THE IMPORTANCE OF PRINCIPLES IN THE PRESENT CONTEXT OF LAW RECODIFYING

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Abstract

In its grand historical-spatial diversity, in spite of the natural differences between civilizations, law presents a permanent and universal nature, represented by a bunch of constants. These constants of law are, doubtlessly, the juridical principles, those indispensable tools meant to facilitate harmonization, on international level, of the legal systems. Along with the global trend of unifying space and time and escalation of a new stage of civilization, a more diversified society, we are witnessing today a reconfiguration of the Romanian legal system, reflected in the adoption of new legal codes. In this historical context in which Romania is placed, researching the importance of law principles becomes a necessity.

Law principles have a privileged place within the positive juridical order, representing the foundation of any juridical construction: they certify the continuity of law during the centuries and that is why here we have to dig in order to find out the foundation of law, its permanent nature, its substance; they precede and give birth to positive law, which lies ahead of legal rules; principles build and guide the entire system of law, conferring to the legal order its necessary stability; being the underlayer of positive law, the principles of law represent a factor of stability and, also, a source of unity, coherence, consistency and efficiency for that legal system.

Keywords*: principle, new legal codes, continuity, stability, unity.*

Introduction

Being a facet of society, law does not reduce to the ensemble of applicable legal norms. At the basis of positive law we can find a handful of principles that have been an adjunct to society from the beginning of its existence and before the founding of state. These principles are the ones that confirm law's continuity in time and this is where the fundament of law, its permanent nature or its substance, need to be looked for. Therefore, regardless of the changes involved in the process of legal systems' evolution and of the number of qualitative and quantitative modifications recorded by the legal phenomenon, the essence remains unaltered.

In the present historical context, in which humanity is ascending a new level of civilization while embracing "the unity in diversity", the role of general principles of law, as a legal expression of the fundamental relations in society, is amplifying. We consider that in order for "the unity in diversity" to actually become possible, it is absolutely necessary for the European Union to specialize in principles and values situated in the area of the eternal legal for the individual's rationality as well as for the states' national identity.

On the other hand, we must not neglect the fact that great social-economic changes also determine modifications in the legislation's content along with changes in the construction of law systems, and the law principles are those that assure the legal system's opening and trace the directions that need to be followed. By placing the principles at the foundation of law evolution in the periods marked by legislative changes, we are highlighting the necessity of reconsidering the importance of law principles in the present context in which new legislative codes are being adopted in Romania.

The necessity of reconsidering the role of law principles is more obvious in the contemporary period, in which society's progress implies the continuous gradual decline of traditional forms and contents. The permanent struggle of emancipating from the traditions' arduousness, the lack of

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fondness towards the moral values and principles and the multiplication of principles into arbitrary, impart relativity, instability and incertitude to law. We are visibly drifting away from Portalis' belief, according to which "what is essential is to impart to the new institutions that character of permanence and stability that can guarantee them the right to grow old."

The symptoms of the crisis crossed by law are legislative explosion, a frantic tendency to reform everything that has proved to be sufficiently stable, obscure laws borrowed from other law systems and sometimes translated without sense, dispositions with imprecise, inconsistent and incoherent character. In this entire normative "chaos", also amplified by the continuous diversity of social relations and, in consequence, of those with legal character, the law principles striving to bring light and orientate the legislator during the process of creating law, as well as the practitioner during the difficult task of applying it.

Given that, such as Hayek sustained, "we must resort to the abstract where we cannot master the concrete", we believe that the need to return to principles is proven to be nowadays impetuously more necessary than in the past.

1. The importance of general principles in the process of elaborating law

The general principles represent a factor of stability in law, whilst being a counter-weight of the legislature's disorders. It is easily observed that the law regulations experience an alert rhythm of changes, whereas the principles maintain society in equilibrium, are long-lived and, thus, assure continuity for the legal order. Bergel observed that while the disappearance or modification of a simple law regulation has only an "episodic character", the elimination of a principle "risks causing a high prejudice to legal order because the faith of numerous legal regulations is at stake"[1].

The principles are genuine constants of law. However, this aspect should not lead to the conclusion that eternal and immutable law principles exist. Mircea Djuvara brought into notice the danger of considering the principles in a purely metaphysical way: "We are very easily inclined to committing the error of believing that a law or judiciary principle is the product of a pure speculation and that it would appear in our minds before an experience…This is why immutable law principles, that are valuable for any time and place, cannot exist".

Sofia Popescu emphasizes that the principles "do not block the law dynamics", but guarantee the law order's cohesion through their "migration" from a law branch to another[2]. At the same time they assure the evolution of the legal system and law renewal while constituting "the vectors of legal development, meaning that while progressing, they impel the progress of the legal system". For these reasons they are named development principles[3].

Nicolae Popa mentioned that the general principles of law are crossed by a double dialectic: external and internal[4]. The external dialecticism "concerns the principles' dependence to the social conditions assembly", while at some point they are reflected in the legal conscience of a nation; the evolution of this conscience imposes "the rethinking of some principles in accordance to the social-economic mutations that require a corresponding adequacy for the legal regulations and institutions"[5].

The internal dialecticism concerns "the assembly of internal connections characteristic to the legal system, the interferences of its component parts". Under this aspect, law principles are those that assure the coherency of the entire legal system. The subordination of the normative assemble to a

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[1] Jean – Louis Bergel, *Théorie générale du droit,* 4th edition, (Dalloz Publishing House), p. 108

[2] Sofia Popescu, *General Law Principles – again under our attention,* in Romanian Law Studies, 12th year *(*45), no. 1-2/2000, p. 13

[3] Dan Claudiu Dănişor, Ion Dogaru, Gheorghe Dănişor, *General Law Theory, (*C. H. Beck Publishing House, Bucharest, 2006), p. 156

[4] Nicolae Popa, *General Law Theory*, 3rd edition, (C. H. Beck Publishing House, Bucharest, 2008), p. 95

[5] Nicolae Popa, *Regarding the Concept and Role of General Principles in Law,* in the Public Law Magazine no. 1-2/1996

minimum of guiding assumptions contributes to affirming the legality's principle, as a fundament of the positive legal order and to assuring a logical unity as part of it.

The law system does not constitute the constant, static, arithmetic, mechanical, sum of the effectual legal norms, but the unity and assembly of legal norms that are systematically structured and organized on the base of certain principles[6]. The cohesion of law system is assured through the interdependency of its composing elements. Buche mentioned that structure and system's development are subordinated to the principles. Therefore they are structure principles. General principles of law "tend to change the legal order into a coherent system. They have the role to assure the systematic unity of law, in the middle of positive regulations' disorder, by forming check points that allow the placement and arrangement of law regulations in accordance to certain conducting ideas"[7].

On the other hand, as a facet of society, law does not reduce to the assemble of applicable legal norms. At the basis of positive law we can find a handful of principles that have been an adjunct to society from the beginning of its existence. Guided by ideals, law is for an individual a mean of social control: the person conforms to the legal norms because these offer him cultural–normative models, of which he is aware they are necessary and thus follows them. Law is valorized and integrates the behavior standards resulting from society's value conscience. Therefore, the elaboration of law is based on principles and values: the principles of law are to the extent of positive law, specify it and stand at its base[8].

The general principles of law occupy a privileged spot in the positive legal order and constitute the foundation of any legal construction. Hayek observes that law principles "determine in a real method the legal system, its general spirit, as well as every particular norm contained by it and the method in which it is applied"[9]. In a similar way,

Adhémar underlined that "in order to be viable and at least durable, the various institutions of a nation need to be founded on principles between which a general adequate harmony exists: this method of thinking, superior to the others, is simultaneously accessible to any real legal advisor"[10]

For Bergel the principles fulfill a fundamental function and a technical one. The fundamental function resides in the fact that while being the base of legal thinking, the principles impose themselves to the actual legal advisor[11]. Thus, the entire legislative assemble is governed and conforms to the principles' authority. The legal norms cannot be proclaimed outside the directives contained by the law principles. The technical function intercepts the interaction of various general law principles: some principles are directors because the legal order itself depends of them; therefore, the principle of law equality and of fundamental liberties constitutes "foundations of the legal structure". Other principles are rectifiers, since they aim only at the disposal of certain mistakes or of the eventual unjust solutions; for instance, the principle of good faith.

In the process of law creation, we are interested in the directing principles that orient the legislator's activity from a methodological point of view. "The entire law creating process involves the skillful combination of tradition and innovation, so that the most adequate legislative solutions are imposed"[12]. The legislator must permanently capture the requirements of social life and offer them an actual expression by establishing legal norms. However the effectiveness of these norms

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[6] Sofia Popescu, *General theory of law*, (Lumina Lex Publishing House, Bucharest, 2000), p. 210

[7] Dan Claudiu Dănişor, Ion Dogaru, Gheorghe Dănişor, *the quoted paper,* p. 156

[8] Gheorghe Mihai, *The Foundations of Law. The Theory on the Beginning of Objective Law*, volume III, (All Beck Publishing House, Bucharest, 2004), p. 36

[9] F.A. von Hayek, *Droit, législation et liberté*, volume I, page 78, *Apud* Philippe Malaurie, *the quoted paper*, p. 356

[10] Esmein Adhémar, *Apud* Philippe Malaurie, *The Anthology of Legal Thinking,* (Humanitas Publishing House, Bucharest, 1996), p.287

[11] Jean – Louis Bergel, *quoted paper,* p. 106

[12] Dumitru Mazilu, *General Theory of Law,* 2nd edition, (All Beck Publishing House, Bucharest, 2000), p.127

depends on their conformity with the ensemble of principles that govern the normative system so that the "law's principles trace the directing line for the legal system; without them the law could not be conceived"[13]. The positive law must organize, develop and apply these principles that guide society towards reaching ideals.

Law must itself contain the equilibrium between the letter and spirit of rules. The entire official legislation, instituted or approved by the state, otherwise said "the law's letter", must be crossed by the "spirit" of law principles. The principles constitute guiding marks for the legislator and assume the function of conforming the positive law's system. The law's spirit orients the legislator's will: "the normative act's text acknowledges that certain will of the legislator that is in accordance to the law spirit, itself configured in the values principle of justice and, on a larger scale, in the century's spirit"[14].

Franck Moderne attributes a functional legitimacy to the general principles of law: these assure the exigency of legal order coherency, by contributing to the consolidation of certainty in legality[15]. The author refers to Max Weber's belief in the fact that "that which answers to the coherency's imperative is rational".

The coherency of legal order signifies the lack of antinomies in law. In C. M. Stamatis' opinion, the law order has never been an absolutely coherent integral normative system, without internal flaws and in perfect conformity with the social, political, cultural domain, instead the antinomies are resident in its interior. However, it has been shown that they must not be seen necessarily as "mistakes" of legislative policy, caused by the legislator's negligence. The existence of antinomies in law is explained by the fact that, on hand, the legal norms serve not just for different purposes but to opposed ones as well, and, on the other hand, by the fact that certain legal regulations are inefficient since they cannot keep up with the tendencies of society's development.[16]

The principles represent the arching key of the entire legal structure. As the base for positive law, they are reservoir of unity, coherency, uniformity and efficiency for the particular law system. The entire law science consists in reality of "generating from the multiplicity of law dispositions their essential, namely these exact last justice principles, from which all the other dispositions derive. Hereby, the entire legislation becomes of a great clarity and is caught in the so-called legal spirit"[17].

2. The importance of general principles in the process of law establishment

The continental legal system rigorously distributes the tasks dictated by the fulfillment of society's ideals: the legislator is entitled to create the law and the judge must apply it, in its letter and spirit. The law, however, cannot be mechanically applied to some actual cases because it is general in its nature; it cannot cover all legal situations that rise from social reality, being insufficient; the law also cannot live forever since it is naturally temporary. The generality, insufficiency and perishable aspect of law make the judge's assignment extremely difficult.

Applying the law, as the judge's primordial assignment, demands a unitary and harmonious interpretation of the legal dispositions, along with the permanent adaptation of law to actual cases, but also to the continuous evolution of social facts. Also the necessity of solving causes under the

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[13] Nicolae Popa, Mihail C. Eremia, Simona Cristea, *General theory of law,* 2nd edition, (All Beck Publishing House, Bucharest, 2005), p 105

[14] Ioan Humă, *Controversial problems regarding historical tehnique in interpreting law,* in Romanian Magazine of Law Philosophy and Social Philosophy no. 2/2005, pp. 68-72

[15] Franck Moderne, *Légitimité des principes généraux et théorie du droit,* in Revue Française de Droit Administratif no. 15(4)/1999, pp. 722-742

[16] Sofia Popescu, *Research of legal methodology for the support of law's elaboration activiy*, in Romanian Law Studies, year 11 (44), no. 1-2/1999, p. 19

[17] Mircea Djuvara, *General Law Theory (Legal Encyclopedia),* All Publishing House, Bucharest, 1995, p.214

sanction of justice refusal, dictated by the civil Code, imposes to the judge the obligation to establish the justice act, indifferent to the silence, obscurity or insufficiency of law.

Interpreting the law is art, an act of creation, because it necessarily implies the issuing of some value judgments, leading to an "alteration" of the text's content. Every case is unique and reclaims innovative solutions, and the judge cannot apply in a mechanical way, instead he must particularize the law, shaping it according to the necessities of the actual cause. "The legislation's entire complexity thus reflects as an intense light, concentrated by a mirror in a single point, in that given text. Afterwards, this light must be aimed as a shred of convergent rays at the actual case that needs to be judged; all of the law's complexity must find its solutions in every test case"[18].

When the texts are no longer equivalent to the necessities of time, the judge will elude the law and apply solutions according to the new conditions of social life, divulging the law's spirit. If the law is silent, the judge will resort to general law principles, interpreting their significance. Therefore, the law principles constitute a guidance to which the judge can appeal to whenever the difficult task of applying the law places him in a deadlock. In this section we refer to the judge as being a representative figure for applying the law. We emphasize, however, that during the process of law establishment, the law principles constitute the key factor on which all actors implied in the justice act's achievement rely on, *lato sensu*.

First, while interpreting, the judge must determine the authentic sense of normative texts. For the achievement of this objective it is required that the judge guides himself not only according to the sense of words and the legislator's intention, instead he must take in consideration the law's spirit itself. "It is contrary to the law to discard its spirit and take in consideration only the words used by the legislator", was the warning int Justinian's *Code*[19]. The judge's activity is not exhausted in the passive lecture of law texts, the identification of concepts and while applying them to the test case. It has constantly been highlighted that "it is not the text containing the norm that adjusts the actual case, but the attorney, as a subject of the objectifying process of the abstract normative significations used for decisively solving a practical problem"[20]. The legal norm has an abstract existence, being incapable to satisfy on its own the exigencies of practice. It constitutes a model that the attorney bears on to the actual case through a creating interpretation. The interpretation thus resides in finding the perfect equation between the form's generality and the content's particularity, between the letter and spirit of law. Or, the law's spirit is situated above the attorney's will and the positive law; it is found in the principles that establish the law.

Other times, the existence of a "unique" sense for the words and any easily recognized attorney's intention are thought to be non-existing. The significance of normative texts is "a variable that depends on interpretation and therefore the interpretation itself must be considered as a constitutive discourse instead of a descriptive one of significations: thus, to interpret does not mean to describe, but to decide what is the significance of the normative text that will be expressed in a text with a value of norm, norm that is not characterized through the value of true or false, but through its validity in the legal system"[21].

Gh. Mihai specifies that, in interpretation, we resort to the law's principles either being intermediate or direct[22]: intermediate, because the law principles especially dedicated or deducted

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[18] Mircea Djuvara, *quoted paper,* p. 112

[19] *Nec dubium est, in legem committere eum, qui verba legis amplexus, contra legis nititur voluntatem* (L. 5, Codex, ab initio, De legibus, 1, 14), *Apud* Dimitrie Alexandresco, Romanian civil law principles, volume I, (Graphic Workshops SOCEC, Bucharest, 1926), p. 40

[20] Gheorghe Mihai, *Law foundations,* volumes I – II, (All Beck Publishing House, Bucharest, 2003), p. 395

[21] A. Aamio, *On the Truth and Validity of Interpretative Statements in Legal Dogmatics*, p.. 423, *Apud,* Lelioara Pena, *Ratio et voluntas. Argument of rationality and argument of authority in law,* in Romanian Law Studies, year 16 (49), no. 3-4/2004, p. 344

[22] Gheorghe Mihai, *Law foundations,* volumes I – II, (All Beck Publishing House, Bucharest, 2003), p.516

from normative texts, are engaged in any interpretative procedure; direct, they are invoiced as natural law principles or as an accepted common law.

Our attention is aimed at the fact that the interpretation should not be absolutely autonomous. If we refuse the interpretive intercession's any element outside the legal aspect, we obtain "perfectibility that tends to close under the limits of strictly legal principles", but we thus build an unprincipled and apolitical law, correct from a logical-formal point of view, but inefficient from a practical point of view. The law is constructed in a practical way and concerning values, so that even in interpretation an axiological base exists, resulting exactly from legal, moral, political values' compound[23].

The law's principles constitute guiding marks that the judge uses especially when the law's text has an ambiguous, vague character or can have multiple interpretations. It has sometimes been emphasized that it is preferred the rule's absence or a slighter perfect rule, instead of an uncertain rule. In this case, the judge is bound to appeal to the law's principles in order to clarify the meaning and to establish the adequate sense. Hart showed that the language involves an area of "half-shade", uncertain from the significance point of view, in which the renderer's discretionary power develops.

For D. C. Dănişor, I. Dogaru şi Gh. Dănişor, the law is "full of inconsistent areas and is often lost in an ocean of vague". The law's inconsistency results from its linguistic nature, but also from reality's complexity to which the law must answer to. On the other hand, the law sometimes resorts to concepts that are intentionally imprecise (for example, that of "exceptional situations"), since "this vague aspect can play a vector role of progress of law and of text's adaptability to situations impossible to be taken in consideration by the legislator in the regulation moment, through the constructive interpretations"[24].

In the context of law regulations' imprecise character, Franck Moderne attributes an explanatory function to the general principles of law: whenever doubts exist regarding the significance of a legal norm in a given context, an appeal is made to these principles that allow the establishment of the text's sense and understanding of the rationality for which this must be applied. At the same time, it is shown that principles also fulfil a function of justification: being recognized as having value on their own, any norm based on a law principle bears a presumption of legitimacy[25].

The author analyses the general principles of law also under the aspect of their contribution to assuring the legal order's completeness, element of the formal rationality of law. Because any legislative system involves, virtually, certain gaps, the law itself authorizes the judge to supply the existing gaps, deciding from the general principles at the base of law. Moreover, rationality through analogy is considered to be "one of the methods of elaborating general law principles, as long as they justify the application, through the association of some actual hypotheses, of a solution regarding a similar case". Formulating general principles with normative character, through analogy, the judge contributes to the law's "completion" and to assuring an accomplished legal order. Another method is that of "increasing induction", that allows the disengagement of new general principles of law for supplying the gaps, through the generalization of some particular dispositions applicable to some cases determined to other unexpected hypotheses.

Since a long time ago, the Romans have admitted the existence of law gaps, so that they surpassed the rigidity of literally approaching the law text and admitted the completion of law through analogy and fiction. To the Romans the law spirit was found in justice, the law being the art of good and the equitable. The Roman legal advisors considered that an appeal could be made to something similar (*ad simila procedere*), if identity rationality exists. The Roman judges had,

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[23] Dan Claudiu Dănişor, Ion Dogaru, Gheorghe Dănişor, *quoted paper,* p. 36

[24] Franck Moderne, *Légitimité des principes généraux et théorie du droit*, in Revue Française de Droit Administratif, no 15(4)/1999, p. 730 and the following

[25] Lucian Săuleanu, Sebastian Rădulețu, *Latin legal expressions dictionary*, (C. H. Beck Publishing House, Bucharest, 2007), p. 240

however, the possibility to declare at the end of debates that matters are unclear and to refuse to bring the verdict in.

Such a possibility is not recognized today, the judge being obligated, instead, to solve the cause under the sanction of justice refusal, regardless of the silence or insufficiency of law, presuming that only the legislative system can be defective. The law, in its ensemble, does not admit gaps, thus the judge has the possibility and obligation to solve the cause in the base of general principles of law. Therefore, if the law emitted a statute and its sense is clear, the judge must limit to applying it, according to the Roman principle *optima lex, quae minimum judici, optimus judex qui minimum sibi* – the best law is that which leaves as little as possible to the judge's judgment, and the best judge is the one who relies more on the law than on himself[26]. However if the law emitted a statute and its sense is ambiguous or if the law gave no such statute, the judge must solve the cause by resorting to either a norm that regulates similar situations (laws analogy), or to general principles of law (law analogy).

Analogy is a logical, inductive procedure, based on the idea that rapports presenting the same essential character must, actually, be subjected to the same law rule: *ubi eadem ratio, ibi idem jus.* Professor Vălimărescu highlights the fact that analogy most not be confused with the extensive interpretation of law, through which the "legal formula is expanded by being applied to some cases unexpected by the legislator, but which enters the spirit and purpose of the law". In the case of analogy, "it surpasses the law's spirit and applies to a rapport not taken in consideration by the legislator, not even implicitly"[27]. Therefore, if the analogy has an inductive character, the extensive interpretation of law is purely deductive.

Sofia Popescu mentions that applying law through analogy, represents, at the same time, a logical and creation activity. Analogously, the inexistence of a direct legal regulation of the case can be observed and the procedure of filling the gaps takes place[28].

The judge must find solutions for eliminating law obscurity. In the case of law analogy, he will attempt to apply a legal disposition to another rapport than the one predicted by law. For example, the jurisprudence appealed to law's analogy on the matter of guardianship, taking over the causes that exclude a person from the quality of guardian of a minor or forbid it, and applying them to the trustee, the purpose of establishing the two procedures being the same: the protection of an incapable person[29]. In case the judge does not find a legal norm proclaimed for a similar situation, he will resort to law's analogy, attempting to establish the real content of legal norms in the light of general principles of law. Through law analogy, the jurisprudence extracted from the dispositions that readjust the guarantee against the eviction with regard to sale, a general institution of guarantee, applying it to all contracts with onerous title that transfer property. Law's analogy surpasses the legislator's will and is established on law's general principles with the role of filling the gaps that exist on a legislative level, assuring at the same time the versatility of law. Law analogy must not, however, disestablish the legislator's will or the legislation's spirit.

The Calimach Code disposed that whenever a business cannot be decided after the literal text, nor after the sense of law, similar cases determined by law must be taken in consideration, as well as the motives of law that refer to similar matters. Furthermore, "if even then doubts exist, the fault should be researched with measure and attention through all circumstances and should also be decided according to the natural law's principles"[30].

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[26] Alexandru Vălimărescu, Treaty of Law Encyclopedia, (Lumina Lex Publising House, Bucharest, 1999), pp. 372 to 373

[27] Sofia Popescu, *General theory of law*, (Lumina Lex Publishing House, Bucharest, 2000), p.264

[28] Alexandru Vălimărescu, *quoted paper,* p. 374

[29] *Apud* Dimitrie Alexandresco, *quoted paper*, p. 22

[30] Alexandru Vălimărescu, *quoted paper*, p.389

The existence of some gaps in positive law is also explained by the fact that legal regulations are unable to promptly answer the spectacular dynamics of society's evolution. Beyond the law's necessity of permanently adapting to social needs, the law authorizes the judge to find solutions by the aid of a creating interpretation of law's principles. This solution is implicitly consecrated in the French and Romanian civil Code that allows the law completion in case it is silent, obscure or insufficient, but finds its absolute expression in the Swiss civil Code, that provides in article 1 that "The law determines all materials to which the letter or spirit of its dispositions refers to. In the absence of an applicable legal disposition, the judge shall act according to the unwritten law and, in the lack of a common law, after the rules he would establish in case he would act as a legislator. He inspires from the solutions consecrated through doctrine and jurisprudence". Recognizing the imperfection of legislative actions, the Swiss Code thus proclaims deliberately the judge's role of creator.

Vălimărescu mentions that for us "the jurisprudence constitutes a source of law subordinated to laws, when it has decided, but a creator of new rules as far as the law cannot face all necessities. If we abandon the fiction of the written law's amplitude, we no longer need to appeal to fictions, like that of historical theory. The jurisprudence, the same as the legislator, will search solutions in the real sources of law, in which the rational and experimental elements will constitute the required directives"[31].

Situated in the rational law, from where they are transmitted in positive law, the general principles of law prove to the judge to be "resources" of the existing legal order. The law's principles allow the accomplishment of exigencies concerning the completion of the legal system, a necessary requirement, since in spite of the attempts to perfect the legislative system, the complete character of the legal system remains an ideal of perfection, not being capable of "defining the statute of any specific fact with the aid of its elements ensemble"[32].

Besides assuring a soft interpretation of legal texts and filling the gaps in the legislative system, law's principles also fulfill another role in the legal order: as soon as they are established by jurisprudence, "the general principles and established solutions serve as support for other legal constructions and contribute to creating new law rules, therefore contributing to the evolution of the legal system"[33]

The general principles constitute the access key for the interpreter in the law domain. Synthesizing J.P. Gridel's considerations regarding the principles contribution in the process of law establishment, we show that these serve to: circumscribing the sphere of application of particular legal texts, highlighting the necessity of an extensive interpretation or, on the contrary, a restrictive one; establishing some exceptions that were previously not expected or admitted by law; determining the mandatory forces of legal norms; creating some new law principles by generalizing some special and analog legal dispositions (for this purpose we are offered as an example the principle of contractual responsibility for another's action, consecrated as a result of abstracting some wasted legal texts that refer to the entrepreneur's, transporter's or hotel-keeper's action); removing some inequitable solutions that result from a purely formal logic[34]

Law's principles are indispensible to the moderated functioning of legal order. They assure the adaptation of the written law, which is static, slow and often surpassed by the evolution of social actions, by clarifying it, completing it and assuring its uniformity, continuity and progress. In

[31] Alexandru Vălimărescu, *quoted paper,* p. 389

[32] Sofia Popescu, *General theory of law,* (Lumina Lex Publishing House, Bucharest, 2000), p. 263.

[33] Jean - Louis Bergel, *quoted pape.*, p. 107

[34] Jean - Pierre Gridel, *Le rôle de la Cour de Cassation Française dans l'élaboration et la consécration des principes généraux du droit privé*, in *Les principes généraux du droit, Droit français, Droits de pays arabes, droit musulman,* (Bruylant Bruxelles, 2005), p. 142 to 155.

addition, they "give those guarantees required by individuals since the norms of law are applicable in accordance to the fundamental exigencies of society"[35].

Conclusions

Since it is connected to the social environment, the law must permanently respond to the requirements of the actual social life, which are continuously transformation. In a reality marked by the gathering of legal civilizations, the jurists can no longer approach the phenomenon only from the perspective of national legal traditions, but also from the perspective of interdependencies on a regional or global scale. Such as the English teacher Twining mentions, in a globalized and cosmopolitan world, the general studies regarding law science, as well as those on the matter of law comparison, must become cosmopolitan, as a pre-condition for the revival of a general law theory and for the reconsideration of the law comparison.

While offering the conclusions for the legitimacy of law's general principles, Franck Moderne illustrates that they express "the most deeply rooted assumptions that accompany the ideal of a rational and modern law". These depended on assuring the coherency's and completion's exigencies of the law's systems, the insertion itself of the principles in a normative hierarchy constituted a guarantee of the ensemble's functioning; creating some interdependencies between the elements of the system, that are situated on the same level or on different ones; protecting some implicitly or explicitly admitted values; consecrating a judge enabled to speak the law. In essence, the author considers that in the context of contemporary liberal democracies the law's general principles "contribute to consolidating the legitimacy of law itself".

All these grounds explain the overwhelming importance of law principles in an era marked by profound legislative transformations, such as the one we are experiencing.

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