GENERAL PRINCIPLES OF LAW

Elena ANGHEL*

Abstract

According to Professor Djuvara "law can be a science, and legal knowledge can also become science when, referring to a number as large as possible of acts of those covered by law, sorts and connects them by their essential characters upon legal concepts or principles which are universally valid, just like the laws of nature".

The general principles of law take a privileged place in the positive legal order and represent the foundation of any legal construction. The essence of the legal principles resides in their generality. In respect of the term "general", Franck Moderne raised the question on the degree of generality used in order to define a principle as being general – at the level of an institution, of a branch of the law or at the level of the entire legal order.

The purpose of this study is to find out the characteristics of law principles. In our opinion, four characteristics can be mentioned.

Keywords: *principle, general, experience, values, universal.*

1. Introduction

In its great historical spatial diversity, despite the natural differences, the law has a permanent nature, represented by a bunch of constants. Not only principles, but institutions are conserved, according to the continuity of social life; the state does not create law, but establishes a law, the positive law"[1].

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The purpose of this study is to find out the characteristics of law principles. In our opinion, four characteristics can be mentioned.

2. Content

2.1. The generality of law principles

Mircea Djuvara pointed out that „in the filed of the science, the scientific progress consists of generalization. The scientific method consists of the knowledge of as many actual cases as possible and of their concentration in unitary laws by means of their essential similarities. The law of gravitation was a huge progress due to the fact it succeeded in combining a huge number of phenomena"[2].

In its entirety, the science of the law tends to generalization: the law is the result of judgment and the judgment consists of generalization; positive law has a general application; the rule of law is general and

* Lecturer PhD, Faculty of Law, "Nicolae Titulescu" University of Bucharest, (e-mail: elena_comsa@yahoo.com).

[1] Gheorghe Mihai, *Fundamentele dreptului*, vol. I - II, All Beck Publishing House, Bucharest, 2003, pag. 250.

[2] Mircea Djuvara, *Teoria generală a dreptului (Enciclopedie juridică)*, All Publishing House, Bucharest, 1995, pag. 225.

impersonal. According to Djuvara, the rule of law was always created by individual cases, by means of their comparison, a higher and higher level of generality being developed. In this respect, the author refers to the Greek primitive organization period, described by Homer, when the resolution ordered by the king, in case of a dispute, called „Themistes", was repeated in all similar cases so that, due to his will of reaching the same settlement, the idea of a general rule emerged over time[3]. Nowadays, statist law provides such general regulations that they can embrace the whole activity of a society. The Napoleonic Code has the great merit of having worded „precisely and clearly so general regulations that they could regulate almost all social life of its time"[4]. Djuvara concludes that, in the field of the law, generalization is necessarily required by the „logical postulate which rules the entire legal thinking, namely the rational idea of justice"[5].

Therefore, the generality is a defining element of the law system. But, within the law framework, „the legal construction of principles is the ultimate expression of refined abstraction"[6]. The generality is related to the law principles essence, is the „the core of the definition", according to Bergel.

Gheorghe Mihai notes that the principles of the law are called both general and fundamental, without the distinction between these two terms being explained. In his opinion, „fundamental" is the attribute of something that has the capacity to substantiate, and „general", in current sense, concerns „what is valid for a whole class of objects, what belongs to the entire class". Therefore, the principle is „the simplest and the most general sentence of which we can infer a totality of knowledge or precepts" and which substantiates, as an essential judgment, this entirety"[7].

Furthermore, the author insists on the fact that we should not confuse the generality of a principle with its extension. The principle, as a main idea, is only one, the founder of the law, the rest being „founded founders, not principles"[8]. For example, the principle of the freedom to adduce the evidence is an extension of the principle of freedom. Therefore, principles are not ranked according to the degree of generality, all of them being „the most general sentences". According to the author, if we refer to principles which are specific to certain areas of the law, we should call them „rules of method", mandatory rules, and not guidelines.

Most authors express a contrary opinion, meaning that in their opinion, principles have a different degree of generality. Therefore, Sofia Popescu shows that the general principles of law are different in terms of the degree of generality[9]: some of them have full applicability, being valid for the entire law system, while others are applicable only to private law or public law or to a certain branch of the law. While branch legal disciplines organize branch principles, the general theory of law concerns the most general principles. By setting aside the whole positive law, the general theory of

[3] *Idem*, pag. 234.
[4] *Idem*, pag. 468.
[5] *Idem*, pag. 447.
[6] *Idem*, pag. 312.
[7] Gheorghe Mihai, *Fundamentele dreptului*, vol. I - II, All Beck Publishing House, Bucharest, 2003, pag. 362
[8] Gheorghe Mihai, *Despre principii în drept*, in Studii de Drept Românesc, year 19 (43), no. 3-4/1998, pag. 273-285.
[9] Sofia Popescu, *Principiile generale ale dreptului, din nou în atenţie*, în Studii de Drept Românesc, year 12 (45), no. 1-2/2000, pag. 7-25.

law, by means of synthesis, can approach to universality.

In what concerns the principles of international law[10], Grigore Geamănu distinguishes, according to their generality, between fundamental principles and other principles of international law. The fundamental principles „represent a full generalization of the international rules of law", by being part of that bundle of rules which is the essential and specific part of this law[11]. The other principles of international law have a lower degree of generality, according to the author.

Furthermore, Franck Moderne wonders what degree of generality would be needed in order to classify a principle as being general, the generality being perceived, as Norberto Bobbio shown, at the level of an institution, of a branch of the law or at the level of the entire legal order[12].

Philippe Jestaz is reserved in expressing a clear point of view, both in what concerns the definition of general principle concept which has so many meanings that, according to the author, we need to resort to our intuition, and in what concerns the generality of the principles of law[13]. In his opinion, the principles of law have three characteristics: permanent, general and unanswerable. The general characteristic consists of the fact that the principle crosses several institutions or branches of law; for example, the principle which good faith is presumed on finds its applicability in various fields. Any rule of law entails in its structure a presumed fact (for example, any married woman gives birth to a child) and a consequence of this fact (the child's father is the husband of the mother). However, a principle consists of a multitude of presumed facts, so that we are not aware of the consequences of the fact unless we resort to certain rules of law. Jestaz concludes that the generality of a principle is a very relative concept, due to the fact that there is no standard to establish the degree of generality where a regulation becomes principle.

The generality of the general principles of law is „maximum", therefore they cannot be placed at the same level with the rules of law. We share the opinion of Jean - Louis Bergel, according to which the aforementioned expression, although pleonastic, is the most appropriate, due to the fact that it outlines the specific generality of these principles and distinguishes them, in this regard, from the rules of law. Therefore, a rule of law is general because it is applicable to an indefinite number of acts and facts, however, in relation to some of them, it can have a special characteristic. On the contrary, a principle is general „in what concerns an indefinite series of applications"[14]. In order to reinforce this statement, professor J. Boulanger exemplifies: the provision of the Civil Code according to which the conceived child is entitled to receive inheritance, is only a rule

[10] Roxana-Mariana Popescu, *Introducere în dreptul Uniunii Europene*, Universul Juridic Publishing House, București, pag. 39: *international law principles should not be confused with the EU principles* (Augustina Dumitrașcu, Roxana-Mariana Popescu, Dreptul Uniunii Europene. Sinteze și aplicații, ediția a II-a, revăzută și adăugită, Universul Juridic, București, 2015, pag. 128).

[11] Grigore Geamănu, *Principiile fundamentale ale dreptului internaţional contemporan*, Edit. Didactică şi Pedagogică Publishing House, Bucharest, 1967, pag. 15.

[12] Franck Moderne, *Légitimité des principes généraux et théorie du droit*, in Revue Française de Droit Administratif no. 15(4)/1999, pag. 723.

[13] Philippe Jestaz, *Principes généraux, adages et sources du droit en droit français,* in Les principes généraux du droit, Droit français, Droits de pays arabes, droit musulman, Bruylant Bruxelles, 2005, pag. 171.

[14] Jean - Louis Bergel, *Méthodes du droit. Théorie générale du droit*, 2nd edition, Dalloz Publishing House, 1989, pag. 100.

of law on inheritable devolution, while *infans conceptus pro nato habetur quotiens de commodis eius agitur* (the conceived child is considered born whenever his interests are concerned) is a genuine rule of law, by being applied in all situations which relate to the beginning of personality development. Therefore, Bergel concludes that the principles govern the positive law, by drawing the limits of the branches of law, while the rules of law are only applications of or exceptions from these principles.

Gh. Mihai provides a response to this statement, namely, by being the most general sentence, the principle does not admit exceptions, even more if we talk about a basic principle; rules involve exceptions, however, „if a principle is declared as such, the exceptions abolish its capacity of principle"[15]. The author criticizes those definitions which distinguish between the principles and the rules of law, by arguing that the first are abstract and general, and the letter would be actual and particular: „by taking over the abstract and general characteristics from the filed of the regulations and moving them into the filed of the principles, means that all regulations are converted into principles or that all principles are converted into regulations"[16].

According to Gh. Mihai, the distinction between principles and regulations is performed by means of justification: „the principle is the conceptual and axiological horizon of the regulations, the regulations are valid constructions of this horizon"[17]. The differences between the principles of law and the rules of law shall be discussed in another chapter.

2.2. The principles of law are the outcome of the experience

By defining the principles as the most general ideas which arise from judgment and which substantiate law, we should not understand that they could be designed outside social facts. They have to support the totality of rules of positive law and to find their justification within social life. Therefore, we point out that the principles are not the outcome of a simple speculation, but on the contrary they are created by means of the experience.

Mircea Djuvara wrote that, setting aside the experience in the field of the law is nonsense, by being impossible to create law only by means of rational deductions. „The knowledge of the legal phenomenon should start from the practice developed from actual cases. In order for the truth to be achieved, the legal science should start from the actual to the abstract and not the other way". Here is the how the instruments of law are created according to the author: the law starts by ascertaining the things of the society, it always starts from the examination of particular cases, which applies legal and rational assessments to, by means of the legal consciousness of the society. Following the assessment of these actual social relationships, by means of induction, higher and higher levels of generalization are reached. Out of these general laws, legal consciousness achieves more precise forms of positive law, which are deemed outcomes of the legal techniques. The principles of law emerge from the legal text established as such, whereas „the legal experts seek the logical ground of each provision". The principles represent the higher level of abstraction, but they have no meaning

[15] Gheorghe Mihai, *Fundamentele dreptului. Teoria răspunderii juridice,* vol. V, C. H. Beck Publishing House, Bucharest, 2006, pag. 140.

[16] Gheorghe Mihai, *Despre principii în drept*, in Studii de Drept Românesc, year 19 (43), no. 3-4/1998, pag. 273-285.

[17] Gheorghe Mihai, *Fundamentele dreptului*, vol. I - II, All Beck Publishing House, Bucharest, 2003, pag. 363.

outside the actual social facts: these principles „have no value, unless they are in relation to the initial particular cases they emerge from”[18]. Therefore, „all the principles of law are the outcome of continuous and necessary observations of the necessary needs of the society and these principles are not only the outcome of abstract speculation”.

The philosophy of law recorded different guidelines in the construction of the principles of law. Therefore, Paul Roubier distinguishes three important categories of thinking: formalist school (positivists), idealist school (iusnaturalists) and realist school, which gathers under this name, historical and sociological doctrines[19]. Positivists thought that any rule of law is an expression of the king’s power; the rule is mandatory for the individuals, regardless if it is applied, therefore, the effectiveness of the rule is not important according to this theory.

Iusnaturalists substantiated law on a bundle of natural and permanent principles, the systems of positive law emerge from. These principles emerge from the nature of things, they are ordered by the judgment, by remaining the same, regardless time and space. „The lawfulness of the rule emerges from its compliance with an intangible pattern (natural or rational order)”, therefore the lawmaker is also bound to comply with it, according to Roubier.

By expressing doubt against the transcendental nature of law and by disclaiming the ideas of natural law, realist school sought the ground of the law in the life experience of people: the law is a spontaneous outcome of social life and every rule emerges from experience. Realists tried to point out the influences of the past, of the traditions, by being concerned not about the natural human being, but about the real human being, not about the alleged permanent principles, but by laws emerged from the spirit of the people.

By being against the codification of law, German historical school substantiated law on experience. Savigny, the prominent representative of this theory, believes that the law is the work of nature, so that it does not have to be created, but it is self-created as a natural phenomenon, such as religion or language. The law is the outcome of a collective action, it is developed at the same time with the spirit of the people and reflects its entire history; therefore, it cannot find its expression in law, but in tradition. The tradition watches over the conservation of the law, by representing the inheritance transmitted sequentially from a generation to another.

The sociological school, represented by Durkheim, developed the ideas of Auguste Comte, whose research followed the method of observation of facts and the role of the experience. Durkheim believes that the law is the result of the intervention of the society in its own interest, namely in order to improve life conditions of social body. The social interest is what prevails: the law emerges from the society and not from the individual.

Free Law School was established by François Gény, as a fight against the theories which believed that the legislation is the sole source of the law. The arguments against these theories were the following: the law is a spontaneous outcome of the society; the formal sources of law are only procedures for the ascertainment of the law, in fact, the law precedes them, due to the fact the law is the outcome of social powers, it does not emerge from the state, but from the society. According to Roubier, the rules of law system substantiated on formal sources, has, to some extent, a virtual characteristic, an

[18] Mircea Djuvara, *op. cit.*, pag. 245 and the following.
[19] Paul Roubier, *op. cit.*, pag. 55.

absolute overlap between the law of the sources and the actually practiced law, being impossible. The validity of formal sources of law depends on their compliance with the real sources[20].

According to professor Benoît Jeanneau, most of the general principles of law, are the result of the wording of latent rules emerging from social life, rules emerged from the repetition of fragmentary text, which at one point in time, the judge promoted them as more or less general principles[21].

We note that this theory is shared by Mircea Djuvara. According to the author's opinion, the law actually practiced within a country is not necessarily and absolutely in accordance with the law drawn up by its sources. There is a „positive latent law" beyond the construction of the positive law: it is the own law of the society, consisting of a series of social practices which, without being guaranteed by the state authority, have a long practical efficiency within society life.

However, every legal system expresses the community life experience of that space, an experience which varies depending on ideologies, traditions and religious symbols. Sometimes, this positive law has such strong roots in the consciousness of the society that the respective legal system remains immovable under the power of tradition; this is the case of Muslim system, which still tries to break away from the clutches of tradition, by slowly progressing under the influence of Western law principles.

There is no place where the law can afford to ignore the experience that its history has gained for centuries. Legislative experience „is not the experience of the legal normality, which is established in rules, but of its clear disclosure, as unambiguous as possible and especially, as public as possible. According to Gheorghe Mihai, this experience could be a logical historical finishing of human normative experience, or in other words, it would be the formalized prescriptive living".[22] In our opinion, the principles of law emerge from this clear disclosure and serve as a basis for positive law.

2.3. The principles of law are axiologically established

The law system cannot be reduced to a set of axiomatic rules of law, as Kelsen believed, but it necessarily entails value judgments. „The importance lies in the social value of the result and not in the logical beauty of laws. If law is faulty, misfit, anti-economic or even unfair, a perfectly logical judgment will only serve to increase the flaw of the premise, of the initial rule"[23].

According to Ion Craiovan, the law is „generated, structured 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"[24]. The author conceives the

[20] Paul Roubier, *op. cit.*, pag. 76 and the following.

[21] Benoît Jeanneau, *Les règles et principes non écrits en droit public*, sous la direction de Pierre Avril et Michel Verpeaux, Panthon Assas Publishing House, Paris, 2000, pag. 12.

[22] Gheorghe Mihai, *Fundamentele dreptului. Teoria izvoarelor dreptului obiectiv*, vol. III, All Beck Publishing House, Bucharest, 2004, pag. 35.

[23] Dan Claudiu Dănişor, Ion Dogaru, Gheorghe Dănişor, *Teoria generală a dreptului*, C. H. Beck Publishing House, Bucharest, 2006, pag. 35.

[24] Ion Craiovan, *Tratat de teoria generală a dreptului*, Universul Juridic Publishing House, Bucharest, 2007, pag. 31.

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 human beings, their aspirations and needs.

The law always starts from the social actions, but it also means legal consciousness, ideals and social values. Gheorghe Mihai deeply outlines that people do not coexist, people live together[25]. 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. „The actual law is not everlasting outside these values and these values are always typically expressed in the statements of the principles of a law system”.

The principles of the law are the expression of the values promoted and defended by means of the law. 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 (equity, welfare, utility, dignity, truth) which are necessary for the human coexistence and which the law takes over, legalizes, promotes and defends by means of its rules.

The law, as a dimension of the society, is not limited to the totality of the legal regulations in force; the values are those which give meaning to the rigid normative feature. The basis of the law is praxio-axiological[26]. The bases of positive law consist of principles, values, ideals, which have accompanied the society since the beginning of its existence. By being guided by the ideals, the law is a social control mean for the individual: human beings comply with the rules of law due to the fact they grant them cultural normative models, which they acknowledge as being necessary for them and they follow them. The law is valued; it sums up the standards of conduct emerging from the consciousness of value of the society. By means of these ideals, the law falls under the scope of „must be”. According to Mircea Djuvara, the ascertainment of the ideal of a society must be the beginning of any law scientific research.

Therefore, the development of the law falls under the scope of the values and principles. The values belong to the given of the law, they are always social. The principles are value bearers. As the principles are the bases of the positive law, the values are crystallized, enshrined and protect by rules of law. The values impact the legal order both in the process of law creation, due to the fact the lawmaker creates the rules of law in this axiological space, and in the process of law fulfillment, thus the values being promoted by effective legal means[27].

[25] Gheorghe Mihai, *Fundamentele dreptului*, vol. I - II, All Beck Publishing House, Bucharest, 2003, pag. 164 and the following.

[26] Gheorghe Mihai, *Natura dreptului: ştiinţă sau artă?*, in Studii de Drept Românesc, year 12 (45), no. 1-2/2000, pag. 42.

[27] Ioan Ceterchi, Ion Craiovan, *Introducere în teoria generală a dreptului*, All Publishing House, Bucharest, 1992, p. 27.

In the application of the law, the enshrined values become references for the personality of the individual who, endowed with responsibility, will guide and assess the conduct according to their standards. Therefore, „the normative legal universe is built on principles and is humanized by the work of the values”[28]. The law is mandatory within the relations between the individuals not as a necessary result of the coercive power of the state, but as the adherence of the members of the society to its regulations. The individuals willingly comply with the rules of positive law in so far they give expression of the values emerging from the legal consciousness of the society. Therefore, the law has to be accepted by the members of the society, in terms of values and regulation, exactly in this order, due to the fact that the principles and accordingly, the values these principles assimilate, represent the bases of the objective law, have logical precedence against the regulations of the positive law. Therefore, the axiological dimensions of the principles also impact the rules of positive law.

According to Gheorghe Mihai, the value „is not given, as the properties of the things, it is not based on the real world, but on the ideal world, of the pure validity”[29]. 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 valued by means of the actions”.

If the law were not related to values, the law would be an artificial structure of rules without scopes. The individual acts in a regulated framework; as the values are expressed by rules of law, the individuals value them by means of their actions. For human beings, the value is the reference of the responsibility: they assume the values that the law crystallizes in its rules of law and act according to their consciousness. Gheorghe Mihai distinguishes between moral assumption and legal assumption of social values, therefore: the moral assumption of the value is „universal and absolute and no speculative derogation of it impacts its substance”, while the legal assumption of the same value is „neither universal, nor absolute, as long as the same lawmaker falls in contraction in the same respect”[30].

2.4. Certain principles of law benefit from universality

In antiquity, Cicero expresses his belief in an universal law and according to him „it is not one thing in Rome, and other at Athens; one thing today and another tomorrow, but in all times and nations this universal law must forever reign, eternal and imperishable”[31]. Iusnaturalists strongly supported the transcendental nature of law, from a dual perspective: there is natural law, consisting of the totality of natural, permanent principles, which are dictated by the judgment, being the same regardless of time and space; the positive law emerges from these eternal principles and by being the work of a lawmaker, it can only be changeable and imperfect.

If by 18 century, it was considered that the law was universal and unchangeable, being developed by human judgment out of the nature of things, Montesquieu revolutionized this thinking, by proving that

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[28] Gheorghe Mihai, *Fundamentele dreptului. Teoria izvoarelor dreptului obiectiv*, vol. III, All Beck Publishing House, Bucharest, 2004, pag. 155.

[29] Gheorghe Mihai, *Fundamentele dreptului. Teoria răspunderii juridice,* vol. V, C. H. Beck Publishing House, Bucharest, 2006, pag. 42 and the following.

[30] *Idem*, pag. 55.

[31] *Apud* Ion Craiovan, *Tratat de teoria generală a dreptului*, Universul Juridic Publishing House, Bucharest, 2007, p. 91.

law is the result of development factors. A great number of theories were developed against metaphysical foundation of law, by disclaiming the ideas of natural law. The historicism denied the universality of principles, by claiming that a historical *a priori*, which emerges from the spirit of the nature corresponds to each period and people. For the positivists, the law is the work of the lawmaker, for the sociologists is the result of facts.

According to Alexandru Văllimărescu „in order to avoid the free will of the lawmaker, we have to admit the existence of an *a priori* law, developed by human judgment which is also incumbent on the lawmaker”[32]. It is important to admit the existence of certain principles which are binding on everybody, to find an „outside rule”, regardless if we call it natural law, rational or objective law, *donné* or *règle du droit*. The author explains that „the postulation of the existence of an absolute principle, which depends neither on the contingency of fact nor on the free will of the people who hold the great power”, is essential.

Nowadays, we witness to some extent, the revival of the natural law. The principles of law represent the universal bases of the legal field, due to the fact they can be found in the depth of each positive law system. As of 1920, „the general principles of law recognized by civilized nations” were proclaimed in art. 38 of the Statute of the International Court of Justice, by being expressly recognized as a source of public international law. The current international view reinstates the universality of these principles, the establishment of mechanisms appropriate in order to ensure the globally protection of the inherent rights, natural for individuals, being in the center of the concerns of all states. In our opinion the institution of the Ombudsman is an extremely important institution of the European scene considering the role played by it in protecting the rights and interests of the European citizens[33] As they „express a sole truth which is mandatory for the judgment”, these principles which substantiate law are transferred from a legal system to another, from the internal legal order to the international legal order and vice versa.

Under the integration into an united Europe, it is easy to note the tendency of the law towards universality. The predictions of Nicolae Titulescu – „starting from national, passing to regional, heading towards universal” were fulfilled. The European Union is opened to all European states which undertake to jointly promote universal values such as, humanism, human dignity, freedom, equality, solidarity, tolerance. The violation of the principle of equality and non-discrimination exists when a different treatment is applied to equal cases without any objective and reasonable grounds, or if there is a disproportion between the scope aimed by means of the unequal treatment and the used means[34]. The building of the European construction entails a blending of different legal orders, without impacting the foundation of member states national identity, and the reconfiguration of national, European and international relations. Such a difficult process would not be possible if the sense of European identity would not be expressed by means of universal principles

[32] Alexandru Văllimărescu, *Tratat de Enciclopedia dreptului*, Lumina Lex Publishing House, Bucharest, 1999, pag. 287.

[33] Elena Emilia Ştefan, *The role of the Ombudsman in improving the activity of the public administration*, Public Law Review no.3/2014, pag.127-135.

[34] Decision no. 107/1995 of the Constitutional Court, published in Official Journal no. 85/1996, *apud* Elena Emilia Ștefan, “*Opinions on the right to nondiscrimination*”, CKS e-Book 2015, pag. 540-544.

and values, which breathe life into this continent[35]. It is important to keep in mind that in the European Union, the European Court of Justice "develops the general principles of law, which can be considered to be judge-made law – almost quasi-legislative"[36].

Giorgio del Vecchio pointed out that we should not understand that the general principles of law belong to a certain positive law system. The statement according to which the general principles of law are valid for only one people and that there are as many general principles as particular systems, would be contrary to the universal belief in *ratio juris*, which dates from Roman times and which is still valid today[37].

The objective law benefits form universality, due to the fact it is based on principles. The principles, in terms of ontology, give meaning to the law from the beginning of the society, namely before being discovered and worded by the law science. They substantiate law from the axiological perspective and guide the lawmaker in the construction of positive law.

3. Conclusions

In its great historical spatial diversity, despite the natural differences, the law has a permanent nature, represented by a bunch of constants. Positive law „does not exhaust the extension of the Law, and does not rebuild its foundations. Not only principles, but institutions are conserved, according to the continuity of social life; the state does not create law, but establishes a law, the positive law"[38]. Philippe Jestaz assigns a permanent feature to the principles of law, by showing that „they crossed centuries and survived numerous legislative convulsions"[39].

The assessment of legal principles, as found in the Western and Arab-Muslim legal systems, reveals their universal value, the fact that they „are identical or quasi-identical in Romanian law, in, Islamic Sharia and in the modern European legal systems"[40]. These principles are and shall remain universal as they crystallize eternal values for human beings of all time and places, independently of the social realities which delimitate their legal status of persons in law.

According to professor Djuvara, „the law can be a science, and the legal knowledge is converted in science when, by covering a large number of the documents contemplating law, sorts and connects them according to their essential characters by concepts or *universal legal principles*, just like the laws of nature"[41]

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[35] For more details on European Union's legal principles, see Laura-Cristiana Spătaru-Negură, *Old and New Legal Typologies*, CKS e-Book 2014, pag. 365-466.

[36] Laura-Cristiana Spătaru-Negură, *Some Aspects Regarding Translation Divergences Between the Authentic Texts of the European Union*, CKS e-Book 2014, pag. 378.

[37] *Apud* Sofia Popescu, *Principiile generale ale dreptului, din nou în atenţie*, in Studii de Drept Românesc, year 12 (45), no. 1-2/2000, pag. 9.

[38] Gheorghe Mihai, *Fundamentele dreptului*, vol. I - II, All Beck Publishing House, Bucharest, 2003, pag. 250

[39] Philippe Jestaz, *Principes généraux, adages et sources du droit en droit français,* in Les principes généraux du droit, Droit français, Droits de pays arabes, droit musulman, Bruylant Bruxelles, 2005, pag. 171.

[40] Sélim Jahel, *Les principes généraux du droit dans les systèmes arabo-musulmans au regard de la technique juridique contemporane,* in Les principes généraux du droit, Droit français, Droits de pays arabes, droit musulman, Bruylant Bruxelles, 2005, pag. 29-46.

[41] *Apud* Ioan Ceterchi, Ion Craiovan, *Introducere în teoria generală a dreptului*, All Publishing House, Bucharest, 1992, pag. 5.

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