THE LEGISLATIVE CONSTRUCTION OF REALITY. A SHORT REFLECTION

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Abstract

In today's Romanian society, characterized by radical economic and political changes, we are witnessing a veritable „law crisis" mainly generated by the inadequate manner in which the law is devised. The law no longer seems necessary to regulate reality and to ensure the protection of the individual and his rights, rather it has become an easy solution amongst so many others, an element of the policies imposed by the ruling party or parties.

The enactment of law no longer seems based on the two conditions considered essential to the drawing up of legislation: knowledge of reality and an adequate application of the legislative technique so that the social reality matches the reality reflected by the law. The law is no longer created to regulate a certain reality, rather through laws most often a parallel reality is created. The legislator no longer makes decisions concerning reality itself, but becomes a simple „fabricator" of reality.

All these assessments constitute the fundamental reason that has determined us to reflect in this study upon what we call „the legislative construction of reality". Thus, in this present article we try to bring forward for discussion no only the causes of this phenomenon, but also to propose solutions to remedy the problem.

Keywords: *law crisis, legislative construction, social reality, juridical reality, real sources of law*

Introduction

If traditionally the law was placed at the top of the legal hierarchy, as in the XIX century when it was considered the "holy ark", at present it seems to have lost its key role within the framework of the internal legal order. The law has become less and less accessible to the citizens and more difficult for the legal practitioners to apply. We therefore appreciate that the law is in a significant and growing crisis.

The intelligible quality of the law, the negative influence of emergency governmental ordinances, the growing role of other sources of law, the pressure applied by European and international law, the legislative inflation, the current parliamentary crisis, but especially the violation of the fundamental rules in the process of elaborating legal acts are only a few of the causes that have led to the declining authority of the law that we are witnessing at present.

In the present study, we seek to bring up to date the role that the social, economic and political factors play within the legislative construction, by starting from the assessment that in contemporary Romanian society the laws are created regardless of what reality requires, given that reality is forced to assimilate more rules than it is capable of absorbing or that these rules contravene social realities, thus seriously endangering not only the stability of the legislative system, but even its own foundation.

We consider that the process of elaborating laws should be, at the same time, both an intellectual as well as a determined operation, since creating laws without any scientific knowledge of the social realities can only lead to the creation of an unjust and arbitrary legal norm.

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1. The relation between reality and the regulated reality

Naturally, in the theoretic approach of the relation between reality and the regulated reality we must start by defining the concepts, to which we make reference. We discuss daily the social, economic, political and juridical realities, but what do these actually represent?

Obviously, throughout time the concept of reality has represented the main theme of reflection in philosophy, which has tried to find elaborate explanations for it, and has sketched out two generally accepted views: according to the first, everything that is independent of the consciousness is "real", and according to the second, everything that is active and acts and interrelates with everything else is "real".

When we say that something exists, what we understand is that it really exists. More precisely, we consider reality as a fundamental form of existence. The concept of reality describes "everything that exists in itself, independent of another's thoughts. Reality exists regardless whether it is perceived or understood by anybody."[1]

By analyzing the notion of reality, we distinguish between two types: objective reality and subjective reality.

Objective reality consists of all the areas of existence, independent of the human consciousness and will. It covers the entire sphere of material existence outside the consciousness and it is completely independent of the actions of humans and nature. Therefore it is exterior and previous to humanity.[2]

As for subjective reality, it consists of all the cognitive, affective, voluntary and attitudinal processes, the states of mind, concepts and theories and so forth, which form the human consciousness. This form of reality exists only through the activity of the human brain and it derives from the objective reality.

Looking beyond these two "pure" forms of reality, we can identify realities that do not belong to either category as they contain both objective and subjective elements, such as social reality. Simply put, social reality describes everything that happens in society from an economic, political, moral, spiritual, demographic, technological and juridical point of view.

All these social realities closely interrelate with what we call the "regulated reality". Speaking for ourselves, simply put, by regulated reality we understand all the aspects of existence conveyed or reflected in the law. Legal norms are either processed from social rules or regulations conceived outside the law or they are created or developed through the express will of competent public bodies.

The law does not define reality, it does not proclaim any general or abstract norm wherefrom we deduce that "this thing" is real and the "other thing" is not. The law distinguishes only what is social in reality, it can only perceive reality in terms of persons and things: on one side we have the existence of persons, and the relations between them, and on the other side we have the existence of things – private property, public property and objects without owners, etc.[3]

From a historical point of view, if in the initial stage of conceiving the law the predominant form of borrowing was either integral, either through adaptation or sanction of certain rules from the social reality, such as moral, economic, religious, familial rules, in modernity and in the present times, the norms of positive law are almost exclusively the result of legislative development activity by the authorities invested with lawmaking prerogatives.

Ideally, the elaboration of legal norms should be founded on two conditions, which one must always meet: knowledge of reality and the necessity to regulate, identifying the priorities by using scientific criteria and subsequently, the adequate application of the legislative technique. The relation

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[1] Peter K. McInerney, *Introducere în filosofia dreptului* (Bucureşti: Ed. Lider, 1998), 43.
[2] C. Stroe, *Compendiu de filosofia dreptului* (Bucureşti: Ed. Lumina Lex, 1999), 36.
[3] Bernard Edelman, *Quand les jurists inventent le reel* (Paris: Éd. Hermann, 2007), 170.

between these two conditions is formed through the interdependence between reality and the regulation of reality. Thus, the elaboration of normative solutions by the legislator appears conditioned by complex realities – social, economic, spiritual, domestic or international realities.

Evidently, in contemporary society these two conditions that we consider essential for the creation of a proper legislation, are not always met and practically, we are witnessing the creation through legislature of another reality, a parallel reality, thus current discussions focus on the legislative "fabrication of reality".

2. Normative Construction – an action conditioned by complex relations

As we have previously shown, the creation of law must be visualized as an action conditioned by complex realities of a social, economic, political, spiritual, domestic or international nature that constitute the so-called "given", which determines the "constructing".

All of these realities constitute the real sources of law, which determine the object, the subjects, the content, the ends and to some extent even the form of the law. Considering these aspects, their role must not be exaggerated, nor overlooked because, as M. Djuvara stated "the entire history, the entire past, all social forces, language, the economy of the respective country, industry, commerce, agriculture, politics, moral and scientific concepts, compete to exert a strong influence over the evolution of law, just as the law exerts a strong influence over their own evolution."[4]

As the law lies at the centre of the legal reality, it has a complex foundation, characterized without a doubt by multi-foundationalism.

When criticizing mono-foundationalism, H. Rottleuthner distinguished between logical and epistemological fundaments; moral and historical fundaments; the naturally extra human, economic, political, extralegal, and proposed the safeguarding of unity and identity, explaining the law through different dimensions and connections with external variables, but also pleading for coherence and a systematic approach of the fundaments of law.[5]

Starting from these assessments, we further will discuss some of the relations considered by us and others, as the real sources of law, meaning those objective or subjective factors that determine the appearance and evolution of law and whose role must always be observed by the legislator.

2.1. The role of the natural environment in the creation of law

The natural environment, in which people live, represents a complex factor that influences the socio-economic and political activities and behaviours of people, which are regulated in their turn by legal norms.

The diverse juridical, philosophical or sociological systems have highlighted the importance of one of the elements of the natural environment: the geographic environment, biologic, physiological and demographic factors and so on.

For example, Hegel shows us that there are "two types of law: natural laws and positive law". The natural laws "are absolute and valid as they are". It is necessary to learn to recognize them because "the measure of these laws surpasses us."[6]

Montesquieu also grants the geographical factor a prevalent role in the political and legal organization of society and in the development of legal norms that must match some of the particularities of the area: "the laws must be in accordance with nature, the geography of the country,

[4] Mircea Djuvara, *Teoria generală a dreptului. Drept raţional, izvoare şi drept pozitiv* (Bucureşti: Ed. All Beck, 1999), 300.

[5] Enrico Pattaro (edit.) et al, *A Treatise of legal Philosophy and General Jurisprudence*, (teoretical part) Vol. 2, Foundations of law, vol. 2 (Springer, 2005), 1-7, 31-161.

[6] G. W. F. Hegel, *Principes de la philosophie du droit ou droit naturel et science de l'état en abrégé* (1821), 9.

the cold, warm or temperate climate, its quality, its size, the type of life of the people, the ploughmen, the huntsmen or shepherds (…)."[7]

We will not exaggerate the role of this factor in the development of law and history, demonstrating that an exaggeration of demographic and biological factors have led to the passing of preposterous laws, with a racist quality, retrograde or anti-humanistic, yet still, the law cannot avoid being influenced by the physical environment since it is in this space that people exercise their rights and assume responsibilities.

The natural environment has manifested its influence and continues to exercise it on the legislation, for example by creating laws that combat pollution and the degradation of nature, by establishing certain laws to protect the land, the territorial waters, airspace or to fight against nuclear radiation. For example, in our country laws have been sanctioned that establish the juridical system of the Danube Delta Biosphere Reservation (Law 82/1993); the Law of the Land Fund (Law 1/1991); as well as other legislative acts for the protection of the waters, the hunting and fishing fund, for the exploitation of natural deposits etc. Today there are talks about a new branch of law, environmental law.

In the literature[8] it is shown that in the process of creating the law, the biological and physiological factors gain a particular relevance in point of the repercussions that the natural qualities of people, both biological and physiological, have on their states of consciousness and their attitudes in society. The well-known distinction in law between the capacity to use (to have rights and obligations) and to exercise (to exercise the subjective rights and to assume responsibilities through proper legal acts), is based just on the existing relation between the physical development of the human being and the development of his mental faculties. Another fundamental juridical institution, namely the legal liability, is configured by the relevance that the physiological and biological qualities of people obtain. The idea of legal liability is founded on the discernment that people use when they act. The biological and physiological qualities of people are imposed upon the legislator and on other levels, for example, children, the infirm and disabled persons require a special legal treatment, thus special laws are created, whereby these groups are protected.

Legislative measures concerning the stimulation of demographic growth, the protection of married couples, have also been created and regulations meant to limit the growth of the population have been adopted, wherefrom originates the influence of the demographic factor exercised on the creation of regulations.

The profound changes generated by biological progress and the medical sciences have given the law new challenges, such as human cloning, eugenics, medical interventions meant to modify the lineage, thus both the international and domestic legislative authorities have promptly reacted and condemned such experiments. Such an example is the Romanian New Civil Code, which thorough article 62 prohibits any type of genetic modification that might result in encroachments upon the human species, or article 63 that prohibit any intervention that might result in cloning human beings or creating human embryos for research purposes.

In conclusion, the manifestation of the force of these factors does not appear as an inevitable negative circumstance, their presence does not automatically produce legal consequences. It is precisely for this reason that certain opinions[9] are well-founded, opinions according to which the action of these factors is always correlated with a social interest, and is present only to the extent to which a social necessity requires that it be taken into consideration.

In the same way, doctrine also shows us that "by acknowledging this double meaning, namely determining the object of the regulation and influencing the solutions adopted within the framework

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[7] Charles Montesquieu, *Despre spiritul legilor* (Bucureşti: Ed. Ştiinţifică, 1964), 17.

[8] C. Voicu, *Teoria generală a dreptului* (Bucureşti: Ed. Universul Juridic, 2006), 48-49.

[9] In this sense: Ion Dogaru (coordonator) et al, *Drept civil. Ideea curgerii timpului şi consecinţele ei juridice*, (Bucureşti: Ed. All Beck, 2002).

of these regulations, the regulating force, at times coercive, of factors that constitute the natural environment wherein social interactions take place, cannot be comprehended except to the extent to which the mentioned factors are considered related with social interests."[10]

2.2. The influence of the national and international socio-political environment on the legislative process

The social-political factor refers to the complexity of life in the community, the concrete components of society: the economic environment, the political, ideological, cultural and even religious environment.

As the law is a product of society, it must also be in a permanent and constructive relation with the social interests.

The economic component of the social environment is an active force in the development and modification of any objective right.

The law is imposed by the economic environment with certain conditions of the material life, dimensions that finally ensure its normative essence. The economic factors influence or determine the elaboration of certain legal norms, by exerting their authority on every component of the social system. These factors allow the law to adapt to economic requirements, depending on the social ends and interests. Economic phenomena such as: production, reparation, circulation and consumption, economic reforms, the change to the market economy take shape through the law, through adopted laws, and create the framework of development of the economy. In this sense, W. Lippman said that "no man can own property, nor openly and securely enjoy its benefits, if it is not by virtue of the fact that the state is disposed to have his legal right respected.

Without a legal title man has no property, he is nothing but a possessor deprived of possibilities to fight against those powerful enough to appropriate what is his."[11]

Within any type of society the economic component is decisive and it bears the mark of the ideologies typical of the respective period.

For example, Marxist ideology, materialist-dialectic in essence, as exemplified by totalitarian socialist and communist societies, considers that the law should correspond to the general economic situation and the economic model imposed by this ideology and also that the economy constitutes the decisive factor of the law.

On the other hand, liberal and neo-liberal ideologies sanction the thesis according to which the law must acknowledge the economic rights and liberties (the right to accumulate riches and capital, the freedom to produce and to commercialise what is produced etc.), it must guarantee contractual economy and create an adequate framework for this type of development.

The Romanian revolution of 1989 has generated radical changes in Romanian society. The economy has shifted from the old, excessively centralized economy to the market economy, whose main driving force is the free initiative of manufacturers and the autonomy of economic agents. All these principles have been sanctioned by the country's Constitution and special laws.

The transformations that have occurred in these last years have led to the advent of certain fundamental laws meant to regulate commercial relations and to guarantee: freedom of trade, loyal competition and the stimulation of foreign investments.

The current economic crisis plaguing Europe and the rest of the world is also an example of how the economy exerts considerable influence over the development of not only domestic but also community and international law: laws have been passed to limit the effect of this crisis. For example, the Law for a Sustainable Economy has been passed in Spain, while in Romania there is Law 118/2010 concerning certain measures, which are necessary for reestablishing the budgetary

[10] Anita Naschitz, *Teorie şi tehnică în procesul de creare a dreptului* (Bucureşti: Ed. Academiei, 1969), 66.
[11] Walter Lippmann, *The Good Society* (New York: Grossef s Universal Library, 1943), 278.

balance. Therefore, all these efforts made to create and perfect the legal framework of the economic reform constitute clear evidence of the connection between the law and the requirements of the economic transformations.

Last but not least, we must not neglect the role of the financial and banking environment in the development and functioning of the objective law currently in force. "No society has any chance of success if it does not combine the interests and the credit enjoyed by the wealthy with those of the state. A national debt, if not an excessively large one, will be a true blessing for the nation." As such, starting from these statements, it is clear that not any positive law, but also public and private international law depend to a subtly assessable extent on the interests of internal and international financial and banking groups.[12]

The political environment is another component that exerts influence over the law, on which we shall focus our discussions further. The relation between this factor and the law is remarkably emphasized by Professor Gheorghe C. Mihai who states: "The legal language is in a particular relation with the political language; thus, there is no one single truth for one or the other but many truths, from which one can choose and decide by majority of the vote. (…) There is no love in the political language and in the case of positive law it means something completely different (loyalty in legitimate sexual relationships, solidarity between citizens, between members of a syndicate) to "surpassing oneself". In the case of positive law, the church (institutionalized religious faith) is the one acknowledged to work, even though, on the other hand, it acknowledges the right to choose one's religion. In the case of politics, the church has no relevance if it does not serve its ends. In the case of positive law, marriage represents the institutionalized family, in which the partners can be: mature persons of different sexes. In the case of politics, the family, even an institutionalized one, is an outdated entity."[13]

The problem posed by the influence of the political factor over the creation of law is an old one, but it is just as pressing and current today as ever.

Speaking for ourselves, any legal norm shall be protected from the supremacy of the political as long as it relates to its own criteria of value that make it more stable and credible as a reflection of the social reality, however without understanding thereby an isolation of the law from the political, wherefrom it claims its paternity and with which it exists in a inter-dependence, but only that the law must keep its own essence.

The concept of political power, simply but relevantly put, designates the power of the polis, in the sense of power "of the community of members of the community that are conscious of belonging to it."

Lato sensu, political power implies besides the power exercise by the state, i.e. the institutionalized part, the characteristics of the political power.

It is clear that exercising political power is not possible without passing certain laws to regulate the organization and functioning of the authorities.

At the same time, the development of state law is the responsibility of a national body, as a component of the institutionalized part of the political power in society, and it is owed to the initiatives with a political under-layer of the existent political parties. The limitation of restituted agricultural properties to ten hectares, through Law 18/1991, the current regulations concerning the acquisition of Romanian citizenship or the electoral law in force in Romania, the decriminalization of homosexuality etc., all of these have a political side, given by the political variety of the parliamentary majority at a certain moment in history. However, the form of the regulation and its application is greatly relieved by the partisan political interest, because thus it cannot impose itself as

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[12] J. Marrs, *Rule by Secrecy*, trad. Rom. (Bucureşti, 2000), 49 *apud* Gh. C. Mihai, *Fundamentele Dreptului. Teoria izvoarelor dreptului obiectiv*, vol. III, (Bucureşti: Editura All Beck, 2004), 81.

[13] Gheorghe C. Mihai, *Fundamentele Dreptului. Ştiinţa dreptului şi ordinea juridică*, vol. I, (Bucureşti: Editura C.H. Beck, 2009), 283-284.

a general obligation. At the same time, the authority of the positive law ensures the law of the political force, which values it and adjusts its legitimacy.[14]

The positive law is also influenced by interest groups, meaning "those group structures that on the basis of a common attitude can transmit to other social structures the intention to reach certain ends that aim to stabilize, maintain or intensify the forms of behaviour that involve common attitudes. Such groups, based on a system of stable interactions, which respect the general and balanced distribution of interests (for an organized reaction to the external pressures on these interests), and act for a maximization of the interests of its members. They make the causes that they defend, public and they support or reject the candidacies in elections, debate law projects, influence the legislative through lobbying etc."[15]

The pressure groups play an ever more important role in the political game besides the political parties. Depending on their legal status, there are compulsory groups (e.g. administrative councils of territorial communities in districts, cities, counties) or voluntary groups, pertaining to the private law (e.g. industrial and commercial societies, syndicates and others). As a rule, the practices of these groups are: propaganda, influence games (corruption is the limit of this practice) as well as through direct actions: strikes, street blockades and so on.

One must not neglect the power of the minorities, defined as "a group inferior in number to the rest of the population of a state, which possesses certain ethnic, religious or linguistic characteristics that set it apart from the rest of the population and which manifests, in an implicit manner, a feeling of solidarity, in order to preserve its culture, traditions, religion and language."[16]

In some states, such groups are organized in political parties, unions or associations legally registered and recognized by the state authorities and fight through a great diversity of means and methods to force the state to adopt the requested legal regulations (the use of the mother tongue in schools, the administration and in justice, the increase of autonomy of settlements where they form a majority etc.).

People's lives take place not only within the national socio-political framework, their existence involves their belonging to the members of a regional and international communities.

The relations formed at the level of the international community, consisting mostly of relations between states, create a certain international climate, which materializes in different categories of laws and principles, which form the international legal system. The principles at the foundation of the contemporary international law are a relevant example of the power to influence the domestic law by the existing human particularities at the level of the international structures, by the forms of organization of the relations at this level as well as the specific characteristic of the social ideology. These principles include the principle of cooperation between states, the principle of a peaceful solution of international differences; not resorting to force or threats to use force; noninvolvement in the domestic matters of other countries; the right of the peoples to lead themselves; the equal sovereignty of all nations; the inviolability of national boarders; territorial integrity; the respect for basic human rights and liberties and last but not least the respect in good faith for the obligations assumed in accordance with international law.

It is indisputable that in contemporary society the structure of the national legal systems is influenced by the international and European socio-political environment.

Thus, the status of Romania as a member state of the European Union and as a part of the great family of the states of the world (the United Nations) generates the obligation to harmonize Romanian law with the international and UN law.

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[14] Gheorghe C. Mihai, *Fundamentele Dreptului. Ştiinţa dreptului şi ordinea juridică*, vol. I (Bucureşti: Editura C.H. Beck, 2009), 277-278.

[15] N. Popa, "Consideraţii privind dimensiunea socială a dreptului şi factorii de configurare a acestuia", *Revista de Ştiinţe Juridice nr. 2* (2007): 12.

[16] A. Lajoie, *Quand les minorites font la loi* (Paris: P.U.F., 2002), 23.

At present, the creation of domestic legislation involves not only an effort to achieve technical organization, national correlation, but also one to achieve community and international correlation. In this sense, article 12 from Law 24/2000 concerning the norms of legislative technique for the development of normative acts, republished in 2004, established that the normative act must be organically integrated into the legislative system, for which purpose: a) the bill must be correlated with the stipulations of laws of the same or a higher level, with which it is connected; b) the bill, drawn up on the basis of a higher level act, cannot surpass the limits of competence instituted through this act and cannot contravene its principles and stipulations; c) the bill must be correlated with the community regulations and the international treaties, of which Romania is a signatory.

Therefore, the development of a legal project involves the harmonization of the stipulations from international treaties, of which our country is a signatory and intervenes on the basis of the principle of respecting international treaties. There can be no discrepancies between a domestic law and an international treaty, because in such a case the domestic law would render the stipulations of the treaty inoperable, which would lead to breaking the obligations assumed and of the principle *pacta sunt servanda* stipulated in the Romanian Constitution. Also, the correlation of a law project with the international treaties intervenes on the basis of the principle of priority of international treaties concerning human rights, as sanctioned by article 20 from the Romanian Constitution.[17]

More than that, as a consequence of the adherence and finally of the integration of Romania in the European Union, from a legal point of view, a new interference was created between the national and community law. As any other member of the European Union, Romania has assumed the obligation to correlate the national legislation with the community legislation through the translation and implementation of the community acquis into the domestic legal system. This acquis consists of domestic laws that must be in accordance with the regulations of community law.

2.3. The human factor in the process of developing of the law

At present, the promotion and protection of the fundamental human rights and liberties, the regulation of the human conduct, in the effort to sustain the integration of the individual in society and the attempt to respond to the social realities and human necessities constitute desiderata of the legislative process.

The legal norms, which represent the substance of law, have not only a role to regulate, but also to regularize the human conduct and the socializing role, to shape and stimulate the behaviours corresponding to the values defended by the law.

In modern law, the human factor constitutes or should constitute the main area of interest for any legislator.

Regulating human behaviour within the framework the diverse categories of social relations, the law permanently relate to the presence of man in society, his capacity to influence and even transform society. Since birth, man goes through a long and complex process of socialization, a concept that signifies his integration in society, learning the social way to coexist, subordination to the conduct-type, prescribed by the social etiquette. Socialization involves the process whereby the individual becomes a human (the assimilation of the rules of social coexistence) and forms his system of response to different social requirements. The law represents an important factor of socialization, by shaping and stimulating those behaviours that are adequate to the respective values. The law exists in a wholly social and human framework. As such, nothing that is social can escape the law, because the law perceives human actions within a given system of relations.[18]

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[17] Mihai Grigore, *Tehnica normativă* (Bucureşti: Ed. C. H. Beck, 2009), 286.

[18] N. Popa, "Consideraţii privind dimensiunea socială a dreptului şi factorii de configurare a acestuia", *Revista de Ştiinţe Juridice nr. 2* (2007): 13.

The regulation of human conduct involves the analysis of the human factor in the dynamism and complexity of the features and relations, to which are added knowledge of needs, interests and goals of the actions of humans observed in different situations: citizen, hunter, worker, owner, teacher and others. At the same time, the regulation of human conduct clearly involves the adaptation of certain laws that discourage or punish antisocial actions and to diminish lawbreaking. The legislator is supposed to keep in mind that fact that whoever breaks the law is still human and for this reason there are institutions with legal responsibilities to reestablish the order of law, on one hand, and on the other to re-socialize the lawbreaker.

We appreciate that before anything else the human dimension of the law concerns the fundamental rights of a person, the rights guaranteeing complete equality for all people, the right to manifest themselves in an unhindered manner on the basis of their dignity and freedom, because humans, by their nature, are free and dignified beings. It is precisely these rights that should constitute the final purpose of any regulation.[19]

Discussing the relation between the authority and the individual, Professor Dan Claudiu Danisor appreciates that "The human person must be instated as the centre of the state and the judicial structure, a person that is understood as a universal entity, deprived of all the particular features that result from its allegiance to a primary identification group and who is free to develop their personality without the abusive intervention of authority."[20]

As such, the human factor is the one that determines the development and adoption of some of the most important international documents for promoting, defending and guaranteeing human rights and liberties: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Thus, modern national and international law is influenced, as regards its whole structure, by the problem of respecting the fundamental human rights by the state authorities. The European Court of Human Rights in Strasbourg, founded in 1954, is the first European jurisdiction for the protection of the fundamental human rights.

Therefore, humans represent the most active force in the development, modification and the evolution of positive law. The legislator, by regulating certain types of conduct must not ignore the fact that they are destined for people who must assimilate and respect them on the basis of certain values, ideals of coexistence, hopes and beliefs.

Humans will accept to have their freedom limited only in favour of an order necessary to them and others and under the condition that the law not deform the interests and values, they will submit only to the law, who consider it just.

Conclusions

The social reality is characterized by extremely fast transformations. It seems like a mosaic, in which every element has a different genesis, development and evolution, which correlates with a specific dynamics, in order to form a whole.

The law, as a constitutive and functional element of any society is influenced by the social changes and transformations, which it tries to regulate through legal norms.

At present, in our country, the legislator tends to devaluate the role of these factors, thus, the creation of legislation does not seem to be founded on the two conditions that we consider essential for the development of a law: knowledge of realities and their adequate application of the legislative technique so that there is a correspondence between social reality and the reality reflected through the

[19] In this sense: Dan Claudiu Dănişor, *Drept constituţional şi instituţii politice*, vol. I (Bucureşti: Ed. C.H. Beck, 2007), 540-620; Ioan Muraru, E. S. Tănăsescu, *Drept constituţional şi instituţii politice* (Bucureşti: Ed. All Beck, 2005), 172-253.

[20] Dan Claudiu Dănişor, *Drept constituţional şi instituţii politice*, vol. I (Bucureşti: Ed. C.H. Beck, 2007), 551.

legal act and to finally bring reality to order and to protect the individual and his rights. We are witnessing a true "law crisis", generated amongst other things by the fact that in the legislative activity does not begin with through scientific research of social realities. We can easily observe how, instead of regulating reality, we are witnessing the legislative construction of a parallel reality.

Speaking for ourselves, we consider that the role of the social realities in the legislative activity must not be ignored, nor overlooked. That is why, we appreciate that the creation of law should be, simultaneously, an intellectual and a determined activity. We must not lose sight of the complexity of the social given reality, of the fact that it comprises of numerous elements that pertain both to the material as well as the spiritual world, since creating law without acknowledging the existence of the social "given reality" can only lead to the creation of an unjust and arbitrary law.

On the other hand, the development of the law must not be reduced to its social determining only because then we reach a wrongful and mistaken understanding of the relation between social conditioning and the rational creation of law, thus hiving us the impression of a passive legislator, who does nothing but copy the social realities, without being capable of accounting for his regulating activities.

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