

THE ROLE OF THE CONCEPTS OF „GENERAL INTEREST”, „PUBLIC ORDER”, AND „GOOD MORALS” IN THE INTERPRETATION OF THE LAW

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Abstract

This article explores the role of the concepts of „general interest”, „public order”, and „good morals” in the interpretation of the law, focusing on their theoretical underpinnings and practical applications. The study aims to provide a comprehensive understanding of how these principles function as fundamental guidelines for legislative and judicial decision-making, shaping legal frameworks and societal norms. The research employs a multidisciplinary approach, combining doctrinal legal analysis with a comparative study of jurisprudence across different legal systems. By examining key cases and legislative texts, the article identifies patterns in the application of these concepts and highlights their interdependence. The study also considers cultural, social, and political factors influencing the interpretation and evolution of these principles. The theoretical significance of the analysis lies in clarifying the conceptual boundaries of „general interest”, „public order”, and „good morals”, offering a nuanced perspective on their interplay within the broader legal context. Practically, the research highlights the importance of these principles in balancing individual rights with collective welfare, ensuring legislative stability and social cohesion. The findings demonstrate that while these concepts serve as vital tools for interpreting and applying the law, they are also susceptible to subjectivity and potential misuse. Therefore, the article advocates for clearer legislative definitions and consistent judicial standards to enhance predictability and legal fairness.

Keywords: legislative process; factors influencing the law; interpretation of the law; collective welfare; legislative stability.

1. Introduction

The interpretation of the law is one of the most complex processes within the legal sphere, influencing both the practical application of legal norms and the development of the legal system as a whole. In any modern society, the law does not operate in isolation but is guided by fundamental values and principles that reflect the balance between individual rights and collective interests. Among these, public interest, public order, and good morals serve as essential benchmarks that guide the interpretation and application of legal norms.

These three concepts function both to stabilize and to adapt the law to social, economic, and cultural realities. On one hand, they provide a reference framework for legislators, indicating the general directions that legal norms should follow. On the other hand, they serve judges as tools for interpreting the law, especially in cases where legal texts are vague, incomplete, or susceptible to multiple meanings. However, the application of these concepts also presents significant challenges, as they are not fixed notions but variable ones, adaptable to social and cultural developments.

The public interest represents one of the most important justifications for state intervention in various areas of social life. Over time, this concept has been used to legitimize legislative measures aimed at protecting collective welfare, even at the expense of certain individual rights. Nonetheless, clearly distinguishing between the public interest and the particular interests of influential groups is often difficult, which can lead to abuses or arbitrary interpretations of the law.

Public order, in contrast, ensures the stability and coherence of legal norms, setting essential limits for the exercise of fundamental rights and freedoms. In many legal systems, public order is invoked to restrict certain rights in situations of necessity, such as protecting national security, preventing social unrest, or maintaining a climate of peaceful coexistence. However, the relative nature of this concept can lead to differing interpretations depending on the legal and social context, which generates dilemmas in its application.

On the other hand, good morals represent a moral benchmark that influences the law, offering an ethical criterion for the validity of certain legal acts and behaviors. Although this concept is deeply rooted in the cultural

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values of each society, it is also subject to change. For example, what was once considered immoral during a certain historical period may become acceptable today, and this requires a constant reinterpretation of legal norms in light of social evolution.

The interaction between these three concepts is complex and, at times, contradictory. For instance, certain measures adopted in the name of public interest may conflict with good morals or public order, generating legal and social controversy. In practice, the resolution of these conflicts lies with the courts, which must find a balance between protecting fundamental values and respecting the principles of the rule of law.

In a constantly changing society, the interpretation of these concepts must be both flexible and predictable, so as to ensure legal certainty and the protection of fundamental rights. This study aims to analyze how public interest, public order, and good morals are used in the interpretation of the law, highlighting their challenges and implications in the legislative and jurisprudential process.

2. „Public Interest” – the foundation of legislative policies

2.1. Definition and legal implications

The concept of public interest is one of the fundamental principles of public law, serving as a justification criterion for legislative and administrative measures intended to ensure collective well-being. In essence, public interest refers to the sum of collective interests that the state is obliged to protect through regulations and public policies. According to Léon Duguit, a prominent scholar of French administrative law, public interest represents „the ultimate goal of any public action, even justifying the restriction of certain individual rights in favor of the common good.”¹

In constitutional law, public interest is invoked to legitimize measures that restrict individual rights, provided these measures are proportionate and necessary. For example, regulations regarding public health, environmental protection, or national security are often justified on the grounds of public interest². Similarly, in administrative law, this concept is used to support state intervention in economic and social domains, including fiscal policy, land use planning, and public services³.

The jurisprudence of the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) also reflects the importance of public interest as a justification for limiting fundamental rights. For instance, in *James and Others v. the United Kingdom*, the ECtHR recognized that expropriation may be justified by public interest, provided the principle of proportionality is respected⁴.

In the context of the European Union, the CJEU emphasized in the *Schmidberger*⁵ case that the free movement of goods may be restricted to protect objectives of public interest, such as the right to assembly and freedom of expression.

These examples demonstrate that public interest is not an absolute concept but one that requires a careful analysis of the balance between collective benefits and the impact on individual rights.

2.2. Examples of application in various legal fields

The applicability of public interest extends across multiple branches of law, each having specific criteria for its evaluation and justification.

Administrative Law: In the fields of urban planning and expropriation, the state may limit private property rights to implement projects of public utility, such as road infrastructure or public transport networks. For example, in *Beyeler v. Italy*, the ECtHR acknowledged that the protection of national cultural heritage may justify state intervention in property rights⁶.

¹ L. Duguit, *Traité de droit constitutionnel*, Fontemoing Publishing House, Paris, 1921, p. 37.

² A. Peters, D. Vanoverbeke, M. Kumm, T. Suami, *Global Constitutionalism from European and East Asian Perspectives*, Cambridge University Press, 2018, p. 215.

³ E.E. Ștefan, *Drept administrativ. Partea a II-a*, Universul Juridic Publishing House, Bucharest, 2022, pp. 10-11.

⁴ ECtHR, *Case James and Others v. United Kingdom*, 1986, C-8793/79, para. 50.

⁵ CJEU, *Schmidberger v. Austria*, C-112/00, 2003, para. 74.

⁶ ECtHR, *Case Beyeler v. Italy*, 2000, C-33202/96, para. 114.

Constitutional Law: Public interest is often invoked to legitimize the restriction of fundamental rights. In *Handyside v. the United Kingdom*, the ECtHR ruled that the state may limit freedom of expression when it conflicts with public morality or social order⁷.

Tax Law: Public interest is a central argument for justifying state-imposed fiscal measures. In *Bidar*, the CJEU recognized that member states may impose restrictions on access to scholarships and other social benefits based on public interest, in order to protect the financial balance of the social assistance system⁸.

Labor Law: In the *Viking Line* case, the CJEU confirmed that the right to strike may be restricted in order to safeguard the public interest in the free movement of services within the European Union⁹.

These examples show that although public interest is an essential principle, its application must be balanced to avoid the excessive restriction of individual rights.

2.3. Criteria for assessing public interest

To prevent arbitrary use of public interest as a justification for restricting rights, both legal doctrine and jurisprudence have established several key criteria for its assessment:

Proportionality: The measure adopted must be appropriate and necessary to achieve the intended objective. For example, in *The Sunday Times v. the United Kingdom*, the ECtHR emphasized that any restriction of freedom of expression must be proportionate to the pursued goal¹⁰.

Equity: Legislative measures must be applied equally to all citizens without arbitrary discrimination. John Rawls's theory of justice as fairness argues that public interest must be compatible with respecting the individual rights of all members of society¹¹.

Efficiency: Public interest should lead to a significant social benefit, thereby justifying imposed restrictions. In competition law, the CJEU has established that national regulations limiting market access may be acceptable only if they promote important social objectives¹².

2.4. Controversial aspects regarding the distinction between public interest and particular interests

One of the major challenges in applying the public interest concept is distinguishing it from the particular interests of certain economic, political, or social groups.

For example, in the field of environmental protection, measures adopted in the name of public interest may conflict with individual interests. Environmental protection may take two forms. There are cases in which the environment „invades“ private space through external disturbances that, by affecting a person's home, become a threat to their sphere of privacy. In most cases, however, it is people who harm the environment. The first case of environmental pollution analyzed under art. 8 in 1990 concerned Heathrow Airport near London and two local residents, Mr. Powell and Mr. Rayner, whose homes were particularly exposed to noise pollution. The Court stated that art. 8 is applicable to the applicants insofar as the noise generated by aircraft from Heathrow Airport could affect their quality of private life. This marked the first time the idea was formulated that interference with a person's home affects the quality of their private life. In that case, however, the Court did not uphold the applicants' claim, noting that the UK authorities had taken appropriate measures to mitigate the pollution caused by the activity in question, which was, after all, serving a public interest¹³.

Another challenge is the use of public interest as a pretext for controversial political measures. In *R (Miller) v. Secretary of State for Exiting the European Union*, the UK Supreme Court emphasized that invoking the public interest in favor of Brexit could not override the principle of parliamentary sovereignty¹⁴.

Therefore, a clear distinction between genuine public interest and particular interests is essential to ensure a balance between state authority and the protection of fundamental rights.

⁷ ECtHR, *Case Handyside v. United Kingdom*, 1976, C 5493/72, para. 49.

⁸ CJEU, *Bidar*, C-209/03, 2005, para. 56.

⁹ CJEU, *Viking Line*, C-438/05, 2007, para. 77.

¹⁰ ECtHR, *Case Sunday Times v. United Kingdom*, 1979, 6538/74, para. 62.

¹¹ Rawls, J., *A Theory of Justice*, Harvard University Press, 1999, p. 214.

¹² CJEU, *Gebhard*, C-55/94, 1995, para. 37.

¹³ ECtHR, *Case Powell and Rayner v. United Kingdom*, 21.02.1990, para. 40.

¹⁴ UKSC, *Miller*, C UKSC/2016/0196, 2017, para. 83.

3. „Public order” – a pillar of social stability

3.1. The origin and legal significance of the concept

The concept of public order has deep roots in Western legal tradition, originating in Roman law under the principle of *pax et ordo*, which referred to maintaining peace and stability within the community. During the medieval period, the idea of public order was shaped by the doctrine of royal sovereignty, whereby the monarch bore the responsibility of maintaining order and security within the kingdom.

In modern law, public order has become a fundamental principle of the rule of law, serving to balance the exercise of individual rights with the protection of collective interests. In legal doctrine, public order is defined as the body of legal and moral norms necessary for preserving social harmony and safeguarding a society's core values¹⁵.

Within the EU legal system, public order is a key concept used to justify restrictions on certain rights. According to the CJEU case-law, Member States may adopt restrictive measures to protect public order, provided that such measures are proportionate and grounded in a legitimate public interest¹⁶.

3.2. Public order as a limit to fundamental freedoms

Public order is frequently invoked as a legal basis for restricting certain rights and freedoms to prevent social threats or maintain community cohesion. However, such restrictions must be balanced and in accordance with the principle of proportionality, as established by the case-law of both, the ECtHR and the CJEU.

- Freedom of expression and public order – Freedom of expression, enshrined in art. 10 ECHR, is a fundamental right – but not an absolute one. In *Handyside v. the United Kingdom*, the ECtHR held that states may restrict freedom of expression when it conflicts with public order and morality, such as in cases involving hate speech or the dissemination of obscene material¹⁷.

- Another relevant example is *Case Perinçek v. Switzerland* (2015), where the ECtHR considered whether banning denial of the Armenian genocide was a justified restriction on freedom of expression in the interest of public order. The Court concluded that such speech restrictions must be carefully balanced to prevent abuse¹⁸.

- Right to property and public order - The right to property, enshrined in art. 1 of Protocol no. 1 to the European Convention on Human Rights, may also be limited in the name of public order. Expropriation for public utility is among the most common scenarios where the state can restrict this right. In the previously mentioned *Case James and Others v. the United Kingdom*, the ECtHR recognized that expropriation may be justified by the public interest, provided it respects the principle of proportionality and fair compensation¹⁹.

Another key case is *Sporrong and Lönnroth v. Sweden* (1982), where the ECtHR criticized the excessive duration of restrictions on property rights, stressing that such measures must be based on a genuine public interest and must not impose a disproportionate burden on individuals²⁰.

3.3. The role of public order in various branches of law

In criminal law, public order is a fundamental objective, protected by criminalizing offenses against public peace and safety. Acts such as disturbing public order, terrorism, incitement to violence, and organized crime are severely punished to prevent social destabilization.

A relevant example is *Erdoğan and Others v. Turkey* (2014), in which the ECtHR examined the detention of protestors accused of disturbing public order. The Court reaffirmed that while states have the right to maintain order, they must also respect the right to peaceful assembly and protest²¹.

¹⁵ P. Delvolvé, *Droit public de l'économie*, 2nd ed., Dalloz, Précis, 2021, p. 45.

¹⁶ CJEU, *Omega*, C-36/02, 2004, para. 30.

¹⁷ ECtHR, *Case Handyside v. United Kingdom*, C-5493/72, 1976, para. 49.

¹⁸ ECtHR, *Case Perinçek v. Switzerland*, C-27510/08, 2015, para. 50.

¹⁹ ECtHR, *Case James and all. v. United Kingdom*, para. 50.

²⁰ ECtHR, *Case Sporrong and Lönnroth v. Sweden*, C-7151/75, 1982, para. 69.

²¹ ECtHR, *Case Mustafa Erdoğan and Others v. Turkey*, C-346/04 and 39779/04, para. 60.

In public international law, global public order is protected through treaties and international conventions aimed at maintaining international peace and security. For instance, the *United Nations Charter* recognizes the necessity of preserving international peace and security as a foundation of global public order²².

An example of this principle in practice is the CJEU's decision in *Kadi*, where the Court examined the compatibility of asset-freezing measures against terrorism suspects with respect for fundamental rights. The CJEU concluded that such restrictive measures must align with both international security requirements and the principles of the rule of law²³.

Public order is a fundamental concept in law, serving to maintain social stability and coherence. Although it can justify the restriction of certain fundamental rights, its application must be carefully regulated and proportionate to the intended aim. Both the case-law of the ECtHR and that of the CJEU demonstrate that the state has a margin of appreciation in applying the concept of public order, but this margin cannot be used to arbitrarily suppress rights and freedoms.

4. „Good morals” – a moral benchmark in law

4.1. The concept of „good morals” and its application

The concept of good morals, known in Roman law²⁴ as *mores maiorum*, is a flexible legal standard used across multiple branches of law to regulate and sanction behavior that contradicts generally accepted ethical and social values. In legal doctrine, good morals are defined as the set of moral norms that govern social relationships and influence the interpretation and application of law²⁵.

This concept is frequently invoked in civil, commercial, criminal, and family law, serving to prevent and sanction contractual abuses, fraud, immoral conduct, or practices that undermine social order. In Romanian legislation, good morals are explicitly referenced in several legal texts:

- art. 1231 CC²⁶ states that a contract is null if its object or cause is contrary to the law or good morals;
- art. 375 CP²⁷ penalizes offenses against good morals, providing sanctions for acts that affect social order and public decency;
- art. 39 of the Labor Code²⁸ mentions that the employee must observe moral conduct norms within labor relations.

The ECtHR case-law also reflects the importance of this concept. In *Müller and Others v. Switzerland* (1988), the Court affirmed that states may impose restrictions on freedom of expression to protect good morals – in this case, regarding the display of artworks deemed obscene²⁹.

4.2. The correlation between good morals and cultural values

Good morals represent a dynamic concept, influenced by the evolution of cultural and social values³⁰. Public perceptions on matters such as marriage, the rights of sexual minorities, surrogacy, or the right to privacy have led to reinterpretations of this standard in various legal systems.

A relevant example is the shift in perspective regarding same-sex marriage. In the past, such unions were often prohibited by invoking good morals, but societal evolution has led many countries to recognize this right. In *Oliari and Others v. Italy* (2015), the ECtHR held that the absence of a legal framework for civil partnerships for same-sex couples violated art. 8 ECHR³¹.

²² A. Cassese, *International Law*, Oxford University Press, 2005, p. 98.

²³ CJEU, *Kadi*, C-402/05 P, 2008, para. 284.

²⁴ E. Anghel, *Analysis of the origin and basis of custom, as a source of law*, in *International Journal of Legal and Social Order*, 4(1), <https://doi.org/10.55516/ijlso.v4i1.211>, pp. 1-13.

²⁵ G. Boroi, C. Anghelescu, *Curs de drept civil. Partea generală*, 3rd ed., Hamangiu Publishing House, Bucharest, 2021, p. 9.

²⁶ Law no. 287/2009 republished, with subsequent amendments, in the Official Gazette of Romania no. 505/15.07.2011.

²⁷ Law no. 286/2009 amended, published in the Official Gazette of Romania no. 510/24.07.2009.

²⁸ Law no. 53/2003 republished, with subsequent amendments, in the Official Gazette of Romania no. 345/18.05.2011.

²⁹ ECtHR, *Case Müller and Others v. Switzerland*, C-10737/84, 1988, para. 36.

³⁰ N. Popa, E. Anghel, L. Spătaru-Negură, C. Ene-Dinu, *Teoria generală a dreptului. Caiet de seminar*, 4th ed., C.H. Beck Publishing House, Bucharest, 2023, p. 109.

³¹ ECtHR, *Case Oliari and Others v. Italia*, C-18766/11 and 36030/11 2015, para. 185.

In Romanian legislation, the debate around recognizing same-sex marriages intensified following the Coman and Others case (2018), adjudicated by the CJEU. The Court ruled that Romania must recognize the right of residence for the same-sex spouse of a Romanian citizen, based on the EU's freedom of movement³².

4.3. Relevant Cases

- France – prohibition of contracts contrary to good morals

A classic example of applying the principle of good morals in contract law is the 1966 decision of the French Court of Cassation (Cass. civ., 1966). In this case, the court annulled a lifetime maintenance contract deemed immoral because it involved a disproportionate advantage for one party. This ruling reinforced the principle that contracts contrary to morality and fairness are null and void. A similar principle exists in Romanian law under art. 1.231 of the Civil Code, which provides for the nullity of contracts that violate good morals.

- Germany – annulment of a surrogacy contract for immorality

In 2004, the German Federal Court (BGHZ) invalidated a surrogacy contract, arguing that it violated good morals by exploiting the vulnerability of women and raising ethical concerns about human commodification. This judgment reflects Germany's strict stance on surrogacy, in contrast to other European countries with more permissive regulations.

- United Kingdom – The Lady Chatterley's Lover Case and the impact on censorship

Another notable example is Regina v. Penguin Books Ltd (1960)³³, in which Penguin Books was prosecuted for obscenity for publishing D.H. Lawrence's novel Lady Chatterley's Lover. The British court concluded that moral standards had changed and that the novel could no longer be considered offensive to the modern public. This decision marked a pivotal moment in loosening censorship and influenced how good morals were interpreted in the UK.

Good morals remain an essential but dynamic legal concept that evolves with social and cultural shifts. While they continue to serve as a moral benchmark in civil, criminal, and international law, their application must be balanced to avoid excessively restricting fundamental rights. Case-law from the ECtHR and the CJEU demonstrates that this concept must be interpreted flexibly and in line with contemporary realities, without undermining a society's core values.

5. Conclusions

The interpretation and application of the concepts of *good morals*, *public order*, and *general interest* represent some of the most complex challenges for both national and European courts. These concepts are inherently flexible, which makes them susceptible to varying interpretations depending on the social, cultural, and legal context. While this flexibility allows legal norms to adapt to changing social realities, it also creates a significant risk of arbitrariness and legal uncertainty.

Maintaining a balance between general interest, public order, and good morals is essential for upholding the rule of law and ensuring coherent and fair application of legislation. These concepts are not merely abstract principles – they have a tangible impact on both social and legal life, influencing how the state regulates and limits individual rights for the sake of the common good.

Although each of these concepts serves a distinct role, they are interdependent and must be interpreted in a balanced manner to avoid authoritarian excesses or legal arbitrariness. The *general interest* is the foundation of any legislative policy, but it must be constrained by the respect for individual fundamental rights. Legislation that prioritizes the general interest at the expense of individual rights risks becoming abusive.

Public order ensures social stability, but it must be clearly defined and applied proportionally. An overly broad interpretation of this concept may unjustifiably restrict fundamental rights, as established by the ECtHR in *Handyside v. the United Kingdom*, where the banning of a publication under the pretext of public order was deemed a violation of freedom of expression.

³² CJEU, Coman and Others, C-673/16, 2018, para. 46.

³³ [https://lawyerz.com/api/caselaw/R.%20v.%20Penguin%20Books%20Ltd%20\(1961\)%20-%20United%20Kingdom?sessionID=m4lz eo0k-3f2fa233-444b-4e87-a5c4-0277499c4be4](https://lawyerz.com/api/caselaw/R.%20v.%20Penguin%20Books%20Ltd%20(1961)%20-%20United%20Kingdom?sessionID=m4lz eo0k-3f2fa233-444b-4e87-a5c4-0277499c4be4), accessed on 26.03.2025.

Good morals express social values, but they must be applied in a way that does not lead to discrimination or unjustified restrictions of individual freedoms. For instance, in *Coman and Others v. Romania*, the ECtHR held that Romania's refusal to recognize a same-sex marriage under the pretext of „good morals” was discriminatory.

International and national jurisprudence highlights the interpretative difficulties surrounding these concepts, showing that rigid or excessive application can lead to violations of fundamental rights. As illustrated in *James v. the United Kingdom*, the Court held that expropriation for public utility must be justified by a genuine public interest and accompanied by fair compensation to avoid breaching property rights.

In *Ahmet Yildirim v. Turkey*³⁴, the blocking of a website to protect public order was deemed a disproportionate measure and a violation of the right to receive and impart information.

These cases demonstrate that the interpretation of such concepts cannot be arbitrary; rather, it must be based on principles of proportionality, fairness, and necessity.

One of the main challenges in applying these concepts is their adaptation to social and cultural changes. Globalization and cultural diversity have altered perceptions of moral norms, requiring a redefinition of good morals in a way that reflects universal human rights values.

At the same time, technological developments have introduced new challenges to safeguarding public order, particularly in areas such as cybersecurity and personal data protection. The general interest must also be redefined in the context of global challenges such as climate change and economic crises, ensuring that legislative measures are effective without creating social inequalities.

To ensure the coherent application of these concepts and to avoid subjective or abusive interpretations, several measures are necessary, including:

- A more precise legislative definition of these concepts to reduce excessive judicial discretion;
- The creation of guiding principles to assist judges in applying these notions, similar to the guidelines issued by the ECtHR and the CJEU;
- And the continuous assessment of whether actions taken in the name of public order, general interest, or good morals genuinely respect fundamental rights and are justified by a real necessity.

The concept of general interest must remain a pillar of legislative policy, public order must be protected without compromising individual freedoms, and good morals must be interpreted in a way that reflects evolving social values. Only through a balanced and flexible interpretation of these principles can we ensure respect for the rule of law, the protection of fundamental rights, and the adaptation of legislation to the needs of modern society.

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³⁴ ECtHR, *Case Ahmet Yildirim v. Turkey*, C- 3111/2010, 2012, para. 68.

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