparation and the cultivation of solid ethical and moral values to ensure a fair and accessible justice system.

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<sup>24</sup> Rotaru, Ioan-Gheorghe, "Current Values of Education and Culture", in *Proceedings of the 23th International RAIS Conference on Social Sciences and Humanities*, August 15-16, 2021, Princeton, NJ, United States of America, pp. 87-92.

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