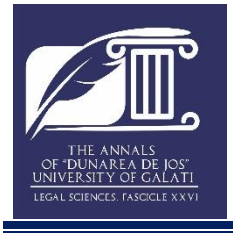

Respect for the Principles of Law, Guarantee of Respect for Human Rights and Freedoms

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Abstract: *The general principles of law warrant unity, homogeneity, harmony and the ability to promote social relations. Legal principles are the result of social experience, and the practical benefit of knowledge of general principles is based on constructive actions directed at the legislator, drawing guidelines for the entire legal system. On the other hand, general principles play an important role in the principle of justice, because those who are authorized to apply the law must know not only the law but also its spirit, and the principles of law must precisely define the spiritual essence of the law. . In other words, in some cases legal principles supersede regulatory rules. Finally, a judge cannot refuse to try a case on the grounds that there is no legal text for the court to decide, because he will be charged with a miscarriage of justice and will decide the matter based on the principles of the law. The movement of legal principles leads to the unpredictability of coercive norms and guarantees the consistency and adequacy of laws.*

Keywords: *law; norms; principles; application; unpredictability*

1. Introduction

Law cannot be devoid of principles, as it presupposes a particularly complex relationship between essence and phenomena, as well as the specific dialectic of each of the two categories from the point of view of theoretical, normative and social reality. "*This is the only way to scientifically develop the law*", says Mircea Djuvara (Djuvara, 1999, p. 265). The words of the great philosopher Kant are apt, and we suggest that all modern legislators ponder: "*Who knows when it will be? The old wish that will come true one day: to open up once and for all to the infinite variety of citizens; laws, principles, because only through this is the secret of simplifying laws. It can be*" (Kant, pp. 276-277). In our opinion, this is the debut for prowess the principles of law.

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2. Definitions and Backround

There is no unanimity in the specialized literature regarding the definition and meanings of legal principles (Ceterchi & Craiovan, 1993, p. 30; Boboș, 1983, p. 186).

Some of the common elements mentioned below can be identified:

a) Legal principles are general ideas, guiding axioms, basic prescriptions, or roots of the legal system. There is a certain correlation between the fundamental principles of law which are constituted in the spirit of the idea of justice, and which express the most important content elements of law and legal categories and concepts. This correlation consists in the fact that legal concepts and categories serve as mediating elements for the fundamental principles of law, and these, in turn, give concrete content to legal categories.

The unity of legal thinking can only be understood in the diversity of its categories and concepts. These appear as real nodal points of the theory of law. The constitution of categories and concepts of law is based on an act of evaluation of human actions in relation to the established legal system. Appreciation, evaluation of human actions from the point of view of legal criteria, presupposes the existence of a system of ideals, principles, and norms. By means of legal categories and concepts like patrimony, citizenship, subject of law, etc., the jurist will proceed to establish the legal nature of a phenomenon.

Representing parts in the developing structure of legal thinking, the categories of law are taken over from one legal system to another, being valid as long as there are the social relations they synthesize.

In this light, the role of general principles is precisely that of bringing the legal system into agreement with social changes, a process in which legal concepts and categories give the principles concrete content, ensuring their functionality.

b) The general principles of law shape the structure and development of the legal system, providing opportunities for unity, uniformity, balance, harmony and development. General principles of law are defined by positive rules of law. Law is by definition a normative order, having completely specific forms of realization compared to all other social norms (David & Brierly, 1968, p. 88).

In general, social norms are the simplest principles that regulate relationships between people.

Legal norms are related to legal principles in at least two ways: norms describe most legal principles; The functioning of the principles is done by applying in practice the procedures prescribed in the rules.

Legal norms have a lower interpretative value than principles; they aim to protect values rather than explain why they exist.

Unlike the norms, the fundamental principles have explanatory value, they contain the foundations of existence, evolution, and transformation of law.

c) The authors distinguish between the main principles of law, which characterize the entire legal system and represent the essence in the form of the relevant law, and the principles that apply to certain branches of law or legal institutions. General principles also differ from legal axioms, maxims, and aphorisms. Legal axioms, maxims and aphorisms represent small syntheses, with a degree of coverage much lower than general principles and with a limited role in the interpretation of the legal phenomenon. They result from experience and tradition.

The main general principles of Law are the most general normative statements which, although they have not been formally integrated into certain legal regulations, collect in an abstract manner the content of a group of them. They are concepts or propositions of an axiological or technical nature that inform the structure, form of operation and the very content of norms, normative groups, normative ensembles, and the Law itself as a whole[1].

These principles are used by judges, legislators, creators of doctrine and by jurists in general, either to integrate legal rights or to interpret legal norms whose application is doubtful.

The general principles of Law are normative statements that express a deontological reasoning about the conduct to be followed in a certain situation or about other norms of the legal order. Each of these principles is a criterion that expresses a duty of behavior for individuals, the principle or a standard for the rest of the norms. Enforcing the individual's duties is his priority.

Furthermore, it applies in the absence of any law or custom.

As regards the general principles of Law, a controversy has developed as to whether they are foreign or external to positive law, or whether they are part of it.

The search and explanation of the origin of the principles of law has been a permanent concern for schools and currents of legal thought. In fact, the problem was often confused with the explanation and interpretation of the legal phenomenon as such, with deciphering its position in the system of relationships between people.

[1] https://web.archive.org/web/20130622183712/http://facultad.zzl.org/areas/general/principiosgenerales.html, accessed on 03.04.2024.

As we have seen, in the consciousness of the first social formations, norms appear as divine commands imposed on people. 'No one knows where the laws come from; they are eternal', wrote Sophocles in Antigone.

The school of natural law finds in human reason the constant and general source of legal principles. They are immutable (which always remain the same, which do not change), valid for any time and any place.

In general, it can be noted that regardless of whether it was about the positivist, Jus naturalist or historical orientations, the justification of the foundation of the law, of its general, guiding principles, was done based on the consideration of the law as an instrument to ensure the freedom and equality of people in the relations between them or in their relations with the state, independent of the historical variations in which the legal instruments were configured to guarantee and achieve the practical realization of freedom and equality.

According to the position of the rationalist natural law school of the 17th and 18th centuries, general principles would be a structure of rational principles separate from and superior to positive law. Classical natural law understands that Law, natural and positive, is reasonable and therefore there are principles of common sense that give unity and coherence to the legal system. That which is totally devoid of common sense or unreasonable is not Law for this school.

According to the positivist doctrine, the principles mentioned above would be part of positive law. However, they could never impose an obligation that was not sanctioned by the same positive order, which is why it is understood that each positive order has its particular general principles and that there are no universal legal principles.

The rationalist position splits Law into two specific and distinct legal orders: the natural and the positive - the first conforms to reason, i.e. they are norms that emanate from the nature of things and are of an axiological nature, and the second is a product of the will of the political system. Another position indicates that Law, a typical human product, is a work of human intelligence: it is the one that discovers, develops, and combines criteria that enunciate a behavior understood as just; for this reason, Law is also called jurisprudence, i.e. of what is just, and prudence is understood as a prerogative of intelligence. Even if Law, set of criteria, is the work of intelligence, its effective fulfillment, the behavior of people according to legal criteria, is the work of will.

In any case, it is clear that the principles of Law are of a rational nature (they are not ontological principles). From a technical point of view, the principle of Law constitutes a logically previous proposition, on a matter of Law. This sentence must precede a mental process, a reasoning: it can be, for example, an anticipation of a

legal effect or *fattispecia* for which it is sanctioned. Thus, from the *pacta sunt servanda* principle it follows that the lease signed today must be fulfilled tomorrow, and the *neminen laedere* principle justifies the fact that injuries deserve imprisonment. These principles are the first arguments from which the rest of legal reasoning starts, anticipating the justification of laws, subjective rights, duties, and legal interconnections.

The first principles are extracted from the reality that predefines legal reasoning. And since the most complex reasonings are nothing but a composition of simpler ideas, the most primordial principles will be a simple value judgment, an affirmation of what is worth, a pro (something). Thus, for example, there is *pro homine, pro natura*, which rationally processes that man and nature are estimated as very high values. From there derives *in dubio pro*..., in case of doubt over two norms, over two interpretations, over two punishments... the most favorable of what is considered more valuable will be chosen. And all principles pro ... must also be assembled with the first principle of practical reason, by which good must be done and evil avoided: consequently, what is pleasing to God, the human species, and nature is to be done and protected (of nature) and avoided that which harms them.

According to Riofrío's formulation, legal goals, values, and goods support and give content to the first principles of Law and, in turn, these principles support norms, contracts and the entire legal system, endowing them with a basis of susceptibility and reason.

3. The Relationship between Legal Principles and Norms or with Social Values

One of the most important problems of legal doctrine is the relationship between legal principles, legal norms and social values. The opinions expressed are not uniform but differ according to the legal concept. The faculty of natural law, the rationalists, the Kantian and Hegelian philosophies of law, admit that there are some principles beyond and superior to positive norms. Legal principles are based on human reason and underlie the entire legal system. In contrast to the positivist school of law, Kelsian normativity holds that principles are defined by laws and therefore that there are no principles of law outside the system of legal norms. Eugeniu Speranția established a relationship between law and legal principles: "*If law is seen as a totality of social, mandatory norms, the unity of this totality is linked to the minimum number of fundamental principles and the consistency of all norms*." (Speranția, 1936, p. 8; Popa, 1999, p. 114).

In the Romanian specialized literature related to this issue, it was argued that legal principles are the basic prescriptions of all legal norms. (Popa, 1999, p. 114).

In another perspective, legal principles guide the elaboration and application of legal norms, the higher norms found in the texts of normative acts have force, but they can also be derived from "*permanent social values*"; it is not clearly regulated by the rules of positive law. (Ceterchi & Craiovan, 1993, p. 30)

We believe that general principles of law are limited by positive rules of law, but there is an undeniable connection between the two facts. For example, equality and freedom or equality and justice are values of social life. You need to get legal advice. Thus, legal concepts appear that represent these values, concepts that become the basis of law. Legal norms are then derived from these principles. Unlike other normative rules, the general principles of law have explanatory value because they comprise the basis of the existence and evolution of law. (Popa, 1999, pp. 116-117).

As in the opinion of other specialists, (Popa, 1999, pp. 116-117; Motica & Mihai, 1999, p. 78) We express our opinion that legal norms refer to principles of law in two senses: norms include and express many principles; the principles are then implemented by enforcing the behavior defined in the rules. In relation to principles, legal norms have a narrower teleological explanatory value, the purpose of norms is to protect social values, not to explain the reason for their existence.

Legal principles are expressions of values promoted and protected by law. We can say that the most general principles of law correspond to the social values promoted by the law.

The most important characteristics of legal principles can be identified:

(a) Every principle of law must be fundamental. It cannot be determined by an individual assessment of a specific case or legal relationship. The principle should reflect the stability and balance of legal relations despite the diversity of regulatory provisions or specific aspects of legal reality. Finally, the principle of law must be opposed to randomness and must show necessity as its essence. Being fundamental, it has a generalizing character for legal principles, the diversity of legal relationships and the rules of law. Although they express the importance and generality of legal truth, legal principles underlie all other normative rules.

There are legal principles that do not depend on sanctification by legal norms, but legal norms determine the specific context according to the moment of historical reference.

B) Legal principles are established and recognized by constitutions, laws, customs, jurisprudence, international documents or formulated in legal doctrine.

With various ways of enshrining and recognizing legal principles, there is an obvious need to recognize them at least for their description and application in the legal system. This sanctification or recognition is not sufficient for doctrine but must

be accomplished by ordinances or legislation. However, a distinction must be made between the sanctification or recognition of legal principles, on the other hand, and their application.

c) Legal principles represent values for the legal system, because they express the legal ideal and the objective requirements of society, they have a normative role for social relations. In case of ambiguity or non-existence of the rules, the settlement of disputes can be carried out based on the principles of general or special law. At best, they represent a unifying theme for legislative activity.

Legal principles, by their nature, generality and depth, are subjects of reflection mainly for the philosophy of law. Only after they have been established in the metaphysics of law can these principles be transferred to a general theory of law, where they can usually be upheld and applied in legal proceedings. In addition, there is a dialectical circle, since the "meanings" of legal principles, according to the principles of legislation and legislation, must also be explained within the philosophy of law.

Such a finding, however, makes a distinction between what we might call: constructed principles of law, on the one hand, and metaphysical principles of law, on the other. The distinction we propose is between what is "established" and what is "given" in law as a philosophical basis.

Established legal principles are, by their very nature, legal norms of general generality, developed by legal doctrine or the legislator in all cases where the law is clearly defined. These principles can form the internal structure of a legal group, a branch or even a single legal system. The following characteristics can be identified: 1) the law is developed within the law, expressing the will of the legislator under the conditions provided by the legislation; 2) is always clearly defined by legal norms; 3) the interpretation and application of the law can reveal the meanings and definitions of the established principles of law, but of course it cannot go beyond the conceptual boundaries defined by the legal norms. In this category, public disclosure of judicial proceedings, the principle of consultation, the supremacy of the law and the constitution, the principle of non-derogation of the law, etc.

Metaphysical principles of law can be considered "given" in relation to legal reality and are external to law in nature. There is no legal, regulatory or judicial process of origin. They are not transcendental and transcendental to the law, so they do not go beyond the scope of the law, but something else in the legal system. In other words, it represents the value of law, without which this constructed reality cannot have an ontological dimension. It is intended to be misunderstood, but it must not be clearly expressed by legal norms, which represent a transcendental, metaphysical form of law. Metaphysical principles may clearly exist, be discovered, or used in interpretation laws. Along with the implicit and transcendent essence of law, these

principles are ultimately arbitrary must be found in any act or form that interprets or represents the context and circumstances of the statute. law enforcement. It should be noted that the existence of metaphysical principles is also fundamental for the teleological nature of law, since any form that appears in the field of law must conform to such principles in order to be legitimate.

Legal principles are derived from constitutional provisions or deduced through interpretation.

The first principle is to provide a legal basis for the functioning of the state. The operation of this principle is the basis for the existence of law. The fundamental characteristic of the norm is the legal conquest of power and then its exercise in accordance with the requirements of legality, which also implies the sense of compromise, i.e. the recognition of the partial legitimacy of the arguments of others.

In the rule of law, the extent of power must be compensated by the shortness of its duration, respectively of those who hold it, the source of any political or civil power must be the sovereign will of the people, and this must find suitable legal forms of expression in such so that people power can actually function as a democracy. For this reason, there must be those intermediate channels through which power circulates, effective constitutional guarantees must be established to achieve the separation and self-limitation of powers in the state.

In a democratic society, the state - the political body that disposes of force and decides on its use - legally and effectively guarantees the freedom and equality of individuals, that is, it proceeds to its own limitation.

There can be no equality except among free men, and no liberty except among men whose equality is legally recognized. Equality concerns the balance of life, and freedom concerns the ability of people to act without restraints: the general principle of freedom is diffused in the branches of law either in the form of general liberties or in the form of individual liberties. While general liberties are a set of protections, civil liberties define free and positive channels and avenues of human activity and participation.

These freedoms are joint, in the sense that the impairment of one produces a chain reaction, disturbing all the others. Thus, freedom of thought is closely related to freedom of expression, freedom of speech, freedom to write and publish, etc. Constitutions and international human rights documents enshrine these freedoms. Their realization in the practice of social relations required sacrifices.

In terms of the effective realization of social freedom, the role of law materializes in limiting the inclination of some groups to deny others what they do not like, in neutralizing that diffuse suspicion of political authorities towards non-conformist

groups and in removing all barriers and discriminations that persist in the way of ensuring equal opportunities for manifestation and progress for all people.

Responsibility accompanies freedom. A clear demarcation must be made between freedom and free will.

Responsibility is a phenomenon in society; refers to the act of engaging the individual in the process of integration. Human freedom appears from a threefold point of view: freedom in relation to nature, freedom in relation to society and man's freedom in relation to himself. In the order of ideas that interests us, that of freedom as the ontological foundation of responsibility, we have in mind the meaning of human social freedom (knowledge, decision, action). Conceiving responsibility as an assumption of responsibility for the results of human social action, it is admitted that social action is the immediate framework for displaying responsibility, on the one hand, and in other conditions, that freedom is a fundamental condition of responsibility. Being related to human action, responsibility appears to be intimately correlated with the normative system. The level and measure of responsibility are assessed according to the degree and content of the process of conscious transposition into practice of the provisions of social norms.

By acquiring the dimension of responsibility, the individual is no longer in the situation of blind subordination and misunderstanding obedience to the legal norm, but in the situation of a factor that relates to the norms and values of a society actively and consciously (Florea, 1976, p. 45).

This principle brings to the forefront the problem of the existence of pre-existing fundamental prescriptions, derived from reason or from a supra-individual order and whose purpose is to give security to social life. These include equity and justice. The word equity comes from the Latin *aequitas*, which means suitability, justice, moderation, impartiality. With the Greeks, namely with Aristotle, the term *epieiheia* had more the value of a social justice, the purpose of which was to correct the law where it was deficient due to its universal character.

Justice, represents the ideal state of society that can be achieved by ensuring that everyone has their legal rights and interests fulfilled. In its finality, justice is among the main factors for consolidating the most important social relationships, as it embodies the fundamental moral virtue aimed at ensuring social harmony and peace, to the realization of which religious, moral, and legal rules contribute equally.

For the Romans, justice was based on the moral principle of justice, they placed at the base of justice that *honeste vivere* - to live honestly.

Christian morality influences the content of the idea of justice. Starting from Plato's idealism and the categories of 'good', 'sin' and 'atonement', Christianity builds an entire theological metaphysics based on 'divine justice'. Saint Augustine and

Thomas Aquinas distinguish between divine law, natural law and human law. There is a wingspanof laws; the first peak of the pyramid are placed the eternal, divine laws that give substance to the laws of nature, and at the bottom of the pyramid are human laws - positive laws.

In conclusion, this enumeration and analysis of the general principles of law underlines the fact that a good knowledge of a legal system cannot but start from the examination of how the guiding ideas - the principles, are reflected in that system. This is the explanation of the fact that in our era, both practitioners and theoreticians of law show an increased interest in the principles of law. This interest is noted both in terms of the norms and institutions of domestic law, and in the area of contemporary international law (Niculescu, 2019, p. 67).

The general principles constitute, in this sense, the foundation of the branch principles. Starting from general principles, branch legal sciences formulate some specific principles, such as, in civil law: the principle of repairing the damage caused, the abolition of an initial act also produces effects on the secondary act, *accesorium sequitur principale,* in criminal law: the principle of legality of criminal law - *nullum crimen sine lege,* in procedural law: another one is this of listening to the other party - *audiatur et altera pars*, and in public international law: the principle of respecting treaties - *pacta sunt servanda.*

In our opinion, the metaphysical principles of law are the principles of justice; the principle of truth; the principle of equality and justice; the principle of similarity; it is the principle of freedom. In our future research, we will detail the considerations that justify our determination that the above-mentioned principles have metaphysical and transcendental value in relation to legal truths, constitutional norms are rules that include the formulation of common laws or constitutional laws. These norms define state power, the basis and organization of power, define certain institutions or define principles related to fundamental rights. In this sense, we emphasize that the constitutional provisions, which include the formulation of some legal principles, cannot be excluded from the scope of the concept of legal norms, as we find all their characteristics.

4. Conclusion

Rules of principle are rules of maximum generality that summarize social experience and ensure the balance between respect for rights and the fulfillment of obligations.

Etymologically, the notion of principle comes from the Latin principium which has the meaning of beginning, initial, or fundamental element. Every principle is an ideational beginning, a source of action. Rules of principles are the tracer lines which establish the architecture of law and the jurisprudence generated by them.

A principal can be presented in various forms: axioms, deductions, or a generalization of concrete facts, and what is more important, it is recognized by democratic states worldwide.

General principles of law are the basic prescriptions that guide the creation and application of law. They intersect in a double dialectic - external and internal. External dialectics refers to the dependence of principles on a set of social conditions, on the structure of society as a whole. An overview of the evolution of legal systems and their guiding principles shows that their pace of change is generally slow. The internal dialectic of legal principles refers to the set of internal connections inherent in the legal system, to the interaction of its parts.

Regarding the practical utility of studying the general principles of law, the issue must be approached from at least two points of view: on the one hand, the principles of law provide guidance for the legal system. Without them the law would be unthinkable. In this sense, legal principles act constructively, guiding the activity of the legislator. On the other hand, general principles also play an important role in the administration of justice. Those charged with enforcing the law must know not only the letter of the law, but also its spirit, and the principles of the law constitute the spirit of the law.

A lawyer must not only determine the positive nature of the law, but also explain the reason for society's existence, the social support of the law and its connection with social values.

As a result, in some cases legal principles supersede statutory law, in civil or commercial cases the law is silent and the judge relies on the general principles of the court.

Thus, the movement of legal principles ensures the certainty of law - the unpredictability of binding rules for individuals and the coherence of the legislative system, that is, the consensus of laws, their social character, their effect and opportunities.

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