

# LEGAL NORMATIVISM AND PRINCIPLES OF LAW

Marius ANDREESCU\*

Andra PURAN\*\*

## Abstract

*The legal norm, especially in the conditions of the will of "legal norming" that contemporary society knows, is increasingly moving away from human values. It is an abstract, general and impersonal structure whose legitimacy is not a value one, but of a formal recognition within the normative system in question. The abandonment of values, including Christian ones, has as a consequence normative relativism based almost exclusively on the pure will of the legislator.*

*The doctrine of legal normativism recognized and applied in almost all states is a concretization of what has been shown above.*

*Therefore, recourse to the principles of law is necessary to avoid legal normative formalism and to correctly adapt legal norms to social realities.*

*Any scientific approach that has as its object understanding the meanings of the notion of "principle of law" must have an interdisciplinary character, the basis of the approach being the philosophy of law. In this study we carry out such an analysis in order to underline the multiple theoretical meanings related to this notion, but also the relationship between principles and legal norms, respectively the normative value of the principles of law. Extensive references are made to the philosophical and legal doctrine on the subject. This study is a plea for relating to principles in the work of creating and applying law.*

**Keywords:** *Legal norms, Criticism of the theory of legal normativism, Principles of law, Autonomy of the legal, meanings of principles of law.*

## 1. Introduction

The essence of social determinism and social normativism is formed by the causal necessity and the normative imperative. The social freedom of man can thus be conditioned, restricted or sometimes even abolished.

The relationship between determinism, social normativism and on the other hand the freedom of the person in the social environment is particularly complex, requires a broad analysis and involves establishing the priority between the social and the man as well as between the social normative system and freedom.

The most important expression of social determinism is the social normative system. The normatization of social life is necessary and has an imperative character, but it is also a restriction of the exercise of the natural freedom of man.

The term "nomos" meaning from the Greek natural law, norm, which implies respect for the order established by the gods, has its counterpart in Asian spirituality, through "Dao", in several forms: Dao of heaven; Dao of man. Genoveva Vrabie defines the social norm as "a general model of behavior that regulates some social actions of people, their conduct and activity and, through this, the relationships between people. There is no type of social activity to which rules of conduct, of exercise are not imposed or recommended"<sup>1</sup>. A social norm is a rule that determines an individual's behavior in a specific situation. Moreover, society as a complex set of structures imposes a developed and dynamic system of social norms.

Legal normativism is a component of social normativism but also a doctrine according to which law is a hierarchical system of mandatory norms, imposed by the state, detached from moral, political or social aspects.

---

\* Scientific Researcher, "Acad. Andrei Rădulescu" of the Romanian Academy (e-mail: andreescu\_marius@yahoo.com).

\*\* Lecturer, PhD, Faculty of Economic Sciences and Law, National University of Science and Technology Politehnica Bucharest (e-mail: andra.puran@upb.ro).

<sup>1</sup> See G. Vrabie, *La cour constitutionnelle - garant de la suprématie de la constitution*, Institutul European Publishing House, Iași, 2014, p. 28.

Promoted intensively by Hans Kelsen through the "Pure Theory of Law", it argues that the validity of a norm derives exclusively from a higher norm, culminating in the *Grundnorm* (fundamental norm)

The principles of law, by their nature, generality and depth, are topics of reflection primarily for the philosophy of law, only after their construction in the sphere of the metaphysics of law, these principles can be transposed into the general theory of law, can be normatively consecrated and applied in jurisprudence. Moreover, there is a dialectical circle because the "meanings" of the principles of law, after normative consecration and jurisprudential elaboration are to be elucidated also in the sphere of the philosophy of law.

## 2. Content

Law cannot be conceived outside the idea of freedom. The normative system, the most important aspect of law, has its meanings and legitimacy in human existence, the latter having freedom as an essential given.

But what kind of freedom can we talk about in legal normativism and in the categories and concepts of law? Inevitably, it is a freedom of the legal norm, a constructed freedom, and not an existential given. We must emphasize that the legal norm also implies constraint, as does any existential order applied to human phenomenology. An important paradox appears that some authors in the field of Christian metaphysics have also signaled, namely the coexistence of legal constraint, on the one hand, and on the other hand of human freedom, both being essential for the order specific to the legal state in which contemporary man finds himself.

Another aspect is also interesting, namely that the legal norm does not show what freedom is, does not define it, does not show its meanings, but only the situations in which freedom is guaranteed or restricted. Moreover, it is good to note that, unlike metaphysics and ethics, the legal norm does not express and does not conceptualize freedom as such, but only freedoms or rights, that is, the phenomenal aspects of human manifestations in the social environment, by its nature a relational environment. It is obvious that the legal normative system could not even define freedom as such, because it remains only at the phenomenological and social aspect of existence. Similarly, the legal doctrine postulates human freedom and highlights the content of legal freedoms and their limits, but does not define freedom as reality, as an essential feature of man as a person, including in the social environment. Law cannot be conceived outside the idea of freedom. The normative system, the most important aspect of law, has its meanings and legitimacy in human existence, the latter having freedom as an essential given.

But what kind of freedom can we talk about in legal normativism and in the categories and concepts of law? Inevitably, it is a freedom of the legal norm, a constructed freedom, and not an existential given. We must emphasize that the legal norm also implies constraint, as does any existential order applied to human phenomenology. An important paradox appears that some authors in the field of Christian metaphysics have also signaled, namely the coexistence of legal constraint, on the one hand, and on the other hand of human freedom, both being essential for the order specific to the legal state in which contemporary man finds himself.

Another aspect is also interesting, namely that the legal norm does not show what freedom is, does not define it, does not show its meanings, but only the situations in which freedom is guaranteed or restricted. Moreover, it is good to note that, unlike metaphysics and ethics, the legal norm does not express and does not conceptualize freedom as such, but only freedoms or rights, that is, the phenomenal aspects of human manifestations in the social environment, by its nature a relational environment. It is obvious that the legal normative system could not even define freedom as such, because it remains only at the phenomenological and social aspect of existence. Similarly, the legal doctrine postulates human freedom and highlights the content of legal freedoms and their limits, but does not define freedom as reality, as an essential feature of man as a person, including in the social environment<sup>2</sup>.

The doctrine of legal normativism recognized and applied in almost all states is a concretization of what has been shown above.

The normativist theory, as a current of legal positivism, is reflected in the main work of the American jurist Hans Kelsen, *Pure Theory of Law*. In this doctrine, the author proposes to study law only in the hypostasis of its existence. According to Kelsen, the science of law must be limited to the research of law only in its pure state,

---

<sup>2</sup> For developments see F. A. Haiek, *Constituția libertății*, Institutul European Publishing House, Iași, 1998; J. M. Buchanan, *Limitele libertății. Între anarhie și Leviathan*, Institutul European Publishing House, Iași 1997; J. Rivero, H. Moutouh, *Libertés publiques: Tome 1*, Presses Universitaires de France - PUF; 9<sup>e</sup> edition (2003); B. Bodea, *Drepturile omului și libertățile fundamentale*, Hamangiu Publishing House, Bucharest, 2024; G. Iancu, *Drepturile, libertățile și îndatoririle fundamentale în România*, C.H. Beck Publishing House, Bucharest, 2003.

outside of connections with politics and morality. Otherwise, it will lose its objective character and will turn into an ideology.

Kelsen analyzes legal norms from the aspect of validity, and then of effectiveness, in a manner that can be called "pure" because it leaves aside any other extrinsic elements that are not strictly legal (for example, politics).<sup>3</sup>

The theory of law aims to eliminate the dualism of subjective law - objective law, arguing that objective law represents the legal normative framework through which subjective law is exercised. Kelsen also relativizes through his theory the dualism of private law - public law, stating that this dichotomy should not be seen as separating two branches of law in opposition. The notable difference between the two branches, Kelsen believes, can be analyzed from an ideological point of view, not a theoretical one.

The central place in the pure theory of law is occupied by the legal norm which, formally, has a pure character, unlike the moral norm, which has a content. Through his system of norms, Kelsen supports the theory of the creation of law in cascades. Thus, the authority of a judicial decision originates in a presidential decree; this, in turn, in a law adopted by parliament, and this, claiming the constitution. All legal norms belong to a given legal order, justifying their validity by referring to a fundamental norm<sup>4</sup>.

The conformity of the entire law with the fundamental law is an important consequence of the supremacy of the Constitution and must be understood not only through the correspondence in content and form of the lower norms as legal force with the constitutional ones, but also through the need to translate the constitutional regulations and rules (in their spirit and letter) into other judicial regulations. It should be noted that an important feature of the constitutional norms that arises from the principle of the supremacy of the fundamental law is the possibility and even the need to be translated, concretized through normative regulations, into other branches of the unified legal system. In relation to this element of specificity of the norms of constitutional law, it is necessary for the constitutive legislator to establish a synthetic, generalized content of these norms, and not an analytical, procedural one. In the situation where, when the descriptive, procedural character of the norms prevails in the normative content of a constitution, it would lose too much of its constitutional purpose, that of being an essential, generalizing factor for the entire legal system. However, the generality of the formulation of the constitutional law norm would not exclude its clarity and precision. Therefore, any codification work in the field of constitutional law is difficult because it must dialectically combine the generality specific to norms containing principles of law, and on the other hand clarity and precision, the latter absolutely necessary to ensure their correct application and thus avoid arbitrariness or the possibility of asserting, in the name of constitutional values, any partisan political interests. The fulfillment of this requirement can be verified in the practice of transposition and interpretation of constitutional norms carried out in all state authorities.

One of the most important issues for elucidating the specifics of constitutional norms concerns the answer to the question of whether all constitutional provisions contain legal norms. Constitutional provisions that concern the economic, social or financial system are norms of constitutional law with a value of principle, and not simple political purposes, since they regulate the conduct of legal subjects participating in certain social relations. Also, the constitutional norms in question establish genuine legal rights and obligations for legal subjects. For example, the constitutional obligation for the derived legislator (Parliament or Government) as in the process of drafting the law to comply with these constitutional regulations, otherwise the sanction of unconstitutionality of the normative acts in question may intervene. We note in conclusion that all constitutional provisions contain legal norms because they have the essential features of a norm of law: they prescribe the conduct of the subjects to whom they are addressed and generate legal obligations, and the violation of such obligations may attract legal sanctions specific to the law.

The normative expression of constitutional principles, themselves simple in normative form, but complex in nature and in content determined by the object of regulation, constitutes the source and normative-value basis of the unity and simplicity of the entire state legislative system. The legislator's reference to constitutional principles, not only to guarantee the simple formal correspondence between the judicial norm and the fundamental law, but especially to legislate in compliance with these principles and having as its purpose their content, is a prerequisite for eliminating the diversity of norms, a natural consequence of the excess of power of

<sup>3</sup> See H. Kelsen, *Doctrina pură a dreptului*, Humanitas Publishing House, Bucharest, 2000.

<sup>4</sup> I. Muraru, E. S. Tănăsescu, *Drept constituțional și instituții politice*, 15th edition, Vol I, C.H. Beck Publishing House, Bucharest, 2016, p.20; M. Andreescu, A. Puran, *Drept constituțional. Teoria generală. Instituții constituționale. Jurisprudență constituțională*, 4th edition, C.H. Beck Publishing House, Bucharest, 2020, pp.114-135.

the rulers in legislative matters. There are, therefore, two ways in which power can legislate: the first one that disregards the teleological reference to constitutional principles and in general to the principles of law, aiming only at the formal correspondence with constitutional norms, and the second one teleologically oriented towards the content, meaning and limits imposed by the principles of law. In the first case, normative diversity results, devoid of a rational, unifying factor; In the second hypothesis, there is at least the possibility of achieving simplicity and unity of the normative system in the complexity of the content.

The logical-formal structure of constitutional law must include all three elements: hypothesis-provision-sanction. The main characteristic of these norms is the way in which the sanction is expressed. Thus, for several provisions, a single sanction may be present. Also, in constitutional law there are specific sanctions, for example the declaration of a legislative act as unconstitutional or the revocation of a state body. Given the structuring role of constitutional law for the entire legal system, the logical-formal assessment of constitutional norms must also be made by reference to other categories of legal regulations. For the regulations of principle or of maximum generality contained in the fundamental law, some sanctions are contained in the norms of other branches of law (civil law, criminal law, administrative law). In this sense, the principle solution was correctly mentioned in the doctrine: "I believe that sanctions are found even in constitutional norms for the violation of any provision provided that the obligation or entitlement is precisely identified, in other words the conduct of the subjects of law".<sup>5</sup>

Another element of particularity for the principles of legislative value of constitutional law refers to the subject of regulation. Without going into details, we retain the idea contained in contemporary doctrine, according to which the common element and proper only to the social relations that form the subject of regulation of the norms of constitutional law, is that they appear in the process of establishing, maintaining and exercising state power.<sup>6</sup>

All the norms contained in the constitution are norms of constitutional law, as well as principles of law, even if some of them also regulate social relations specific to other branches of law. Given that constitutional law, in particular the constitution, contains norms with a principle value, which refer not only to the organization and functioning of state authorities, but also to the social and economic system. Consequently, the subject of regulation of constitutional law is formed by the social relations that arise during the process of constituting, maintaining and exercising state power, but also those relating to the bases of power and the bases of organizing power. These categories refer to the sovereignty of the people, the characters attributed to the state, the territory of the population, including those relating to the fundamental features of the social economic system.<sup>7</sup>

In a comparative analysis of the regulations contained in contemporary constitutions, it is observed that the historical, political, national, cultural, religious, etc. diversity of states does not directly result in a diversity of the legislative content for the fundamental laws. The content of the constitutions of modern states presents many similarities and sometimes almost identical formulations with some of the regulated institutions.<sup>8</sup> This similarity is mainly determined by the identity of the normative object of constitutional norms.

On the other hand, the diversity of the normative content eliminates the idea of uniform standards generally valid for contemporary constitutions. The diversity of the normative content is a consequence of the fact that the fundamental law of the state is determined from the point of view of the content of social, political and economic realities, on the characters and attributes of the respective state, expressed historically and at the same time. on the will of the constituent legislator, essentially a political will, at a certain historical moment.

Along with other authors, we consider that the scientific definition of the constitution is the main criterion for identifying the normative content. Such a criterion ensures the generality necessary to give a scientific character to scientific elaborations on the subject and at the same time explains the regulatory unity but also the constitutional normative diversity. For the purpose of this scientific approach, we retain the essence of any attempt to define the fundamental law, namely: "The constitution is a fundamental political and legal constitution of a state."<sup>9</sup> In legal acceptance, the fundamental law is the act by which the status of power is

<sup>5</sup> I. Muraru, E.S. Tănăsescu, op. cit, p. 21.

<sup>6</sup> I. Muraru, E.S. Tănăsescu, op. cit, p.24.

<sup>7</sup> For development see M. Andreescu, A. Puran, *Drept constituțional. Teoria generală și instituții constituționale*. Jurisprudență constituțională, C.H. Beck Publishing House, Bucharest, 2025, pp. 14-22.

<sup>8</sup> C. Ionescu, *Tratat de drept constituțional*, 3rd edition, C.H. Beck Publishing House, Bucharest. 2019.pp. 208-209.

<sup>9</sup> I. Deleanu, *Instituții și proceduri constituționale- în dreptul român și dreptul comparat*, Universul Juridic Publishing House, Bucharest, 2024, p. 88.

determined and, through it, all legal norms, having as its object the regulation of the bases of power and the bases of the organization of power.

One of the most controversial and important legal issues is the relationship between stability and innovation in law. The relationship between stability and change in law can be analyzed in relation to a specific historical moment and to the current state of a legal normative system and a society.

The stability of legal norms is undeniably a necessity for the predictability of the conduct of legal subjects, for the security and proper functioning of economic and legal relations as well as for giving substance to the principles of the supremacy of law and the Constitution.

On the other hand, it is necessary to adapt the legal norm and law in general to the social and economic phenomena that follow each other so rapidly. It is necessary for the legislator to be constantly concerned with eliminating everything that is "outdated in law", of what does not correspond to realities. The relationship between stability and innovation in law is a complex and difficult issue that must be approached with all due attention, taking into account a wide range of factors that may determine a favorable or unfavorable position for legislative change.<sup>10</sup>

Stability is a requirement for guaranteeing the principle of the supremacy of the constitution and its implications. In this sense, Professor Ioan Muraru stated that the supremacy of the constitution does not represent only a strictly legal category, but a political-legal one, revealing that the fundamental law is the result of economic, political, social and legal realities. "It marks (defines, outlines) a historical stage in the life of a country, it consecrates victories and gives expression and political-legal stability to the realities and perspectives of the historical stage in which it was adopted".

Essential for a constitution is its stability over time because only in this way can the stability of the entire normative system of a state, the certainty and predictability of the conduct of legal subjects, but also to ensure the legal, political and economic stability of the social system as a whole, be ensured. Stability is a requirement for guaranteeing the principle of the supremacy of the constitution and its implications. In this sense, Professor Ioan Muraru stated that the supremacy of the constitution does not represent only a strictly legal category, but a political-legal one, revealing that the fundamental law is the result of economic, political, social and legal realities. "It marks (defines, outlines) a historical stage in the life of a country, it consecrates victories and gives expression and political-legal stability to the realities and perspectives of the historical stage in which it was adopted."<sup>11</sup>

The establishment of the normative content of the constitution is done depending on the specificity, importance and value of the regulated social relationship. We share the opinion expressed in the specialized literature that, unlike other categories of legislative acts, the norms contained in the constitution should regulate the fundamental social relations that are essential for the establishment, maintenance and exercise of power, but also those relating to the bases for power, respectively the bases of the organization of power. Therefore, constitutional norms are always principles of law having a decisive role in the establishment and functioning of government bodies and in determining the form of the state, respectively its character and attributes.

The limits of social normativism, especially the legal one, are evident especially in relation to human freedom. Social normativist determinism cannot encompass nor constrain human freedom as a person. The existential freedom of man in the social environment manifests itself in its phenomenal forms, determined, guaranteed but also controlled by the power of the state, the creator of social order through laws. It is therefore a freedom whose content is expressed through the forms of culture and civilization, a creative freedom, but a limited, conditional freedom, possibly subject to restrictions imposed by the state. It is a freedom of the legal norm.

Regarding the complex relationship between the normative legal system, and on the other hand society, it can be noted that in contemporary times the legal system tends to have its own functional autonomy, outside the objective or subjective determinations that society transmits. The autonomy of the legal tries to transform itself from a secondary, phenomenological and ideational structure, into one with its own reality, with the power to impose its order on the social and natural order. In this context, the normatively consecrated legal freedoms try to determine the existential freedom of man, explaining it, ordering it and conditioning it. It is a situation

<sup>10</sup> M. Andreescu, *Reflecții privind reforma constituțională în România*, Dreptul no. 9/2011, pp. 41-60.

<sup>11</sup> For details see M. Andreescu, A. N. Puran, *Drept constituțional. Filosofia dreptului și istorie. Studii și eseuri*, C.H. Beck Publishing House, Bucharest, 2022, pp. 181-239.

contrary to natural reality; the phenomenology of the legal must be conditioned, determined, by the existence of man, as a person, and by the particularities of social existence and not vice versa. It is an expression of dictatorship by law even in democratic societies, because the legitimacy of the legal norm lies, in such an unnatural situation, only in the will and interests of the rulers who express themselves, paradoxically, in the name of the people.

The reality described above, specific to contemporary society, has negative consequences, in the sense that man, as a person, the only holder of existential freedom, is no longer aware of his own freedom and expects the normative order, the state or even justice, to grant him the freedom he needs. It can be said that, in such a situation, not being aware of his own freedom, contemporary man does not exist authentically, but lives by delegation, his existence being externally determined by state and legal normativism, abstract, impersonal and, often, devoid of value sense.

Naturalistic jus conceptions consider freedom as an ontological given of the human being and try to achieve the transition from freedom as an ontological essence to freedoms as a social phenomenon, specific to the legal status of man and normatively determined. We say that none of the forms of naturalistic jus conceptions manages to fully make such a transition, and the attempt to preserve the immutability and prestige of freedom within legal freedoms is most often unsuccessful.<sup>12</sup>

We note, in this ideological context, that legal freedoms, as a structural element of the legal status of man, have as their metaphysical basis the principle of coexistence of freedoms, postulated by jus naturalism, but also by the French Declaration of the Rights of Man of 1789. It is a natural expression of the social existence of man, understood through the limits and not through the absolute of existential freedom. In other words, in this phenomenal legal plane, man's freedom extends to the limit of the freedom of his neighbor. It is about the specific distinction of law between "mine" and "yours", through which legal freedom is not constituted as a spiritual opening, but as a closure within the limits of the individual. We maintain that the legal norm, in this way, cannot address the person, focused on the ontological idea of freedom, but only man as an individual, contained in the multiple structures of the social scaffolding.

Article IV of the Declaration expresses the famous legal principle of the coexistence of liberties: "Liberty is to do whatever does not harm others: thus, the right of each man has no limits, except those which secure to the other members of society the exercise of the same rights. These limits can only be determined by law." In other words, my freedom extends to where the freedom of another begins. Of course, this principle is valuable because it enshrines the legal rule according to which the exercise of my freedom cannot affect the similar freedom of others. Essentially, the coexistence of liberties, as conceived in legal doctrine, is a principle that divides and does not unite, because it is the expression of the same fundamental dichotomy for law and the legal status of man that I have mentioned. It is a rational principle.

Obviously, such a reality is not in itself negative, because the dimension of human social phenomenality is a reality through which the human essence is manifested, and the affirmation, recognition, normative consecration and guarantee of fundamental human rights and freedoms, a fact achieved relatively late in history, is a remarkable act of culture and civilization, which places man in his social individuality in a relationship of equality with the power of the state and sets limits to the absolute and discretionary power of those who exercise state power. The constitutional consecration of human freedoms and rights represents the most important fact in the contemporary history of humanity, a resettlement of the relationship between the state and man, in the sense that man is not for the state, but the state for man. But this too is a gift from God. Unfortunately, in contemporary society this fundamental legal reality is altered and distorted by abusive manifestations of power, which cannot always be controlled and eliminated effectively by legal means.

The legal norm, especially in the conditions of the will of "legal norming" that contemporary society knows, is increasingly moving away from human values. It is an abstract, general and impersonal structure whose legitimacy is not a value one, but of a formal recognition within the normative system in question. The abandonment of values, including Christian ones, has as a consequence normative relativism based almost exclusively on the pure will of the legislator.

---

<sup>12</sup> I. Dojană, *Dreptul subiectiv*, C.H. Beck Publishing House, Bucharest, 2010, pp. 101-123; M. Andreescu, *Filosofie, credință și drept*, University Publishing House, Bucharest, 2016, pp.111-120.

Therefore, recourse to the principles of law is necessary to avoid legal normative formalism and to correctly adapt legal norms to social realities.<sup>13</sup>

The problem of the status of the principles of law and their explanation has always concerned theorists. The school of natural law argued that the source, the origin, and therefore the basis of legal principles is human nature. The historical school of law, under the influence of Kantianism, opens a new perspective in the research of the genesis of legal principles, presenting them as products of the popular spirit (*Volkgeist*), which displaces the basis of law from the universe of pure reason, to the confluence of historical origins dissipated in a multitude of transient forms. Variants of the positivist school maintain that the principles of law are generalizations induced from social experience. When the generalization covers a sufficiently large series of social facts we are in the presence of principles. There are also authors such as Rudolf Stammler who deny the validity of any legal principle, considering the content of law diversified in space and time, lacking universality. In the author's conception, law would be a cultural category.<sup>14</sup>

Referring to the same problem, Mircea Djuvara stated: "The whole science of law consists in reality, for a serious and methodical research, only in extracting from the multitude of legal provisions their essential, that is, precisely these ultimate principles of justice from which all other provisions derive. In this way, the entire legislation becomes of great clarity and what is called the legal spirit is captured. Only in this way is the scientific elaboration of a law made."<sup>15</sup>

In our opinion, this is the starting point for understanding the principles of law.

In the doctrine, the following general principles of law have been identified and analyzed: 1) ensuring the legal basis for the functioning of the state; 2) the principle of freedom and equality; 3) the principle of responsibility; 4) the principle of equity and justice<sup>16</sup>. The same author considers that the general principles of law have a theoretical and practical importance which consists in: a) the principles of law draw the guideline for the legal system and orient the activity of the legislator; b) these principles are also important for the administration of justice because, "The man of law must ascertain not only the positivity of the law, he must also explain the reason for its social existence, the social support of the law, its connection with social values"; c) the general principles of law can take the place of regulatory norms when the judge, in the silence of the law, resolves the case based on the general principles of law.<sup>17</sup>

We consider that the general principles of law are delimited by the positive norms of law, but there is undoubtedly a relationship between the two values. For example, equality and freedom or fairness and justice are value foundations (values) of social life. They must find their legal expression. In this way, legal concepts appear that express these values, concepts that become foundations (principles) of law. Legal norms then derive from these principles. Unlike norms, the general principles of law have explanatory value because they contain the foundations of the existence and evolution of law.<sup>18</sup>

Along with other authors<sup>19</sup>, we consider that legal norms relate to the principles of law in two senses: the norms contain and describe most of their principles; the functioning of the principles is then achieved by applying in practice the conduct prescribed by the norms. In relation to the principles, legal norms have a more restricted explanatory, teleological value, the purpose of the norms being to preserve social values, not to explain the causal reason for their existence. The principles of law are the expression of the values promoted and defended by law. We could say that the most general principles of law coincide with the social values promoted by law.

The principles of law, by their nature, generality and depth, are topics of reflection primarily for the philosophy of law, only after their construction in the sphere of the metaphysics of law, these principles can be transposed into the general theory of law, can be normatively consecrated and applied in jurisprudence. Moreover, there is a dialectical circle because the "meanings" of the principles of law, after normative consecration and jurisprudential elaboration are to be elucidated also in the sphere of the philosophy of law.

<sup>13</sup> For development see I. Craiovan, *Tratat de teoria generală a dreptului*, 5th edition, C.H. Beck Publishing House, Bucharest, 2023, pp. 191-229, 456-473.

<sup>14</sup> R. Stammler, *Theorie der Rechtswissenschaft*, University of Chicago Press, 1989, p.24-25.

<sup>15</sup> M. Djuvara, *Teoria generală a dreptului. Drept rațional, izvoare și drept pozitiv*, All Beck Publishing House, Bucharest, 1999, p.265.

<sup>16</sup> N. Popa, *op.cit.*, p.120-130.

<sup>17</sup> *Ibidem*, p.119.

<sup>18</sup> *Ibidem*, pp. 116-117.

<sup>19</sup> N. Popa, *op.cit.*, pp.116-117, R. I. Motica, G. Mihai, *Teoria generală a dreptului. Curs universitar*, Alma Mater Publishing House, Timișoara, 1999, p.78.

Such a finding nevertheless imposes the distinction between what we could call: constructed principles of law, and on the other hand metaphysical principles of law. The distinction that we propose has as its philosophical basis the difference between "constructed" and "given" in law.

The constructed principles of law are, by their nature, legal rules of maximum generality, elaborated by legal doctrine or by the legislator, in all situations explicitly consecrated by the norms of law. These principles can constitute the internal structure of a group of legal relations, of a branch or even of the unitary system of law. The following features can be identified: 1) they are developed within the law, being as a rule the expression of the legislator's will, enshrined in legal norms; 2) they are always explicitly expressed through legal norms; 3) the work of interpreting and applying the law is able to discover the meanings and determinations of the constructed principles of law which, obviously, cannot exceed their conceptual limits established by the legal norm. In this category we find principles such as: the publicity of the court hearing, the principle of adversarial proceedings, the supremacy of the law and the Constitution, the principle of non-retroactivity of the law, etc.

The metaphysical principles of law can be considered as a "given" in relation to legal reality and by their nature are external to law. At their origin they do not have a legal, normative, or jurisprudential elaboration. They are a transcendental and not transcendent "given" of law, therefore, they are not "beyond" the sphere of law, but are "something else" in the legal system. In other words, they represent the value essence of law, without which this constructed reality could not have an ontological dimension.

Not being constructed, but representing a transcendental, metaphysical "given" of law, it is not necessary to be expressed explicitly by legal norms. Metaphysical principles can also have an implicit existence, discovered or capitalized in the work of interpreting law. As an implicit given and at the same time as a transcendental essence of law, these principles must ultimately be found in the content of any legal norm and in any act or manifestation that represents, as the case may be, the interpretation or application of the legal norm. It should be emphasized that the existence of metaphysical principles also underpins the teleological nature of law, because any manifestation in the legal sphere, in order to be legitimate, must be adequate to such principles.

In our opinion, the metaphysical principles of law are: the principle of justice; the principle of truth; the principle of equity and justice; the principle of proportionality; the principle of freedom.

The metaphysical principles of law have normative value, even if they are not explicitly expressed by legal norms. Moreover, as it results from the jurisprudential interpretations, they can even have a supra-normative significance and, in this way, can legitimize jusnaturalist conceptions in law. These conceptions and the doctrine of supra-legality supported by Francaise Geny, Leon Duguit and Maurice Duverger, consider that justice and, in particular, constitutional justice must relate to supra-constitutional rules and principles. In our opinion, such standards are expressed precisely by the metaphysical principles to which we have referred. Jusnaturalist conceptions have also been applied by some constitutional courts. The Decision of January 16, 1957 of the Federal Constitutional Court of the Federal Republic of Germany on the freedom to leave the federal territory is famous in this regard. The Court declares: "Laws are not constitutional unless they have been enacted in compliance with the prescribed forms. Their substance must be in accordance with the supreme values of the democratic and liberal order as a system of values established by the Constitution, but must also be in accordance with the unwritten elementary principles (s.n.) and with the fundamental principles of the Basic Law, especially with the principles of the rule of law and the social state."<sup>20</sup>

### 3. Conclusions

Law represents, among other things, a system of norms that regulate human conduct. This human conduct can have a legal content only on the basis of a legal norm. Law, unlike moral and religious norms, has a coercive character, in case the subject refuses to comply with the normative provisions. Public power imposes on individuals a normative legal conduct, because law is the reflection of the common interests in society. Law cannot be conceived without power.

The state, in Kelsen's conception, is identified with law. It represents the legal order, and its reality is the content of positive law. The state and law are two sides of the same phenomenon<sup>97</sup>. By creating law, the state must subordinate itself to law, and this, in turn, regulates its edification process. By identifying the state with law, according to Kelsen, any state is a state of law, which obviously does not correspond to current reality.

<sup>20</sup> For development see M. Andreescu, A. Puran, *Drept constitutional. Filosofia dreptului și istorie. Studii și eseuri*, C.H.Beck Publishing House, Bucharest, 2022, pp. 34-38.

We consider that the "pure doctrine of law" as a theory is not convincing, since law cannot be separated from social reality, viewed as objective reality, and especially cannot be deprived of moral values from its foundation, which is justice. The normative system cannot subordinate man.

Applying the principles of abstract and impersonal legal normativism, the principle No one is above the law is inscribed in all democratic constitutions. This is valid only in the formal relations of man with the law and in accordance with social determinism in which freedom is a given of the law and conditioned by it.

Law has numerous political, historical, economic and sociological implications that are intrinsic to it, naturally arising from interhuman relations and from the citizen-state relationship. Although the status of law as an autonomous science cannot be denied, a legal norm cannot be analyzed without being placed in a historical context, without being correlated with the political and economic factors that determined its promulgation, and without evaluating the social impact it produced among the population through its application.

One of the world's great philosophers, Immanuel Kant, considered the superiority of the principles of law in relation to the formal, abundant, sometimes contradictory legal normativity, the result of the will of the legislator. Kant approached law (Rechtslehre) in the "Metaphysics of Morals" defining it as a system of rational principles a priori, independent of experience, which regulate the coexistence of individual freedoms. Unlike morality, which concerns internal motivation, Kantian law refers to external actions and the possibility of their correlation with the freedom of others. The Universal Principle of Law (Supreme Principle) in Kant: "Any action is right if, by itself or on the basis of its maxim, the freedom of choice of each can coexist with the freedom of all, in accordance with a universal law". This principle emphasizes that law does not limit freedom, but orients it to guarantee a maximum sphere of external freedom for each person<sup>21</sup>.

For social normativism, we believe that the words of Immanuel Kant are applicable: "Only the law of becoming truly explains the permanence of existence, making it intelligible according to empirical laws."

## References

- Andreescu, Filosofie, credință și drept, University Publishing House, Bucharest, 2016
- Andreescu, A. Puran, Drept constituțional. Teoria generală și instituții constituționale. Jurisprudență constituțională, 5th edition, C.H. Beck Publishing House, Bucharest, 2025
- Andreescu, A. N. Puran, Drept constituțional. Filosofia dreptului și istorie. Studii și eseuri, C.H. Beck Publishing House, Bucharest, 2022
- Andreescu, Reflecții privind reforma constituțională în România, Dreptul no. 9/2011, pp. 41-60.
- Bodea, Drepturile omului și libertățile fundamentale, Hamangiu Publishing House, Bucharest, 2024
- M. Buchanam, Limitele libertății. Între anarhie și Leviathan, Institutul European Publishing House, Iași 1997
- Craiovan, Tratat de teoria generală a dreptului, 5th edition, C.H. Beck Publishing House, Bucharest, 2023
- Deleanu, Instituții și proceduri constituționale- în dreptul român și dreptul comparat, Universul Juridic Publishing House, Bucharest, 2024
- Djuvara, Teoria generală a dreptului. Drept rațional, izvoare și drept pozitiv, All Beck Publishing House, Bucharest, 1999
- Dojană, Dreptul subiectiv, C.H. Beck Publishing House, Bucharest, 2010
- A. Haiek, Constituția libertății, Institutul European Publishing House, Iași, 1998;
- Iancu, Drepturile, libertățile și îndatoririle fundamentale în România, C.H. Beck Publishing House, Bucharest, 2003.
- Ionescu, Tratat de drept constituțional, 3rd edition, C.H. Beck Publishing House, Bucharest. 2019
- Kant, Metafizica moravurilor, Antet Revolution Publishing House, Bucharest, 2013.
- Kelsen, Doctrina pură a dreptului, Humanitas Publishing House, Bucharest, 2000.
- I. Motica, G. Mihai, Teoria generală a dreptului. Curs universitar, Alma Mater Publishing House, Timișoara, 1999
- Muraru, E. S. Tănăsescu, Drept constituțional și instituții politice, 15th edition, Vol I, C.H. Beck Publishing House, Bucharest, 2016
- Rivero, H. Moutouh, Libertés publiques: Tome 1, 9 edition, Presses Universitaires de France - PUF; 2003;
- Stammler, Theorie der Rechtswissenschaft, University of Chicago Press, 1989
- Vrabie, La cour constitutionnelle - garant de la suprématie de la constitution, Institutul European Publishing House, Iași, 2014

---

<sup>21</sup> I. Kant, Metafizica moravurilor, Antet Revolution Publishing House, Bucharest, 2013.