

# VALUES AND VALORIZATION

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## Abstract

*I live with the feeling that, in the past few years, Romania has been a drifting ship. We do not know where it is going, nor the place it will arrive at. Like any individual endowed with reason, I wonder why chaos took over this society and, if I would have the power to change anything, what would be the solution to less troubled waters. I think we lost our way because we forgot to always refer to the values that should guide us ... or because we refer too often to non-values. I think we could find our way and stop wandering if we will rely our evolution on values, if we will teach our children from a young age what values and non-values are and if we could run our existence in the spirit of a real value horizon.*

*People live together, not just coexist, as so deeply professor Gheorghe Mihai highlighted<sup>1</sup>. Coexistence is specific to herds, packs, hordes; but human community means collaboration, cooperation, consensualisation, which implies a consciousness towards values. "What is missing now to the human society is a behavior that relates to a code of virtue"<sup>2</sup>.*

*Moral values are the support for the legal values. Unfortunately, today, it seems to me that values are inverted and that the belief in the perfectibility of the individual (and therefore the perfectibility of law) is increasingly being questioned. Contemporary society is characterized by lack of motivation, lack of a strategy and the absence of any ideals. In this context, I believe that the individual today feels the necessity of some value references more acutely, whilst the society needs a law deeply based on moral values. As morality itself contributes to the valorization of the law, I think that moral appeal is more necessary today than yesterday, as a remedy for the individual and, consequently, the law to overcome their crisis.*

*For all these reasons and also because I share the view that "the concrete law is not viable without values and these values are always expressed in the defining principles of a law system"<sup>3</sup>, I felt the need to write about values and valuation.*

**Keywords:** value, valuation, law crisis, principle, ideal.

## INTRODUCTION

The rules of cohabitation within the society are not spontaneously produced by the intuition. Mircea Djuvara noted that „the concept of value is present within all the legal relations and therefore it can be said that the law in its integrity is nothing but a research of values. They are classified in increasingly higher values, having the same nature as the very idea of obligation, being set out as unconditional values”<sup>4</sup>.

First of all, the values concern the process of creation of the law by being valorized by means of the enacted rules of law. The lawmaker creates the ideas within an axiological area. The law always starts from the social actions, but it also means legal consciousness, ideals and social values. Ion Craiovan noted that an action becomes a value as soon as it falls under the dynamic field of our interests and opinions<sup>5</sup>. Each and very rule outlines social values, defined as „appreciation criteria, standards, norms” which are values representing “fundamental principles of choice” for human life. As soon as the values acquire legal expression, they are promoted and protected by

the rules of law they translate. Within the society, the values motivate the individual, guide it and grant reference models and systems to it. Therefore, we speak about the perception of the values in what concerns the individual and the valorization function of the values on the human inwardness.

The specific element of the society is the praxio-axiological cooperation of its members. Gheorghe Mihai deeply outlines that people do not coexist, the people live together<sup>6</sup>. The coexistence is specific to the herds, packs or hordes; but the human community means collaboration, cooperation, unity which implies the value awareness. The individuals, as free beings endowed with sense and consciousness, choose their behaviors, measure their actions, relate to behavior standards and assess the consequences of their actions. Therefore, „the feature of the individual of being free, able to choose based on a rational purpose is the one that differentiates so radically the animal from the human being”.

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<sup>1</sup> Gheorghe Mihai, *Fundamentele dreptului*, vol. I - II, All Beck Publishing House, Bucharest, 2003, page 164.

<sup>2</sup> Dan Claudiu Dănișor, Ion Dogaru, Gheorghe Dănișor, *Teoria generală a dreptului*, C. H. Beck Publishing House, Bucharest, 2006, page 11.

<sup>3</sup> Gheorghe Mihai, *Fundamentele dreptului*, vol. I - II, All Beck Publishing House, Bucharest, 2003, page 167.

<sup>4</sup> Mircea Djuvara, *Teoria generală a dreptului (Enciclopedie juridică)*, (General Theory of Law (Legal Encyclopedia)), All Publishing House Bucharest, 1995, page 216.

<sup>5</sup> Ion Craiovan, *Tratat de teoria generală a dreptului*, (The Treaty on the General Theory of Law), Universul Juridic Publishing House, Bucharest, 2007, page 480.

<sup>6</sup> Gheorghe Mihai, *Fundamentele dreptului*, (The Basis of Law), vol. I - II, All Beck Publishing House, Bucharest, 2003, page 164 and the following ones.

## CONTENT

The axiological dimension of the law represented a point of interest for the whole philosophy of the law. Ioan Humă outlines that the legal axiological condition is the key condition of the law. The substance of the law lies not only in the normative dimension of the law, but also in the valuable contents which confer the axiological meaning to the field of the law. Therefore, the field of the law and especially its regulatory framework “falls under the scope of the creative tension between what it actually is and what it should be, between the reality and the ideal and between the fact of life and the value. To remove the law from the axiological field means to reduce it to a pile of facts, of things belonging to the entropic fact of life and not to the human action able to model the social reality and the human being itself”<sup>7</sup>.

The principles of the law are the expression of the values promoted and defended by means of the law. According to J. Locke, „the principles have such an influence on our opinions that we usually judge the truth and weigh the probability by means of them to such extent that all that is not compatible with them is so far from us that we do not even think it can be possible”<sup>8</sup>.

Such great is the importance of the values, that they classify any positive law from the axiological point of view. However, the people do not cohabit only legally, but also morally, politically and religiously. The law does not exhaust the wealth of the horizon of the values: besides the independent legal values which build the rules of law, there are also other values, namely non-legal values which are necessary for the human coexistence and which the law takes over, legalizes, promotes and defends by means of its rules. „The philosophy of the value is the only one which can justify both the general human nature of the value and the fact that the different types of value are complementary, so that if the human being does not cultivate values it is unilateral, poor and in the end comes to be inauthentic”<sup>9</sup>.

Therefore, the legal axiology does not investigate only the legal values. Since it aims the legalization of the other social values, the principles represent the field where the law meets the philosophy, moral, politics and the other social fields. The circumscription of the content and of the purpose of the general principles of law inevitably engages the theory in formulating valuable statements which are opened to the philosophical horizon so that the real

penetration of their meanings necessarily implies the philosophical meditation: the philosopher is the one who “queries the whole law, the concept of the law while the lawyer “queries the concreteness of the law”<sup>10</sup>. Ion Craiovan noted that the philosophical universe of the value, „attracts, repulses or causes reluctance, but it proves to be unavoidable by the human being within its permanent attempt of self-definition and construction”<sup>11</sup>.

Ioan Humă outlined that the philosophical truth is different from the scientific truth due to the fact that, by studying not the thing itself but its impact on our spirit, the philosophical truth confers value<sup>12</sup>. Notwithstanding, the author establishes that the two subjects are complementary: „the science of the law certifies the philosophy of the law and the latter is nourished by the living truths of the former”.

The ethics also represents an axiological criterion of the law. There are several law principles that claim the defense of certain values coming from the moral; therefore, the fairness, dignity, the good and the useful thing, the truth and the good faith are categories of the moral. Sometimes, the doctrine assesses the individual itself as a value, seeking answers to the question of whether the individual as a distinct personality is or has value. Therefore, according to Ion Craiovan, „the human being creates values and creates itself by means of the values which become coordinates of the human action and ontological determinations of the human condition”.

The moral values represent the basis of the legal values. In our opinion, the two social fields, namely the law and the moral are complementary in the field of the law and they merge in order to achieve the scopes of the society without being mutually exclusive. However, within the accepted legal principle, the existence of the law was sometimes perceived as a subsidiary intervention: „the law exists as long as the individuals are incapable of morality, in its meaning of virtue”<sup>13</sup>. We believe that the substance of the law is not the coercion, the perfection being achieved by means of the valorization function of the moral within the law. First of all, the law is claimed in order to educate, to valorize and to prevent (this is why the majority of the individuals comply with the normative prescription) and only to the extent necessary the law is claimed in order to coerce and to punish.

The distinction of perspective between the law and the moral in terms of the value consists in the fact

<sup>7</sup> Ioan Humă, *Teorie și filosofie în orizontul de cunoaștere a fenomenului juridic*, în *Studii de Drept Românesc*, (Theory and philosophy in the horizon of the knowledge of the legal phenomenon in Romanian Law Studies) year 17 (50), no. 3-4/2005, page 264.

<sup>8</sup> *Apud* Dumitru Mazilu, *Teoria generală a dreptului*, (General Theory of Law), All Beck Publishing House, Bucharest, 1999, page 126.

<sup>9</sup> Ioan N. Roșca, *Introducere în axiologie. O abordare istorică și sistematică*, (Introduction to axiology. An historical and systematic approach), Fundația România de Mâine Publishing House, Bucharest, 2002, Foreword.

<sup>10</sup> Gheorghe Mihai, *Fundamentele dreptului*, (The Basis of Law), vol. I - II, All Beck Publishing House, Bucharest, 2003, page 7.

<sup>11</sup> Ion Craiovan, *Tratat de teoria generală a dreptului*, (The Treaty on the General Theory of Law), Universul Juridic Publishing House, Bucharest, 2007, page 478.

<sup>12</sup> Ioan Humă, *Teorie și filosofie în orizontul de cunoaștere a fenomenului juridic*, în *Studii de Drept Românesc*, (Theory and philosophy in the horizon of the knowledge of the legal phenomenon in Romanian Law Studies) year 17 (50), no 3-4/2005, page 260.

<sup>13</sup> *Idem*, page 33.

that “the moral admission of the value of the human life is universal and absolute and no speculative derogation of it can affect its substance, while the legal admission of the same value is suddenly neither universal nor absolute as long as the same lawmaker falls in contradiction in the same respect”<sup>14</sup>. Therefore, we understand that what is important is the admission of the values, not the way they emerge within a positive law system which changes from an era to another, but within their logical anteriority, the everlasting values of the founding principles of the positive law being the ones that really matter. In what concerns the political influence, the principles of law are “the result of the continuous and necessary observations of the social needs and none of these principles represents just the result of the abstract speculation”<sup>15</sup>. Before being embodied into a principle of law, a certain principle represents the object of the political ideologies; up to the extent the idea takes shape in the common legal consciousness of the society, the concept sets oneself up as a principle of law, being then translated into the rules of law. According to Ion Craiovan, the political values such as peace, freedom, equality, independence express the aims of the social-political system, the content and the structure of the power, the mechanisms of exercising the political leadership and ideologies<sup>16</sup>.

According to Montesquieu, to pretend that the justice exists only if the positive law discloses it would be as absurd as if someone pretended that the radii of the same circle were not equal before drawing the circumference.

The draw up of the list of all values would have no practical use. However, we believe that the values such as justice, legal security, social order, peace, social progress, freedom, equality, human dignity, property, democracy, rule of law, national sovereignty represents the invariabilities of the legal judgment. We distinguish between legal, moral, political, religious, aesthetic, economic and philosophical values. The legal accepted principles notes the existence of the scope values which are sought by means of the action and of the instrument values by means of which we are able to reach the scope value<sup>17</sup>. The scope values, „although spiritual creations of the society, arising from cohabitation, live by means of their subjective interpretation of the human experience which engages them in dreams, aspirations and ideals of life”. For example, according to Djuvara, the scope value is the

justice which „orders by means of its own authority. It must be heard for ourselves and inside ourselves without reference to any other purpose, because there cannot be any other purpose higher than it”<sup>18</sup>.

The philosophy of the law often attempted to classify the values in a particular hierarchy. Each of those who approached the study of the values of the law classified within this hierarchy the values which they considered to be the most important. Therefore, there is a multitude of systematizations, claiming a diversity of “higher rank” values. As far as we are concerned, we move away from the attempt to classify the values, wondering under what criteria we might consider that a certain value is more important and other less important for the universal human being? Therefore, we agree with the words of the professor Craiovan: „the originality and irreducibility of the values lead to the failure to admit the superiority of rank, and at most, to temporary priorities depending on the human social needs related to them”<sup>19</sup>. It is shown that the hierarchy of the values should not be understood as a mechanical subordination of the values, likely to cancel the specific of each value.

Throughout the evolution of thinking, the values were “ranked” depending on the importance they granted to the human community, according to the aspirations of the respective historical moment. For the Romanian lawyers, the law was the art of the good and of the equitability, Toma d’ Aquino defined the law by means of the idea of equality, according to Kant the law means the individual freedom, to Bentham the utility, to Duguit the solidarity, while the positivists remained to the state law. Most of the philosophers considered the ideal of justice to be the supreme value. Mircea Djuvara wrote that „our sense does not conceive anything higher than the idea of justice; we necessarily understand that there cannot be any another interest above justice; the ideal of justice is higher than any other ideal, is an ultimate ideal in this respect”<sup>20</sup>. François Terré noted the ambivalence of the law: the law is a mediator between the right thing and the wise thing, it tends to reconcile the aspirations of the law with the requirements of the society<sup>21</sup>.

J.-L. Bergel also admits the possibility to classify the general principles of law depending on their value, arguing that: everything related to the social order prevails over the personal interest; the requirements of the public order prevail over the non-retroactivity of the law or of the individual property; the fundamental

<sup>14</sup> Gheorghe Mihai, *Fundamentele dreptului. Teoria răspunderii juridice*, (The Basis of Law. The Theory of the Legal Liability), vol. I - II, All Beck Publishing House, Bucharest, 2003, page 55.

<sup>15</sup> Mircea Djuvara, *op. cit.*, page 242.

<sup>16</sup> Ion Craiovan, *Tratat de teoria generală a dreptului*, (The Treaty on the General Theory of Law), Universul Juridic Publishing House, Bucharest, 2007, page 482.

<sup>17</sup> Gheorghe Mihai, *Fundamentele dreptului. Teoria răspunderii juridice*, (The Basis of Law. The Theory of the Legal Liability), vol. I - II, All Beck Publishing House, Bucharest, 2003, page 43 and the following.

<sup>18</sup> Mircea Djuvara, *op. cit.*, page 441.

<sup>19</sup> Ion Craiovan, *Tratat de teoria generală a dreptului*, (The Treaty on the General Theory of Law), Universul Juridic Publishing House, Bucharest, 2007, page 481.

<sup>20</sup> Mircea Djuvara, *op. cit.*, page 214.

<sup>21</sup> François Terré, *Introduction générale au droit*, 7<sup>th</sup> edition, Dalloz Publishing House, 2006, page 47.

freedoms have priority over any other legal categories. Basically, the conjugation of the principles of law depends to some extent on their specialty or generality, so that the principles applicable to a certain subject shall have precedence over the general principles<sup>22</sup>.

Paul Roubier outlined the necessity to explain the law based on the theory of the values. The definition of the rule of law fundamentally involves an essential dimension, as the law is a normative science situated in the field of the “should be” and subject to the law of the purpose. The law is not an explanatory discipline, it does not describe the reality on the indicative mood but on the imperative, the law is founded on valuable judgments and its assessments are always set by reference to an ideal<sup>23</sup>.

Paul Roubier noted the existence of the three-dimensional theory of law, in the sense that each of the three main thinking movements – the positivism, the natural law and the realism – explained the concept of the law by reference to a certain value. Each of the values discovered by these accepted legal principles correspond to a certain stage in the evolution of the society, as follows: the positivism considers that the key value is the legal security, the value of the justice prevails in the field of the natural law, and the realism seeks the purpose of the law within the social progress. According to Roubier, the trilogy of the legal security, justice and progress represents the hierarchical order of the values.

According to Rickert, there are certain principles that give meaning to the history and they consist precisely of the fundamental values that govern the development of the humanity. The accepted legal principle shows that „in formal terms, they are timeless by means of their validity, regardless of the historical transformation, but their content depends on the historical life. Therefore, in what concerns the history, the system of the values has an open character”<sup>24</sup>.

The historical continuity of certain values asserts their importance and the absolute nature, regardless of the changes recorded from a society to another. By being located within the natural law, these values are absolute and represent a legal constancy. The evolution of the ideals emerges from the consciousness of the society, however, to a certain extent it can lead to a re-valorization of the law. Therefore, by being related to a particular system of positive law, the social values established within the content of the rules of law may be subject to “transformations”, rearrangements. Therefore, in terms of the axiological dimension, the Romanian constitutional system was established in 1991, the supreme values being referred to in art. 1 of

the Basic Law. By means of the review of the Constitution in 2003, the democratic traditions of the Romanian people and the ideals of the Revolution of 1989 supplemented these values. Thereby, certain ideals, aspirations and values were taken over from the natural law and were expressly provided by means of the rules of law, by being transformed from real sources into formal sources of law.

Mircea Djuvara showed that the ascertainment of the ideal built by the society must be the beginning of any scientific research of the law. According to Gheorghe Mihai, the value „is not natural, as the properties of the things, it is not based on the real world, but on the ideal world, of the pure validity”<sup>25</sup>. However, although the individuals are similar by means of the values they receive, they are still different by means of their valorization, due to the fact that „each and every value is valorized by means of the actions”. Therefore, the human being is endowed with responsibility, is aware of the values that the rules of law engage, adopts them and chooses between the legal and the illegal, the licit and the illicit actions. By means of the actions, the human being decides to adopt a certain legal conduct and commits to translate the values admitted by it.

Therefore, the value represents the mark of the responsibility and the validity of the rules of law falls under the conditions of the acceptance. Those who disregard the rules of law defy the values involving them. Therefore, the fulfillment of the law depends on whether it is accepted and assumed as a value and a rule by the members of the society. The coercion is not the one which essentially ensures the force of the law, but the power to valorize the rules of law imposed on the individuals. In this regard, the understanding of the fulfillment of the law is an act of assessment and search of the justice and of the other acknowledged values.

Ion Craiovan distinguishes between the action of valorization and the action of preference, as follows: the action of valorization, by being emerged within the social consciousness prevails over the actions of preference which occur within the individual consciousness<sup>26</sup>. The value is a “generic human quality”, although it is inner: it is repeated in the individual consciousnesses which live it, as if it belongs only to a single individual; the value remains universal by means of its structure, no matter the historical time. The values propose to the individual “a complex of coded solutions that store the collective experience of the group to which it belongs, anticipate and humanize its creations”.

<sup>22</sup> Jean - Louis Bergel, *Théorie générale du droit*, 4<sup>th</sup> edition, Dalloz Publishing House, 2003, page 109.

<sup>23</sup> Paul Roubier, *Théorie générale du droit, Histoire des doctrines juridiques et philosophie des valeurs sociales*, 2<sup>nd</sup> edition, Dalloz Publishing House, 2005, page 163.

<sup>24</sup> Apud Ioan N. Roșca, *Introducere în axiologie. O abordare istorică și sistematică*, (Introduction to Axiology. An Historical and Systematical Approach), Fundația România de Măine Publishing House, Bucharest, 2002, page 27.

<sup>25</sup> Gheorghe Mihai, *Fundamentele dreptului. Teoria răspunderii juridice*, (The Basis of Law. The Theory of the Legal Liability), vol. I - II, All Beck Publishing House, Bucharest, 2003, page 42 and the following.

<sup>26</sup> Ion Craiovan, *Tratat de teoria generală a dreptului*, (The Treaty on the General Theory of Law), Universul Juridic Publishing House, Bucharest, 2007, page 480 and the following.

The law is „generated and structured within and directed towards the inseparable connection with the constellation of values of the historical time in which it is developed and in certain conditions the law itself accedes to the statute of value”<sup>27</sup>. The author conceives the culture as a merger between the knowledge and the value. The knowledge is not sufficient in order to grant an unitary view to the act of culture, therefore the value appears as a “fulfillment of the knowledge” in relation to the human being, its aspirations and needs. In the first place, the culture, by involving valuable judgment, represents the crystallization of the knowledge and in the second place the embodiment of the value. The elements of the knowledge are “capable of valorization within the humans’ area by means of their very essence and genesis, therefore they are potential or actual values of the human being”.

Petre Andrei distinguishes between the process of knowledge and acknowledge (valorization) of the values. Therefore, the process of knowledge is theoretical and results in making existential judgments; it grants us the “explanatory theoretical values” on the top of which the value of the truth is laid. The process of acknowledge is a practical process which results in valuable judgments. The valorization, preceded by the knowledge, consists in the “research of the correspondence, matching between a middle value and a scope value which we consider as a feasible fact”. Within the valorization process the individual is engaged intellectually, emotionally and volitionally. The result of the valorization process is an absolute, general and supra-individual value consisting of all the values that create the culture: the cultural ideal<sup>28</sup>. In the same time, as stated in the literature: (...) empowering people through their involvement in community life can be perceived as a factor related to democracy, to the development of the society<sup>29</sup>.

The values, ideals and aspirations of the society find their expression in the content of the rules of law. A certain concept, a certain value, such as equality may be a subjective right considered essential. Therefore, we speak about the subjective right to equality. In addition “certain subjective rights are selected based on the criteria of values due to their importance and registered as fundamental rights”<sup>30</sup>. Equally, the same value, by being one of the basis of the law, may

achieve the content of the principle of the objective right. „Therefore, the equality and freedom, as the basis of the social life need to find their legal expression. Therefore, the legal concepts of the equality and the freedom which shall become basis (principles) of law emerge, thus resulting in the emergence of the rules of law”<sup>31</sup>.

The qualification of these ideas, concepts and values depending on their importance and consecration within the legal, national or supra-national order is not an easy task. The long discussions prior to the draw up of the European Union Treaty on the coverage of the “values of the Union” proved the difficulty of such a process, determined by the meaning to be granted to the concept of “value”<sup>32</sup>. Therefore, difficulties were encountered in trying to establish if one of the ideas should be considered as values or objectives, the replacement of the „values” with „principles”, of the „human rights” with the „fundamental rights or fundamental freedoms” emerged, the area of the objectives of the Union extended. Basically, it was considered that the values able to accomplish the following two requirements should be recorded as values of the Union: the fundamental behavior and the basic legal content which is clear, without controversies, so that the member states know their obligations and the penalties which emerge in case of the failure to fulfill the obligations. That way, the former “principles” become “values” in the Treaty of Lisbon and, for the first time, the rights of minorities are mentioned<sup>33</sup>.

Ion Deleanu noted that, „by means of an original feed-back circuit, once the law is created, it becomes mandatory to the state which is a subject of law, like other subjects. In order for the law to have the power to become mandatory, several minimum terms are indisputable; the postulation of the genuine and persuasive moral and political values of the global civil society and of the individual, by means of the rules of law; the establishment of a democratic environment; the strengthening of the state responsibility principle; the establishing of control means over its activity; the creation of a coherent and stable legal order; the strict promotion of the legality and of the constitutionality principle; the conversion of the human being into the cardinal axiological mark”<sup>34</sup>.

<sup>27</sup> *Idem*, page 31.

<sup>28</sup> Petre Andrei, *Filosofia valorii*, în *Opere sociologice*, (The philosophy of the value, in Sociological works), vol. I, Academiei Publishing House, Bucharest, 1973, *Apud* Ioan N. Roșca, *Introducere în axiologie. O abordare istorică și sistematică*, (Introduction to Axiology. An Historical and Systematical Approach), Fundația România de Măine Publishing House, Bucharest, 2002, page 78-79.

<sup>29</sup> Elena Emilia Ștefan, *Răspunderea juridică. Privire specială asupra răspunderii în dreptul administrativ*, Pro Universitaria Publishing House, Bucharest, 2013, page 18.

<sup>30</sup> Ioan Muraru, Elena Simina Tănăsescu, *Drept constituțional și instituții politice*, (Constitutional Law and Political Institutions), 12<sup>th</sup> edition, vol. I, All. Beck Publishing House, Bucharest, 2005, page 139.

<sup>31</sup> Nicolae Popa, Mihail C. Eremia, Simona Cristea, *Teoria generală a dreptului*, (General Theory of Law), 2<sup>nd</sup> edition, All Beck Publishing House, Bucharest, 2005, page 103.

<sup>32</sup> Roxana Munteanu, *Elemente de noutate în Tratatul instituind o Constituție pentru Europa*, în *Studii de drept românesc*, (Novelty Items in the Treaty Establishing the Constitution for Europe in Romanian Law Studies) year 17 (50), no. 1-2/2005, page 99-142

<sup>33</sup> Roxana-Mariana Popescu, *Introducere în dreptul Uniunii Europene* (Introduction to European Union Law), Universul Juridic Publishing House, Bucharest, 2011, page 86.

<sup>34</sup> Ion Deleanu, *Drept constituțional și instituții politice*, (Constitutional Law and Political Institutions), vol. I, Europa Nova Publishing House, Bucharest, 1996, page 113.

## CONCLUSIONS

The importance of the principles of law and their related values is suggestively expressed by Gh. Mihai in the following lines: „The algebraic equations and the chemical schemes are also beautiful, the demonstrations of the geometry and the sociological investigations are fascinating, but neither of them breaths the human beauty in the same way the legal truths succeed in doing it, by means of which we aspire to live surrounded by the good and the right things. The people need not only the harmony and the balance but how could they hope to spend effectively the other needs if the balance and the harmony are missing and are altered?”<sup>35</sup>

If the specialized literature records a consensus over the importance of the existence of the principles, the determination of the number of the general principles leads to many disputes. The four principles of natural law established by Grotius – the obligation to repair the damage caused by own actions, the fulfillment of the undertaken commitments, the respect towards the assets belonging to another persons, the fair punishments of the offenders – were gradually supplemented by tens of principles, by revealing a real passions of the theorists to list principles. Gh. Mihai noted in the works of the doctrinarians the existence of at least one hundred principles, classified in four levels: essential for *omni et soli*, essential for the Romanian law in force, essential for a branch of the law, essential for the legal institutions. Furthermore, the difficulty increases when the principles are to be stated; for example, the author shows that the principle

of freedom was granted 47 statements within the works published in 2004.

According to Gh. Mihai there is one single principle which organizes the law and which does not need any acknowledgement: the principle of justice. The justice, as an ontological principle is registered in the spiritual essence of the human being. This principle of „what it should be” is multidimensional and its dimensions lead to another dispute: the representatives of the monism assert the single dimension of the principle; the representatives of the pluralism argue that „the basis is represented by a plurality of principle, without agreeing on their number”<sup>36</sup>. In what concerns the dimensions of the principle of justice, Gh. Mihai claims the equality, freedom and responsibility. The independence of justice is not only a desiderate of the Constitution’s editors, it is a reality, it has practical application, so it is not only a state of mind <sup>37</sup>.

The multitude of opinions can be justified as follows: we are situated in a field which confers a generous space to the creative role, so that each and every researcher makes all the efforts in order to bring something new, by exceeding the level of the knowledge already settled. However, we must not forget that the principles represent a guarantee for the stability of the legal order, a requirement which should not be sacrificed in favor of the creative vanity. What is really important is the existence of the principles: „a principle, whatever it may be, in relation to which all individual relations are arranged, is essential for the maintenance of the society; the significance of this principle, the things it allows or prohibits do not matter, but its existence is fundamental for the social body”<sup>38</sup>.

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<sup>36</sup> *Idem*, page 179-181.

<sup>37</sup> Elena Emilia Ștefan, *Reflections on the principle of independence of justice*, published in the proceeding of the Conference Challenges of the Knowledge Society, The 7<sup>th</sup> Edition, „Nicolae Titulescu” University, Bucharest, 17-18 may 2013, CKS- eBook 2013, page 671.

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