

DEFINING THE CONCEPT OF FUNDAMENTAL HUMAN RIGHTS IN THE LIGHT OF JURIDICAL VALUES THEORY

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Abstract

We find relevant for this study to highlight the general trend that the evolution of the concept of fundamental human rights approach and implicitly that of human rights in light of the values theory in general and juridical values in particular, established by the general principles both of the Romanian Constitution-republished, and those set out in the Preamble to the universal and European standards for human and citizen rights, on these values. By the expression citizen rights we refer to the European standard, namely Charter of Fundamental Rights of the European Union.

This is why the study begins with the justification of the scientific approach by identifying the general principles by which the documents referred to proclaim the rights of supreme values, universal values, European values and common values for countries that have ratified the universal or European document on human rights or fundamental rights. Following a key-scheme, conceptual demarcation in the field of values knowledge study, the establishment of three levels of genesis in their valuation process and, finally a systematic hierarchy of juridical values, and determining the place of supreme values in this hierarchy are analyzed successively. The final part of this study is devoted to the diachronic approach to the concept of fundamental rights and exploitation of this approach to establish the concept of fundamental rights in the light of legal values theory.

Keywords: (f) fundamental rights, (v) values, (j) juridical values, (s) supreme values, (u) universal values

Introduction

Taking into account K. Mbaye's assertion according to which **human rights history is similar to human history**, in our opinion, the first legal regulation of human rights can be identified in the statements of rights and in the content of the first written constitutions in the world, followed by their enshrining in the constitutions of the states, and much later their integration and protection at universal and regional level.

The subject of the scientific approach will be circumscribed to establish the concept of **fundamental rights** discussed in terms of values theory and finally, values positivited as juridical values. In formulating this concept we hold the classic component element of the Romanian constitutional doctrine and of the theory of fundamental rights that is addressed in a general sense of **rights and freedoms of citizens proclaimed and guaranteed by the Constitution**, which can be considered similar to the concept of **public freedoms** enshrined in the French constitutional doctrine. Also, in our opinion the establishment of the concept of **fundamental rights** is suggested by the title of the Chapter II of Title II, entitled Rights and Fundamental Freedoms.

The usage of the subsumated concept **fundamental rights** provides that **the rights and freedoms of citizens** have the same juridical status, meaning that both components are subjective rights. These components of the concept will be seen as **constant elements of the concept and elements of continuity in its diachronic evolution**.

In our opinion, the subject of the study is important for the constitutional doctrine in the matter and for the fundamental rights theory because, through this study we aim **to establish a correlation between the constitutional principle established in the paragraph 3 of the article 1 of the Constitution of Romania-republished**, which proclaims that:...**the rights and freedoms of**

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the citizens are supreme values,... and are guaranteed and subsuming a new component of the concept of fundamental rights, that highlights their supreme value, established by the fundamental law.

The discussion of this correlation leads us to the field of **values**, an extra-judicial field studied by the philosophy of values, and by transforming them in positive values they become **judicial values, which means binding normative values, dealt with as formal phenomena, imposed by the state** and which, in our opinion, are subject of the science of law, being linked to all manifestations of the individual's behaviour in society by effective use and exercise of fundamental rights.

However, in establishing the concept of fundamental rights it is necessary to mention that they are **subjective rights, essential for citizens** and for the supreme values selected and protected by the paragraph 3 of article 1 of the fundamental law, among which we mention: **human dignity and free development of human personality**.

To achieve this goal, we intend **to analyze the general theory of knowledge of the values and knowledge of formal judicial values applying the following formal scheme**: - the study of knowing values in general and in the legal field in particular, - approaching the theory of knowing the judicial values subsumed by three levels of genesis; - based on the idea that the values of positive law form a system of values, we will determine their hierarchy system, which will include **the position of supreme values** in that hierarchy.

Moreover, on the components of the concept of fundamental rights discussed in terms of judicial values, we aim to propose the introduction of **a new component, which subsumes four relativity determinations of the concept** as, in our opinion, they result from the relativization of the provisions in the paragraph 1 and paragraph 2 of the article 20 of the Constitution which essentially establishes two constitutional rules: the first rule establishes that the constitutional provisions regarding **the rights and freedoms of the citizens** shall be interpreted and applied in accordance with the Universal Declaration of Human Rights, the covenants and other treaties to which Romania is party, and the second states that if there is any inconsistency between the covenants and treaties on fundamental human rights to which Romania is party, and domestic laws, the international regulations have priority, except where the Constitution or national laws contain provisions more favourable.

Even if the theory of fundamental rights, addressed as the rights and freedoms of citizens points to the adoption of the first written constitution, the theoretical interest for its discussion is determined by the fact that the studies in the field has not always paid sufficient attention to some theoretical aspects of the fundamental rights approached in the light of the values and legal values in particular. The studies in the field generally refer to the world of values, without extending and deepening this research, and the determinations of relativity mentioned are limited at the state level without being extended to universal or European level.

1. The justification of the scientific approach

The approach of the judicial values knowledge in the field of human rights in general and that of fundamental rights is particular will be motivated for this study by identifying the principles in the matter established by documents have symbolic value for these rights up to the current standards, and those set by the Constitution of Romania-republished in 2003 as follows:

1.1. In the preamble to the Declaration of Independence of the United States of America¹ it is expressed the belief that the following truth are considered self-evident: all men are created equal,

¹ Elena Simina Tănăsescu and Nicolae Pavel, Constituția Statelor Unite ale Americii/Constitution of the United States of America (Bucharest: All Beck, 2002), 32;

they are endowed by their Creator with certain **unalienable rights**, among these rights are life, freedom and pursuit of happiness;

1.2. In the article 1 of the French Declaration of Human and Citizen Rights² it is stated that **humans are born and remain free and equal in rights**. Social distinctions may be based only on common utility;

1.3. In the Preamble of the Universal Declaration of Human Rights³ are enshrined the following principles: **a.** the recognition of the inherent dignity of all members of a family, **and their equal and inalienable rights which is** the foundation of freedom, justice and peace in the world; **b.** U.N. peoples have reaffirmed their faith **in the fundamental human rights**, in the dignity and **worth of humans**, in the equal rights of men and women and that they are determined to promote social progress and to create better conditions of life, ensuring a larger freedom;

Also, the article 1 states the philosophical postulate to which the Declaration addresses: **All human beings are born free and equal in dignity and rights**. Thus the fundamental ideas that inspired the Declaration are defined: **a.** **the right to liberty and equality is an acquired right from birth** and could not be alienated. **b.** as man is a moral being and endowed with reason, he is different from other creatures of the earth and therefore **can claim certain rights and freedoms that other creatures do not enjoy**.⁴

Moreover, the article 2 of the Declaration states the essential principle of equality and non-discrimination regarding **the exercise of human rights and fundamental freedoms**, thus developing the provisions of the United Nations Charter, according to which the United Nations should encourage the **exercise of these rights and freedoms for all**, irrespective of race, sex, language or religion.

The preamble to the International Convention on Civil and Political Rights and that to the International Convention on Economic, Social and Cultural Rights adopt and develop the content of the principles stated in the United Nations Charter and in the Universal Declaration of Human Rights, representing **universal values universally accepted by the international community**.

1.4. In the third paragraph of the Preamble to the Convention on the Protection of Human Rights and Fundamental Freedoms it is proclaimed the principle according to which the aim of the Council of Europe is to achieve a closer collaboration between its members **and that one of the ways to achieve this goal is the protection and development of human rights and fundamental freedoms**. Also, the provisions of the article 1 of the Convention set the obligation of the Council of Europe member states **to respect the human rights established by the Title I of the Convention**.⁵

1.5. We consider it necessary for this study to remember the concept of **human dimension** that **subsumes the respect for all human rights and fundamental freedoms**, and those on human contacts and other humanitarian issues, as defined in the Section *The Human Dimension of C.S.C.E.* in the *Final Document of the 1986 meeting of the representatives of the states participating*

² Charles Debbsch and Jean Marie Pontier, *Les Constitutions de la France*. (Paris: Dalloz, 1983), 8;

³ Nicolae Pavel, *Drept Constituțional și Instituții Politice/Constitutional Law and Political Institutions*, Vol. I, *Teoria Generală/General Theory*. (București: Fundația România de Măine, 2004), 222. Art.1 All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in spirit of brotherhood. Art.2 : paragraph. (1) Each individual is entitled to all rights and freedoms set forth in this Declaration, without distinction of any kind, especially of race, color, language, religion, political or other opinion, national or social origin, property, birth or other status. **paragraph. (2)** In addition, there will be no distinction based on the political, juridical or international status or the territory of the country whose citizen is a person, whether that country or territory is independent or non-autonomous or subject to any limitations of sovereignty.

⁴ *Activité de l'O.N.U. dans le domaine des droits de l'homme*. (New York: Nations Unies, 1998), 10.

⁵ Nicolae Pavel, *Drept constituțional și instituții politice/Constitutional Law and Political Institutions*, vol.I, *Teoria Generală/General Theory*. (București: Fundația România de Măine, 2004), 264. Art. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms proclaims: **The high contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Title I of this Convention**.

in the Vienna Conference on Security and Cooperation in Europe, held under the provisions of the Final Act relating to the consequence of the conference.⁶

We also believe that it is necessary to present other components of the **human dimension** which in our opinion results from the Seventh Principle of the Decalogue of the CSCE Final Act of Helsinki in 1975⁷, and includes the following components: a. **the respect for human rights and fundamental freedoms**, including freedom of thought, religion or belief for all without distinction as to race, sex, language or religion; b. **universal recognition for human rights and fundamental freedoms** and the commitment of participating states to respect them in their mutual relations and to strive individually and jointly, including in cooperation with the United Nations to promote universal and effective respect for them;

In this context, in our opinion, we must note the principles of human rights, democracy and the rule of law enshrined in the Charter of Paris for a New Europe⁸, as follows: a. Heads of State and Government of participating States undertake to build, consolidate and strengthen democracy as the sole way of government of these states and nations, and for this purpose shall comply to: **a.1. Human rights and fundamental freedoms are inherent to all people, inalienable and guaranteed by law. a.2. Democracy is founded on respect for the human person** and the rule of law. **a.3. Participating countries are ready to join all States and each of them in an effort to protect the community and to determine the progress of the fundamental human values.**

1.6. In the Preamble to the Treaty on European Union⁹ it is confirmed the commitment of the member states representative to the **principles of freedom, democracy and respect for human rights and fundamental freedoms** and the rule of law, principles which are common to the Member States (as amended by the Treaty of Amsterdam in 1997). It also expressed willingness **to deepen the solidarity between their peoples to respect their history, culture and traditions**. Moreover, in the article B of the Title I, among the Union's objectives it was introduced that of **strengthening the protection of rights and interests of nationals of Member States through the introduction of a citizenship of the Union**. Text mentioned is reiterated in the article B of the Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts of 1997. In addition, the article F paragraph (2) states that **"The Union shall respect fundamental rights as guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from constitutional traditions common to the Member States as principles of Community law.**

1.7. The second paragraph of the Preamble to the Treaty of Lisbon, December 2007¹⁰ - regarding amendments to the Treaty on European Union and the Treaty Establishing the European Community enshrines the following principle on universal values: Inspired by the cultural, religious

⁶ Pavel Nicolae, Iulian Șomănescu, Dumitru D. Ifrim, *Drepturile omului – Documente adoptate de organisme internaționale/ Human Rights-Documents Adopted by International Organizations*, Adevărul Publishing House, București, 1990, pp.164-202;

⁷ Final Act of the Conference on Security and Cooperation in Europe, Helsinki, 1 August 1975, Published in the Official Gazette no. 92 of 13 August 1975.

⁸ *Charter of Paris for a New Europe*, Published in the Official Gazette, Part I, no. 181 of 9 September 1991;

⁹ *Traite sur L'Union Européenne, Le texte integral, Signé à Maastricht le 7 février 1992*, amended by the Treaties of Amsterdam in 1997 and Nice in 2001, *Journal L'Humanite*, Paris, 1992, p. 12;

¹⁰ *Official Journal of the European Union*, C30612, of 17 December 2007; In addition, we must observe the general principle of Union's action on the international level which is based, among other principles, on the **principle of promoting the universality and indivisibility of human rights and fundamental freedoms** proclaimed in the paragraph 1 and paragraph 2.a of the Chapter I of the Treaty, that sets states: **paragraph. 1** Union's action on the international scene **is based on the principles that inspired** the creation, development and its expansion and which it intends to promote to the wider world: democracy, rule of law, **the universality and indivisibility of human rights and fundamental freedoms**, respect for human dignity, the principles of equality and solidarity and the respect for the principles of the United Nations Charter and international law. **Paragraph 2b consolidation and support** for democracy, rule of law, **human rights** and the principles of international law.

and humanist heritage of Europe from which the **universal values** were developed and that are the **inviolable and inalienable rights of the person**, and the freedom, democracy, equality and the rule of law. Also in the article 1 of the General Provisions of the Treaty is enshrined the principle that the **Union is founded on the values of respect for human dignity, freedom, democracy, equality**, rule of law and **respect for human rights**, including rights of persons belonging to minorities. **These values** are common to the Member States in a society characterized by pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men.

Furthermore, we observe the principle of **promoting the values that contribute to the protection of human rights** stated in the paragraph 5 of the article 2 of the General Provisions of the Treaty: In its relations with the wider world, the Union **upholds and promotes its values** and interests and contributes to the protection of its citizens. **It contributes** to peace, security, the sustainable development of the planet, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and **protection of human rights** and especially child rights and the strict observance and development of international law, including the respect for the principles of the United Nations Charter.

1.8. The proclamation in the Preamble to the Charter of Fundamental Rights of the European Union,¹¹ of the following principles: **a)** the Union is founded on **the indivisible, universal values of human dignity, freedom, equality and solidarity**; **b)** the Union places the individual at the center of its actions, **establishing UE citizenship and creating an area of freedom, security and justice**. **c)** The Union shall contribute to the preservation and development of these **shared values**. **d)** For this purpose, it is necessary **to strengthen the protection of fundamental rights**;

1.9. The Title I of the Constitution of Romania, amended in 2003, entitled General Principles enshrines **the rights and freedoms of the citizens**, human dignity, free development of human personality, justice and political pluralism as **supreme values and guarantees theme**, article 1 paragraph 3;¹²

1.10. **Multiplying the state and conventional constitutional laws at the regional and universal level** by inserting, recognizing and allowing **protection to the moral values**, an idea supported by the doctrine of natural law;

1.11. We can find in Europe today, and this finding can be extrapolated to the international society that **all the values are transformed and their quintessence is determined**.

At least these considerations have led us to approach the concept of fundamental rights in the light of **supreme values** enshrined in the paragraph 3 of the article 1 of the Constitution of Romania, republished in 2003, in the light of common **European values, universal values** and the **components of human dimension**.

2. Conceptual demarcations in the field of value learning

The word axiology in Romanian comes from the Greek word **axios = value + logos = study**. In essence, we should note that axiology is a branch of philosophy which has as object of study the study of values.

On the other hand, the Romanian word for epistemology comes from the Greek word **episteme = knowledge + logos = study**.

In its substance, epistemology is part of gnoseology which has as object for study the **process of knowing** as it works within the sciences in general and the theory of scientific knowledge.

¹¹ *Official Journal of the European Union*, (2007/C 303/01);

¹² Romanian Constitution, revised in 2003, was published in the Official Gazette of Romania, Part I, no. 767 of October 31, 2003, article 1 paragraph (3) Romania is a state of law, democratic and social, in which human dignity, rights and freedoms, free development of human personality, justice and political pluralism represent supreme values, in the spirit of the Romanian people's democratic traditions and ideals of the Revolution of 1989, and are guaranteed;

By using the compound word **axiological-epistemological approach** we wanted to use in the scientific approach the study of value knowledge in the field of law.

We must point out the complexity of the study and its location in a condominium belonging to the philosophy of law, gnoseologiei and the field of law.

Referring to the time of all values transformation, Nicholas Râmbu¹³ considered that now a new objective spirit, ie a new way of thinking and being, to value on and create, a new sensitivity are about to be set.

Moreover, **the reflection on values is a constant of the philosophical spirit**, but it becomes central in crucial moments of history. Besides that, people live in the world of values without being aware of them, as not aware of the air they breathe. In this respect it seems self-evident what is the truth, good, beauty, happiness, freedom, etc.

We consider that the author cited addressed an exhortation to becoming aware of the values and learning their content.

We can also say that the philosophy of value and knowledge of legal values has become more than ever a cardinal problem of the contemporary world. In addition, quantification of the values and their positivation became **a part of human society at national, regional and universal level**, thus tending to confirm Hegel's assertions according to *which laws must, on one hand, to be an all over, closed, on the other hand, the continuing need for new legal determinations still remains*.¹⁴

We noted for this study the following concept of value, considering it general enough, comprehensive and sufficient to cover the research and its application in law, in particular in establishing the concept of fundamental rights in the lights of juridical values theory.

The concept value, in a philosophical, general sense, includes **the acquisition of certain things, events and actions to which a human society grants appreciation under their correspondence with its needs or necessities and the ideals generated by them**.¹⁵

The studies in the field support the idea that **values are related to all manifestation of social relations and human behaviour**.¹⁶

Regarding the criteria according to which the values were grouped, they are:¹⁷ a. the validity of values; b. their quality; c. their subject; d. the reasons that have determined the values; e. their object; f. mental faculty from which these values arise; g. their scope.

We use the fifth criterion of classification, namely the object of values, according to which the values can be classified as economic, legal, ethical, political, etc. and the seventh criterion, their scope, according to which values can be individual, social and universal.

Starting from the idea enshrined in the philosophy that **man knows reality to use it we consider that between knowledge and value** there is a bi-univocal correspondence.

It follows that the foundation of value should be based on the science of logic and value theory. As the studies in the field have shown, **the object of value is value as a phenomenon, or as a given fact exterior to human**.

¹³ Petre Andrei, *Filosofia valorii/Philosophy of Value*, III Edition, Preface by Nicolae Râmbu, Polirom Publishing House, Iași, 1997, p.7.

¹⁴ G.W.F. Hegel, *Principiile filosofiei dreptului/Philosophy of Law*, IRI Publishing House, Bucharest, 1996, p. 213;

¹⁵ *Mic dicționar enciclopedic/Glossary encyclopaedic*, Editura Enciclopedică Română, Bucharest, 1972, p. 984;

¹⁶ Adrian Năstase, *Drepturile omului-religie a sfârșitului de secol/Human Rights-the Religion of the End of the Century*, Institutul Român pentru Drepturile Omului, București, 1992, p. 32; The author further states: Individual's participation in political, cultural or social life reflects the influence and impact of values, categories of maximum theoretical-philosophical generality, which find their expression at the axiological level of social knowledge, and that objectifies in all sorts of social norms, forming the behavior in different spheres of social life.

¹⁷ Petre Andrei, *Filosofia valorii/Philosophy of Value*, ed. cit. p. 47; The autor considers that the following values are part of the social values: a. economic values; b. judicial values; c. political values; d. ethical values; e. historical values; f. aesthetic values; g. religious values; h. cultural and social values;

Referring to the philosophy of value, Petre Andrei¹⁸ considers **philosophy as the science of the ultimate values of truth and life**, highlighting the subjective nature of philosophy, since we do not know realities, but the values we ascribe to psychological and logical datum which we objectivate.

Consequently, the great problems of the philosophy of values can be summarized in three main categories of research: that of reality, that of knowledge and that of action.

Given the above, we believe that we can study the universal, regional and constitutional theory of values structuring it on two generally accepted levels of genesis:

a. knowing the reality and the configuration of the social values to which a human community gives appreciation based on their correspondence with the essential requirements or needs determined by society's objectives and goals and its general ideals;

b. the recognition of values or valuing the social values for creating a table of values or their hierarchy;

The two levels of value genesis are generally applied not only in the study of philosophy and sociology of value, but they have the same application in the study of social reality in different fields, such as: economic, political, legal, ethical, historical, aesthetic, religious, social, cultural, etc.

It follows that interdisciplinary approaches to the theory of values is a constant of the modern science, a study condominium in contemporary sciences.

We conclude that in the national, regional and universal society today there are many values in the fields mentioned above, which have an open content.

As Petre Andrei¹⁹ said, the **judicial values could be the object of a science of law**, a legal sociology or a philosophy of law, as we study them as formal, rational phenomena, imposed by the state as social regulatory phenomena or abstract concepts of social reality of practical life.

Through the law, the individuals' behavior is subject to rules or mandatory rules in the social life. These mandatory rules or rules of conduct are general, impersonal and apply iterative when the reality or the fact circumscribed to it appears.

Also on the legal values, another author makes the following statement: **judicial value** is thus a **normative value**, from a special point of view which is that of the justice of an action. It is not a normative value of existence, as it is about obligations, we say it is true that a person is required or not to do something, and not that it is true that his action exists or not²⁰.

It follows that the dyad of the value genesis above is not sufficient for judicial values.

c. Therefore, it requires a third level of the genesis called the realization of the value by its positivation, which means passing a value from the non-legal, moral or customary field in the field of law.

Starting from the idea that **values are social phenomena, legal values are related to all manifestations of individual behavior in society.**

Human rights as value are rooted in the historical development of human society, as theorized by both natural law doctrine and the doctrine of positivism.

We must point out that the first two levels of value genesis have a social character, they are outside the law and only after positivation they become judicial values.

Positivation implies a shift in the value from non-legal field to the legal field, thus becoming a value in positive law.

¹⁸ Ibid, p. 13;

¹⁹ Ibid, p. 128

²⁰ Mircea Djuvara, *Teoria generală a dreptului(enciclopedia juridică)*, *Drept rațional, izvoare și drept pozitiv/General Theory of Law, Rational Law, Sources and Positive Law* Editura All, Bucharest, 1995, p. 439 – 442; on the same line of thought the author adds: **The legal rules are thus violated, by their very definition and nature, they can not claim to ascertain facts, ie if they are broken or not, also the laws of science say what is and can be seen, but will never lay down in the final analysis what we are rationally obliged to do based on ideas of justice**, as a rule of practice sets.

The values of positive law form a system of values. As the system of law has a hierarchy of rules and its branches, it follows that the value system of positive law also experiences such a hierarchy.

In essence, taking into account the above, in our opinion, in this field there is the following system of hierarchy of values, but we do not consider it comprehensively approached:

2.1. Absolute values, as determined by the philosophy of law as a science of the ultimate values of reality and life that can not be challenged, of which we mention: the truth, good, beauty, happiness, right, justice, life, liberty, equality, dignity, good faith, the rule of law, etc.

2.2. Universal values, universally accepted by the international community at the United Nations level or European regional community at the European Union level and proclaimed *expressis verbis* in the preamble or normative content of international or European documents of which we mention: **the inviolable and inalienable right of individual**, freedom, democracy, equality, human dignity, solidarity, the worth of human person, etc.

2.3. Supreme or fundamental values, superior to legal order of a state, proclaimed *expressis verbis* by the general principles of the State Constitution, for which the Constitution is the supreme law or the law of laws. For example, the 1991 Constitution, revised in 2003, declares *expressis verbis* in the article 1 paragraph 3, entitled General Principles, the following **supreme values**: human dignity, **rights and freedoms of citizens**, development of human personality, justice and political pluralism.

2.4. Relative values enshrined as judicial values and related to other values or other reference system of values against which they define. For example, protection of judicial values by the other fields of law, of which we mention: the protection of human rights by means of criminal law, civil law, labor law, financial law, etc.

2.5. Moral values are required to be discussed in the theory of value in law. If legal values are imposed by the legislature, ie outside the will of the individual, moral values or moral law is an externalization of the individual personality and is imposed by the interior, because, as Ihering says, the moral man is the product of social evolution. In essence, we must remember that both values are rules of conduct for the individual except that for non-complying with the moral values can not be applied the coercive force of the state. Finally, we must remember that absolute values should also be subject to positivity in law in order to be realized, but only as part of universal or regional documents or in the content of the fundamental laws.

Moreover, **moral values** must be discussed in the context of this study taking into account the constitutional provisions of article 11, paragraph 1 that proclaims that: The Romanian State pledges to fulfill **in good faith** the obligations deriving from the treaties it is party. We noticed the following definition of morality: **a set of concepts and rules of right or wrong, just and unjust, allowed or disallowed**²¹. Good faith is a moral concept deriving from international customary law of compliance by states with their obligations in treaties concluded by the will of their agreement.

In our opinion, **the set of values of the European Union** should build a condominium with the **set of national values** so that the **European peoples to feel part of the same Union**, thus defining a set of values that can be called the **Union's ethics**.

Finally, we must observe that absolute values can be subject to their positivation in law, but only as part of universal or regional standards or normative content of the fundamental laws of the states.

²¹ Ioan Ceterchi, Momcilo Luburici, *Teoria generală a statului și dreptului/General Theory of state and Law*, Tipografia Universității din București, Bucharest, 1983, pp. 104 – 106;

3. A diachronic approach to the concept of fundamental rights and its consequence in approaching the concept of fundamental rights in light of the theory of judicial values-selective aspects

In our opinion, through the diachronic approach to the concept of fundamental rights we can establish the first determination of relativity on the development of criteria under which some rights are considered fundamental and others, not at different times that accompany a state constitutional development and terminology evolution under which these rights are identified. It is also why we kept for this study K. Mbaye's statement that **human rights history is identical with the history of mankind**.²²

Defining fundamental rights of citizens has been a constant concern of legal doctrine.

In a diachronic approach to defining the fundamental rights of citizens, we find that the first Romanian constitutionalists have perceived the ideas and principles of the French Declaration of Human Rights and Citizen and the theory of natural law. We believe that in general, the content of the definition refers to the normative constitutional document come in force or its evolution over time.

Thus, Constantin G. Dissescu²³ entitled the Chapter IV Rights of the course Romanians Rights, but defining the law as regulatory of the liberties and retaining that the fundamental problem of social organization lies in the harmonization of freedoms, it concludes that the fundamental law regulates these freedoms and guarantees them in the article 5-30.

They form, according to this consideration the Rights of Romanians proclaimed in the Title II of the Romanian Constitution of 1866.

Finally, it is mentioned that the **Rights of Romanians** are the common freedoms of Romanians and foreigners on the Romanian territory and he names them names **public freedoms**.

Starting from the theory of natural law the author refers to the close link between human rights and freedoms by stating that **the right derives from liberty**. On the other hand **freedom is conscious exercise of will, the will in contest with life, intelligent being is entitled to develop in his order by reason**.

Defining freedom legally as **human faculties and powers of human beings**, it results that **each faculty or power is a right or privilege**. For these reasons it confuses right and freedom, so **freedom is a right as a right is a freedom**.

We can thus see that the idea of freedom was not known by the ancient city.

In the Middle Ages appears the doctrine of natural law, establishing one of the fundamental principles according to **which man as a human being is endowed by nature with rights specific, previous and opposable to the state**.

Starting from the idea of individual freedoms proclaimed by the French Declaration of Human Rights and Citizen, Paul Negulescu shows that **public rights, also called public freedoms, or the rights of man and citizen, are faculties, opportunities recognized by the constituent legislature for all members of society, apart from special restrictions, in order to help improve and preserve the individual himself**.²⁴

We conclude that in terms of legal nature between law and freedom there is no difference, these opportunities, these faculties recognized by the legislature to human being are guaranteed to each and to other individuals and to the community in which the human being lives.

²² K. Mbaye, *Les droits de l'homme et des peuples*, Edition A. Pedone, Paris, 1991, p. 111.

²³ Constantin G. Dissescu, *Dreptul constituțional/Constitutional Law*, Editura librăriei SOCEC & Co., Societate anonimă, 1915, p. 440 et seq.

²⁴ Paul Negulescu, *Curs de drept constituțional român/Romanian Constitutional Law Course*, Edited by Alex. Th. Doicescu, Bucharest, 1927, pp. 512-513.

It is also considered that these freedoms are subject to restrictions only because one's freedom is limited by another's freedom and because of the need for conservation and development of the state itself. As proclaimed in the article 4 of the French Declaration of the Rights of Man and Citizens, **freedom is the power to do anything which does not harm another: therefore, the only limits to the exercise of each person's natural rights are those which ensure that the other members of the community enjoy those same rights.**

From the above, we must accept the idea that although the Constitutions of Romania of the years 1866, 1923 and 1938 constantly proclaim in the Title II the **Rights of Romanians**, they are called in the studies in the field either **public liberties** or **public rights** or **rights of man and citizen**.

Romanian Constitutions of 1948, 1952 and 1965 enshrine the **fundamental rights of Romanian citizens**, and the Romanian Constitution of 1991 proclaims the **rights, freedoms and fundamenta duties**.

Given the constitutional considerents in our legal field, many authors have defined the concept of fundamental rights.

Nistor Prisaca, from theoretical considerations, suggests the following definition: **fundamental rights of citizens are those powers of the citizens to perform certain actions, essential to ensure its existence and socio-political and cultural development that are enshrined in the constitution and guaranteed through economic base and the coercion of the state.**²⁵

The definition includes the following components:

- a) Fundamental rights are those powers of the citizen to exercise certain actions;
- b) Performing these actions is essential to ensure his existence and socio-political and cultural development;
- c) Fundamental rights are provided in the Constitution and are guaranteed through the economic base and the coercion of the state;
- d) State coercion is exerted against those who try to prevent citizens to exercise their fundamental rights enshrined in the Constitution and other laws.

Tudor Drăganu, referring to the **Fundamental Rights of Citizens** states: **the concept of fundamental rights of citizenship designates those rights of citizens, essential for the physical existence and psychological integrity, for their material and intellectual development, as well as to ensure their active participation to the leadership of the state and are guaranteed by the Constitution itself.**²⁶

In an axiological approach, the author emphasizes that the fundamental rights of citizens are fundamental social values, being essential for the physical existence and psychological integrity, for material and intellectual development of the citizens and to ensure their active participation in state leadership.

Because of their overriding importance, they are guaranteed by the Constitution of Romania itself.

Ioan Muraru and Elena Simina Tănăsescu, following scientific arguments, propose the following definition: **Fundamental rights are those subjective rights of citizens, essential to their life, liberty and dignity, essential to their free development of human personality established by the Constitution and guaranteed by the Constitution and laws**²⁷. Regarding the establishment of criteria by which certain rights are considered essential or not the authors noted that **this criterion leads to world of values** and the most important problem is the selection of the values and their

²⁵ N. Prisca, *Drept constituțional/Constitutional Law*, Editura Didactică și Pedagogică, Bucharest, 1977, p.20.

²⁶ Tudor Drăganu, *Drept constituțional și instituții politice/Constitutional Law and Political Institutions, Tratat elementar/Handbook*, vol. I, Lumina Lex Publishing House, Bucharest, 2000, p. 151.

²⁷ Ioan Muraru, Elena Simina Tănăsescu, *Drept constituțional și instituții politice/Constitutional Law and Political Institutions*, Edition 13, Volume I, C.H. Beck Publishing House, Bucharest, 2005, pp. 139 -140.

special legal protection. The author also states that **certain subjective rights, because of their importance, are selected on a value criterion and are considered fundamental rights.**

In order to define the concept of **fundamental rights** the following were taken into account:

- a) fundamental rights are subjective rights of the citizens;
- b) these rights are essential for citizen's life, freedom, and dignity, indispensable for the free development of human personality;
- c) fundamental rights are set by the Constitution and guaranteed by Constitution and laws.

Ion Deleanu, referring to the **rights of citizens** or **public freedoms**, states: We called them **fundamental not only because they are enshrined and essentially guaranteed by the basic law, but – especially – because they are the nucleus around which revolve all the other subjective rights.**²⁸

This definition highlights the fact that fundamental rights are enshrined and essentially guaranteed by the fundamental law and they are the nucleus around which revolve all other subjective rights.

The French constitutional work consulted studies the **human rights, public freedoms, the rights and freedoms of citizens and fundamental freedoms.**

We note that the terminology used is not uniform. The synonym of the Romanian concept of **fundamental rights** in French terminology is the concept of **public freedoms.**

A general definition of this concept states that **public freedoms are human rights recognized, defined and protected by law.**²⁹

Starting from the fact that freedom should not be reduced to a single meaning, Jacques Robert³⁰ considers that it should have at least two senses:

- a) the first sense, freedom is the absence of constraint, which he names actual freedom, which is the same as guaranteeing a private sphere where every human being is master of his own;
- b) the second sense, the freedom is the power to act and have the right or power to achieve this or that act, which is considered normative freedom or protected freedom.

According to the first sense, the public freedom is a freedom granted to all individuals, so that its exercise by anyone should not result in any case to a harm to exercising the same freedoms of another.

According to the second sense, **the public freedom** is defined broadly and narrowly.

In a narrow sense, **the public freedoms** are freedoms enshrined in the Declaration of Rights or the Preambles, the essential rights and freedoms being specifically mentioned.

In this sense, not every public freedom should be a freedom constitutionally declared.

In a broad sense, **the public freedoms** are any right recognized by law; this obviously includes constitutional texts and that of declaration of rights.

These public freedoms will be referred to as recognized freedoms.

The fundamental freedoms are placed, in author's opinion, among the public freedoms, declared and recognized. Approaching axiologically the issue of fundamental freedoms, **fundamental freedoms** are considered to be the rights having a certain social importance, meaning that they are considered to have a fundamental character. They do not represent a immutable list, being always subject to revision.

Claude Albert Colliard³¹, states that the expression **public freedoms** comes from the article 34, paragraph (2) of the French Constitution of 1958 which reserves the field of **public freedoms** to be regulated exclusively by the Parliament. Moreover, the law lays down rules on: civil rights and

²⁸ Ion Deleanu, *Drept constituțional și instituții politice/Constitutional Law and Political Institutions*, Bucharest, vol. I, 1991, pp. 11-12.

²⁹ Raymond Guillien, Jean Vincent, *Lexique de termes juridiques*, Edition Dalloz, Paris, 1990, p. 301

³⁰ Jacques Robert, *Droits de l'homme et libertés fondamentales*, Edition Montchrestien, Paris, 1993, pp. 13-22.

³¹ Claude Albert Colliard, *Libertés publiques*, Septième édition, Edition Dalloz, Paris, 1989, pp 21-29.

fundamental guarantees given to the citizens to exercise public freedoms... Constitutional Advisory Committee has proposed to define by law the exact content and meaning of the concept of **public freedoms** as the definition of doctrine is never very precise, always founded on excesses of exegesis or refinements of subtlety.

The author states from the beginning that **public liberties** exist only in positive law and by positive law, which leads to the result that they vary in space and time. It follows that legal rules can only protect the natural rights of human beings, and that positive law is the only real legal framework of public freedoms.

Following these considerations it is necessary to propose a general definition of **public freedoms which are rights that individuals benefit from and that are analyzed by recognizing them for individuals in a certain field of autonomy.**

This general notion can be clarified if it is successively applied to the following three fields:

- a) the relationship between individual and public power;
- b) public freedoms and their collective character;
- c) public freedoms and positive obligations from the state.

Regarding the relationship between individual and public power, public freedoms are rights belonging to individual and that constitute limitations of state power or negative obligations of the state.

Regarding the collective nature of civil liberties, this means that public freedoms are individual, but when an individual acts without constraint and the action takes place in a social context in relation to other humans it can acquire a collective character.

Also, positive obligations from the state were classified into two broad categories:

- a) obligations provided and organized
- b) set or virtual obligations.

Positive obligations, separated by public liberty itself may give in reality its full sense.

Set or virtual positive obligations generally refer to economic and social rights that are considered public freedoms.

They are known as set or virtual because their framework is established by the constituent but the legislature is not required to meet them.

Given the general definition applications in the three fields mentioned, we propose the following definition in strictly legal sense: **public freedoms are legal situations and those established** by acts issued by the competent executive authorities in which the individual is granted the right to act without constraint within the limits set by positive law in force and may determine, under judicial control, the police authority obliged to maintain public order.

Jean Rivero,³² referring comparatively to **human rights and public freedoms**, shows that **public freedoms have at least the benefit of being a reality in the legal sense, through public liberties the State recognizes the right of individuals to exercise, away from all external pressures, a number of specific activities.**

This recognition implies, in a variable manner according to legal systems, a relatively solemn formulation and the existence of real guarantees, most often national and jurisdictional but equally nonjurisdictional or supranational.

The definitions observed for this study reveal a diversity of terminology in addressing fundamental rights, and a variety of views on the establishment of the concept proposed by the authors over time.

The research on these views allows us to deepen the individual's development in society, both in relation with state power and in relation to other individuals and the group to which it belongs.

³² Jean Rivero, *Les libertés publiques*, Tome 1, *Les droits de l'homme*, Presses Universitaires de France, Paris, 1991, p. 12. and p. 109.

From the analyze of the diachronic approach on the fundamental rights presented above and the observations formulated, in our opinion, the conclusion emerges that it can be regarded *as a first determination of relativity which can be subsumed to the concept of fundamental rights*.

A definition of fundamental rights includes the identification of its components on the basis of scientific criteria that achieve a more complete picture of the legal dimensions and capture their essential features.

Regarding the terminology adopted, that of **fundamental rights**, it is suggested by the Title II of the Constitution entitled **Fundamental Rights, Freedoms and Duties**.

Given that between **right** and **freedom** there is no difference in terms of legal nature, we proceeded to the above generic definition. This terminology was also suggested by the **Universal Declaration of Human Rights** and the two covenants, namely the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Certainly, in terms of terminology, we can also define the **fundamental rights and freedoms** by taking strictly the constitutional text.

From the considerations above, **we observe a current trend in the general use of values criterion and legal values in particular to identify the fundamental rights and to determine their essential or primordial character for citizens**.

This current trend is determined as mentioned above by the universal and European regional documents on human and citizen rights that **proclaim those rights as universal, European or common values** in their preamble.

We must remember that, in our opinion, the fundamental law of Romania has used these principles by enshrining them in the general principle set in the paragraph 3 of the article 1 as the **supreme values of human and citizen rights, human dignity and free development of human personality and guaranteeing them by the Constitution of Romania**.

These **three components proclaimed supreme values together with the component of human dimension will form the constant or primordial core of the concept of fundamental rights**.

Also, for this study it is necessary to take into account the **criterion according to which the human being, man, is always in the space of a sovereign state**. The citizen, because of its constitutional relationship to citizenship, benefits from the universality of rights and freedoms enshrined in the Constitution and other laws and has the obligations set by them.

According to this criterion, in our opinion, it can be subsumed **a second determination of relativity, which relates to the economic, social, political and cultural context of a society organized as a state** and that determines the use and exercise of fundamental rights guaranteed by the constitution and laws.

From the justification of the scientific approach observed in the first part of the study, in our opinion, it is required that in establishing the concept of fundamental rights we must take into account the international community, in terms of the normative standards both universally represented by the UN and at European regional level represented by the European Union's system, which is also concerned with protecting and promoting the human rights and fundamental freedoms. We can talk about a **universalization of basic human rights**. Gaining universal recognition, the human rights are indivisible and inalienable, inherent to human being.

In this regard we must subsume to the concept of fundamental rights **a third determination of relativity on the criterion of the synchronism between internal law and treaties on fundamental human rights, to which Romania is party**.

This criterion of relativity is suggested by the provisions of the paragraph 2 of the article 11 of the Romanian Constitution, republished, which establishes the following constitutional rule: **Treaties**

ratified by Parliament, by law, are part of the internal law. This process involves an analysis of simultaneity for the process of valorisation and positivation of human and citizen rights on the three levels, namely: universal, regional and state or national level. But in the case of positivation a lack of synchronism can occur on the three levels mentioned. To support this theory, we mention as argument, the provisions of the Constitution of Romania, revised, referring to the **International Treaties concerning human rights** which proclaims that: **if there are inconsistencies between the covenants and treaties on fundamental human rights to which Romania is party and internal laws, the international regulations shall prevail, unless the constitution or domestic laws contain provisions more favorable.**

In our opinion, the **diversity of approaches to the issue of human and citizen rights** on the three levels, namely: universal, regional and state or national, can be explained by the **heterogeneity of the international community**, part of which will be subordinated to the fourth determination of relativity.

Summarizing the above considerations, from the perspective of judicial values we define **fundamental rights as being those subjective rights of individual and citizen, components of the human dimension, which in an axiological approach are primordial to their dignity and freedom and for the free development of human personality, universal values, common European values and Romanian supreme values, enshrined and guaranteed by the universal and European standards and by Constitution of Romania and which subsumes four determinations of relativity: the first determination of relativity relates to addressing human rights developments over time; the second determination of relativity relates to the approach in the economic, social, political and cultural context of a society organized in a state; the third determination of relativity concerns the lack of synchronism between the regulations at universal or regional level and at state or national level; the fourth determination of relativity relates to the diversity of approaches in human rights issues explained by the heterogeneity of the international community.**

Conclusions

The objective to define the fundamental rights in terms of values in general and judicial values in particular, in our opinion was achieved. The foundation of this concept was suggested to us by the constitutional principle enshrined in the paragraph 3 of the article 1 of the Romanian Constitution, republished, which proclaims human dignity, rights and freedoms of the citizens and the free development of human personality, supreme values and their guarantee, and the general principles contained in the Preamble to the universal and European standards on human and citizen rights, that proclaims those rights as values. From these documents, we identified and noted the enshrinement of the following values for the concept of fundamental rights: **the supreme values, common European values, universal values, and components of the human dimension.**

Establishment the concepts in the field of values in general and judicial values in particular, we examined the learning and study of values on three levels of genesis and their systemic approach, an approach that involves their hierarchization, **setting the place of supreme values** in this hierarchy. In logical order, we identified the four determinations of relativity that have been subsumed to the concept.

The proposed concept can be considered a contribution to the expansion of research on constitutional law and human and citizen rights, in line with the current trends in the field.

Also, the proposed concept opens a complex and complete vision, but not exhaustive in this field.

The scheme-key proposed to justify the scientific approach, the scheme-key proposed to study the field of learning values and the determination of relativity can be replicated and extended to other fields such as justice, political pluralism, human dignity, etc.

References

- *Activité de l'O.N.U. dans le domaine des droits de l'homme*, (New York, Nation Unies, 1998), p. 10.
- *Actul final al conferinței pentru securitate și cooperare în Europa*, Helsinki, 1 august 1975, Publicat în Buletinul Oficial nr. 92 din 13 august 1975;
- Adrian Năstase, *Drepturile omului-religie a sfârșitului de secol*, (București, Institutul Român pentru Drepturile Omului, 1992), p. 32;
- *Carta de la Paris pentru o nouă Europă*, Publicată în Monitorul Oficial, Partea I, nr. 181 din 9 septembrie 1991;
- Charles Debbasch, Jean Marie Pontier, *Les Constitutions de la France*, (Paris, Dalloz, 1983), p. 8;
- Claude Albert Colliard, *Libertés publiques, Septieme édition*, Paris, Edition Dalloz, 1989), p. 21-29;
- Constantin G. Dissescu, *Dreptul constituțional*, (București, Editura librăriei SOCEC & Co., Societate anonimă, 1915), p. 440,
- *Constituția României*, revizuită în anul 2003, publicată în Monitorul Oficial al României, Partea I, nr. 767 din 31 octombrie 2003;
- Elena Simina Tănăsescu, Nicolae Pavel, *Constituția Statelor Unite ale Americii*, (București, Editura All Beck, 2002), p. 32,
- G.W.F. Hegel, *Principiile filosofiei dreptului*, (București, Editura IRI, 1996), p. 213;
- Ioan Muraru, Elena Simina Tănăsescu, *Drept constituțional și instituții politice, Ediția 13, Volumul I*, (București, Editura C.H. Beck, 2005), p. 139 -140;
- Ioan Ceterchi, Momcilo Luburici, *Teoria generală a statului și dreptului*, (București, Tipografia Universității din București, 1983), p. 104 – 106;
- Ion Deleanu, *Drept constituțional și instituții politice, Volumul I*, (București, 1991), p. 11-12;
- Jacques Robert, *Droits de l'homme et libertés fondamentales*, (Paris, Edition Montchrestien, 993), p. 13-22;
- Jean Rivero, *Les libertés publiques, Tome 1, Les droits de l'homme*, (Paris, Presses Universitaires de France, 1991), p. 12. și p. 109;
- K. Mbaye, *Les droits de l'homme et des peuples*, (Paris, Edition A. Pedone, 1991), p. 111;
- *Mic dicționar enciclopedic*, (București, Editura Enciclopedică Română, 1972), p. 984;
- Mircea Djuvara, *Teoria generală a dreptului(enciclopedia juridică), Drept rațional, izvoare și drept pozitiv*, (București, Editura All, 1995), p. 439 – 442;
- N. Prisca, *Drept constituțional*, (București, Editura Didactică și Pedagogică, 1977), p. 20;
- Nicolae Pavel, *Drept Constituțional și Instituții Politice*, Vol. I, Teoria Generală, (București, Editura Fundația România de Măine, 2004), p. 222 și 264;
- *Official Journal of the European Union, C30612*, of 17 December 2007;
- *Official Journal of the European Union*, (2007/C 303/01);
- Paul Negulescu, *Curs de drept constituțional roman*, (București, Edited by Alex. Th. Doicescu, 1927), p. 512-513;
- Pavel Nicolae, Iulian Șomănescu, Dumitru D. Ifrim, *Drepturile omului –Documente adoptate de organisme internaționale*, (București, Editura Adevărul, 1990), p.164-202;
- Petre Andrei, *Filosofia valorii, Ediția a III-a, Prefață de Nicolae Râmbu*, (Iași, Editura Polirom, 1997), pp.7, 13, 47 și 128;
- Raymond Guillien, Jean Vincent, *Lexique de termes juridiques*, (Paris, Edition Dalloz, 1990), p. 301;
- *Traite sur L'Union Européenne*, Le texte integral, Signé à Maastricht le 7 février 1992, amended by the Treaties of Amsterdam in 1997 and Nice in 2001, Journal L'Humanite, Paris, 1992, p. 12;
- Tudor Drăganu, *Drept constituțional și instituții politice, Tratat elementar, Vol. I*, (București, Editura Lumina Lex, 2000), p. 151.