

## THE CONCEPT OF FREEDOM AND THE RESPECT FOR THE LAW IN A RULE OF LAW

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### **Abstract**

*Freedom is a concept as old as the democracy one, but freedom led to the edification of democracy.*

*Within human society, the issue of freedom, of the concept of freedom, starts from the premise that the individual depends on the values and norms of the society he lives in. „Freedom consists in being able to do what the law allows to do.” (Montesquieu)*

*Freedom of conscience is considered the foundation of all public freedoms. If, according to Hobbes' theory, safety is a purpose of the social contract, freedom is a higher purpose and freedom of conscience is connected to reason.*

*It is an axiomatic truth that law is a phenomenon related to social life and the disruption of social order creates favourable conditions for breaking the law. Law enforcement is intended to ensure the social order in correlation with other factors generating democracy, among which human rights occupy an important place.*

*The principle of legality is a principle of the constitutional democracy and an essential demand of the rule of law.*

**Keywords:** *freedom, law, democracy, right*

Freedom is a concept as old as the democracy concept, even older, if we take into account the fact that freedom helped building the democracy and not vice versa. In this century the content of freedom has experienced increased developments, which are also marked by the fact that human rights have become a political and social theme of major concern.

Regarding freedom, Hobbes said: "A free man is one who is not prevented from doing what he intends to do." So it results that the individual's freedom in society is not the same as freedom as a state of mind, as freedom as a philosophical concept.

The issue of freedom in human society is thus analyzed because within the concept of freedom it is assumed that the individual depends on the values and norms of the society in which he lives. [1] Thus, Montesquieu appreciated that "freedom is to be able to do what laws allow"

Freedom of conscience, however, is the foundation of all public freedoms. For over two millennia, since this concept was present in the culture of humanity, has

undergone significant developments, and today it is ascertained that there is an interpenetration between democracy, liberty and liberalism.

Human society as a whole is governed by rules and legal norms that express and impose the requirements of the society, demanding a certain conduct of its members, as well as respect for them. [2]

John Locke considered that upholding the laws is one of the fundamental safeguards of natural rights as a system of pre-existing positive laws. [3]

Most members of a society live abiding the law, but within the society there are also minorities which believe that in a democratic state freedom has no limits, considering that they have more rights than in reality, and fewer duties. Article 23 from the Romanian Constitution regulates individual freedom, and the provisions of this article take over the provisions contained in the Universal Declaration of Human Rights ("Everyone Has the Right to Freedom and Security") and the International Covenant on Civil and Political Rights ("every person has the right to freedom and the security of its person").

Moreover, the Romanian Constitution stipulates that: "Individual freedom and the person's safety are inviolable", therefore, individual freedom concerns the physical freedom of the person, its right to behave and move freely, not be held in slavery or in any other servitude, not to be apprehended, arrested or detained, except in the cases and by the express forms referred to by the constitution and laws. [4]

Freedom of the person means the existence of those conditions that allow the man to dispose of himself, to manifest himself freely in accordance with his desires, needs and conceptions. [5]

Living within the society, the man cannot have absolute freedom. It is admitted the freedom that does not violate the legal order, does not harm the rights and freedoms of others or of the good morals. [6]

Violation of the legal order legitimizes the intervention, the repression of public authorities, taking some measures that concern directly the person's freedom (searches, detentions, and arrests). [7] Talking about these measures we must refer to the concept of the person's safety, which identifies all safeguards that protect the individual in situations where public authorities take measures regarding individual freedom,

guarantees which ensure that these measures are not arbitrary, excessive, and abusive. [8]

The individual, when in contact with a public authority, regardless of his or her level, must be protected and have effective means to defend his / her rights. Violation of a right produced by an administrative authority can be repaired either by addressing that authority, or by addressing to the courts of the State, so that the individual disposes of effective steps in stages to defend its rights and freedoms. It can also address European jurisdictions. [9] In this regard, article 23 from Romanian Constitution stipulates the conditions under which searches, detentions and arrests can be carried out.

The whole issue of those who violate the law has different aspects. By breaking the law, people and their heritage, family and social well-being are affected. We mention that immoral practices represent important costs that are sustained by collectivities, economic agents, individuals etc. those who do not respect the law affect y their antisocial needs the fundamental institutions of the state as well. [10] At the forefront of these manifestations are included the facts of corruption. Corruption must be seen in correlation with the disturbances that manifest in the economic, political and normative area. We must take into account the fact that the market economy has not only beneficial consequences for the democratic society, because its resource-sharing mechanisms also create inequalities that lead to some individuals gaining an influential role in society at decision-making level. These advantages are materialized in different alliances and networks that strengthen their power. All such manifestations lead to the delay of the economic growth of the state, to the violation of the citizens' fundamental rights and freedoms, and divert the allocation of resources to the important objectives.

Today, more and more specialists, from different fields of activity are concerned about the relationship that exists between the freedom of the individual, the rules of law and the respect for them. [11] These concerns are due to the changes that take place today in the world both in economic and social terms, but also in the functioning of some institutions as a result of the transition from industrial society to the computerized post-industrial one. The economies of the states have evolved towards globalization and the computerization has created only a technical progress and increases in labor productivity,

it has also led to the increase of unemployment as well as the emergence of new forms of crime - cybercrime. Globalization did not contribute to the expansion of the economic system generator of prosperity, but on the contrary, in the rush of resources, there were great economic gaps between states.

With the disappearance of totalitarian regimes it has been opened the road towards democratization, but there have also been major legal deficiencies. Nowadays, the so-called democracy has serious problems and, as Alexis de Toqueville said: "the nations that have been deprived of their liberty for a long period of time will face difficulties in using their unexpectedly acquired freedom".

During the period that has passed since the events from December 1989, Romania has become a part of many international legal instruments, moreover, adopting provisions for the adjustment of its domestic law to the requirements of the European law and the international conventions. [12]

The generous ideas comprised in the statute of the European Council have guided this prestigious organization and have happened and materialized in the European convention for the protection of the human rights adopted in 1950, which was subsequently completed with multiple protocols annexed. It must be observed that compared with the protection system of the human rights existing in the United Nations, the European mechanism offers the image of a much more integrated system, with increased possibilities for the remediation of the human rights violation, if they were disregarded. [13]

It is noteworthy that by enforcing a series of rights that also appear in the Universal Declaration of Human Rights, the European Convention still brings a number of clarifications and developments in relation to the person's right to freedom and security. Including the legal principles specific to democratic societies, the European Convention for the Protection of Human Rights largely develops the idea of the right to a fair trial that must be conducted within a reasonable time before an independent and impartial tribunal established by law (article 6). As Kant stated in his theory about the essence of the state, its sole purpose is to protect the law and guarantee freedom. Kant argued that in regulating mutual relations between people, "the legal power of the whole being called

civil society can oppose violation of natural freedoms." [14] Kant defined the part of the civil society by the legal power, that is, by the state. The state, he said, must recognize the value of personality and limit the action where it would destroy that value, which is also a right.

The state being a regulator of individual activities must encompass all new areas of human activity. The State can and must embrace within its field any activity and must encourage the good everywhere, but always in the form of law, so that any act of it be based on the law, on the manifestation of the general will, on the respect and on the guarantee of the fundamental rights and freedoms.

As Giorgio del Vecchio stated, the state represents the supreme organ of the law and the law is an emanation of the human nature. The state is the man itself regarded as the species of law. [15]

The sovereignty of law and legality remain in reality the pillars of the modern state which, therefore, wants to be a state of law, its essence being the normativism.

The law is the legal instrument with a higher juridical value, being distinguished from the other legal instruments by its superior position in the system of sources of law and by the normative content of its constitution. In a democratic society the authority of law and the rule of law are supreme. The obligation of law is so strong that no one can ignore the legal rules under the pretext of its incognizance. [16]

The principle of legality implies the democracy of power manifested through the sovereignty of the people. The people exercise their power through their elected representatives by universal, equal, direct, secret and freely expressed vote. The Parliament is elected by the people and exercises the powers of law-making and control over the executive. This principle calls for an order of law in which the Constitution is the supreme place - the fundamental law of the state that compels all to obey the law.

When social control weakens, the freedom of social action of the individual leads to disregard and violation of the rule of law. Also, a series of acts such as vagabondage, beggary, drunkenness in public places, shaky or aggressive street behavior lead to breaking the law and creating a phenomenon of social disarray. In this situation, the state

must intervene through its specialized institutions in order to regulate the relations between the members of the society by resorting, if necessary, to the force of coercion.

The fundamental principle of the theory of the rule of law is that the state can be bound by law, that is, the organs and officials of the state, the state itself, can be limited in their action by legal norms which they cannot violate without responding, i.e. without incurring the sanction which applies to any subject of law when violating the law. Legality means strict adherence to a rule of law. The state of legality is achieved, either by complying with a legal provision voluntarily, by persuasion, or through law enforcement by the power of constraint of the public power.

The principle of legality is a fundamental universal principle that, as professor Victor Popa observes, forces all the subjects of the legal relationships to respect the law in their activity. [17] within the illegality there is also included the notion of constitutional legality, which means the compliance of all legal provisions with the provisions of the Constitution. The principle of legality implies that the entire conduct of individuals as well as the work of public authorities and other social organizations must comply with the general and impersonal norms adopted by the Parliament. The relations between the state and the law viewed from the point of view of the principle of legality are expressed most impressively by the doctrine of the rule of law. [18]

We underline the fact that the legality does not mean only law enforcement, but compliance with all legal norms. [19]

In the contemporary age, the principle of legality has become a fundamental principle of all the legal systems consisting of the respect for the law by its recipients: the citizens and the state. [20] Lawmakers and those applying to them must understand their purpose well; understand that in democratic societies there is a direct link between democracy, freedom and law, but also the respect for this. [21]

The vast majority of people undoubtedly value democracy. They also value the conditions that allow them to lead a decent life and its foundation is the order. In the absence of order, freedom does not bloom. The purpose of the law, as John Locke said, "is not to abolish or restrict, but to increase freedom, and law enforcement is intended to

ensure order." But this must be done firmly and in correlation with other factors generating democracy, among which human rights occupy an important place. [22]

In a broad sense, the concept of law is extended to any binding rule of law. [23]

The rule of law is mainly ensured by establishing in the Constitution or by customary law, of the sphere of regulation of the social relations reserved to the law.

## Conclusions

1) Freedom and equality of rights represent a fundamental criterion of progress, and the rule of law must defend human rights in accordance with national and international law.

2) Fair laws and their correct application underpin the economic basis and lead to the present and future development of society, to the genuine edification of the rule of law, to the safeguarding of human rights and fundamental freedoms. The legal order of the European Union creates for all the citizens of the Member States not only obligations, but also specific rights.

3) The jurisprudence of the national courts always exists, but the mandatory jurisdiction of the European Union courts is the expression of the new state concept of its sovereignty over human rights.

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