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THE VALIDITY AND EFFECTIVENESS OF LAW

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Abstract: *This current study addresses the key issues regarding the content, effectiveness and implementation of the law in its entirety. The matters of detail concern the characteristics and role of law, their legitimacy, their interpretation and application to specific cases and the role of legality as a fundamental principle of any legal system. The society is characterized by, and thus remains in a normal order, through a broad system of legal, political, moral and economic norms. The social order is of a logical-normative uniformity and regularity type. The incumbency thus becomes a powerful organizer of the people's efforts to balance the individual interests with the public ones.*

Key words: *law, value, validity, interests, purpose.*

1. Introduction

The law includes the axiological dimension, being the product of the social actions of the person's will. The law is a material phenomenon and also includes moral values and a normative order, acts of will and acts of authority, of freedom and constraint (J.L. Bergel).The same author often notes the frequent neglect to study the aims of the law.

M.Virally considers [9] the attraction of the value concept to be at the core of the legal theory in order to accurately assess the manner in which the law protects its individual and collective interests.

In the conception of N. Popa, Professor and lawyer, the aims of law as a legal system are embodied in a set of functions: [7]

a. the function of institutionalization or legal formalization of the political-social organization

b. the function of preservation, protection and safeguard of the fundamental values of society

c. the function of company management

d. the regulatory function

The purpose of the law embodied in its functions arises from the purpose of the law. R. Von Ihering subtly remarked that the purpose is the creator of the entire law system as an intentional product, this being the form in which the state organizes through coercition the living conditions of society.

The researchers of the past two decades have shown the necessity that the idea of law not be removed from its original homeland, of considering justice as a special purpose.

In relation to the purpose of the law [5] there are three categories of doctrine:

1. The doctrines that put the law in the service of the individual (the nominalist philosophy: I Bentham, Hobbes). From

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this perspective, the human person is the ultimate purpose of the law.

2. The doctrines that consider that the society is the supreme value (Hegel, A. Comte, Durkheim E), in particular the State as the center of social life.

In this sense, the law functions as the organizer of society, defender of social cohesion.

3. The transpersonal law doctrines according to which the individual and the society, therefore the law, must be in the service of civilization, its progress, presenting itself as a law of coordination between people who have an equal legal status.

The general sense reveals the conclusion that the law always puts face to face at least two topics and establishes for both of them a norm in the sense that what is possible for a party cannot be prevented for the other party. Thus transpires the differential character of the law - moral rapport.

The law has two basic purposes:

1. It formulates rules of conduct, setting roles that individuals must meet;

2. Acts in order for these rules to be noticed and observed, by using legitimate means of pressure and coercion. Thus, the law performs the function of order and social integration. From this perspective, the validity and effectiveness of law depend to a significant extent, on the degree of similarity that exists between:

- the ethical-cultural model that refers to the forces of tradition (ideals, values, feelings, social desires);
- the roles established through the rule of law;
- the needs and aspirations of individuals fulfilling these roles.

Given the consistency / inconsistency between the three elements, the law may evolve at a certain time, before society, thus causing social changes, but it may lag behind the society, thus becoming a factor of social immobility.

The problem of realization of law lends itself to two approaches:

1. theoretical
2. in the area of effective achievement.

In the second plan "we mean mainly the assembly of structures which cooperate in the concrete achievement of justice, an assembly which constitutes a whole legal system. Basically, this system incorporates the trial courts, the substance of the judicial activity being materialized in court orders, as acts that bring to conclusion a conflict that appeared in the field of social relationships " [1] .

When referring to the validity and effectiveness of law, the debate focuses on two directions. On the one hand, the whole judicial system with all the institutions meant to ensure the execution of law. On the other hand, the legislative institutional democratic system that can provide on time or not the laws necessary for the operation of the areas of social, economic life, of people living together in a society characterized by order, safety, stability.

In the sphere of regulations, ambiguous laws are delivered not infrequently, although the law must have a degree of generality. The judiciary system faces difficulties arising from laws contradicted by certain orders given by the ministries in office. Due to certain gaps and ambiguities, the change of law in the same field is practiced, resorting to emergency ordinances, which are afterwards modified.

There are many such examples recently or somewhat older, such as law 19/2000 on the pension system entering into force on 1 April 2000, in which 70 articles had been changed 3 days before.

Law arguments, with the exception of law from a multidisciplinary perspective, must constantly be in force at least two or three decades in order to take effect.

Sources of legislative inefficiency and raised questions regarding the validity of the law also come from the fact that some laws or parts of their body enter into force well over the limit set (e.g. the pension indexation according to the current law).

Worth mentioning as a source of confusion in the application of the law are certain laws that allow "loopholes" through which one can slip without violating any law. In the system of regulations, new opportunities for negative impregnation occur, such as fundamental disagreement in principle, which is not likely to generate the same type of representation regarding the consistency and functionality of the regulations.

The lawmaking policy in almost all elaborations is effective, meaning that it is successful in the legal practice if it consistently incorporates in any law the fundamental rule of law: obligation and sanction.

It governs human activities in a direct manner: requires, forbids or allows, this is why it is mandatory.

"The rule of law governs human activity. It generally makes it in a direct manner and it requires, permits or prohibits. In this respect, it is mandatory, which does not contradict the existence of "optional" rules (allowing). One obeys a rule for two reasons. On the one hand, it is rational or at least reasonable (such as the obligation for a motorist to give priority to the right or the prohibition of smoking in public places or at work), which incites to its spontaneous compliance. On the other hand, it is imperative because the public authority enforces its conformation through constraint if not observed spontaneously. In this way, it takes a coercive character.

"The rule of law is the foundation of the state subject to the rule of law, but it can also result in an excess of law. Then, it produces indirect effects: sometimes prophylactic, other times on the contrary, perverse " [9] .

From the spectrum of the legislative system, other malfunctions emerge which significantly impede the effectiveness and credibility of law, namely unnecessary laws. The French law specialists refer to this state with expressions like "legislative inflation", "bulimia of law".

At the beginning of our era, Tacitus denounced the legislative inflation. The situation is repeated as the contemporary era is marked more and more by a legislative bulimia "the excessive use of law in the contemporary era depreciates it." The resort to the rule of law is channelled in order to adjust all difficulties, all disputes and all conflicts (political, economic, social, moral, intellectual), even if it is not adequate to address them.

"The rule of law should have as one of its aims to declare that something is bad and to prohibit it, by linking it to the common values received from one society at a time and in a determined country" [8] .

The temptation to legislate everything, even when it is not required, inevitably causes the unnecessarily complicated space invasion of the right of expression, it reveals the stupidity of pride and the vanity of power.

The legal statistics reveal that the map of laws and regulations of this kind in Romania is currently overloaded, it is populated by dozens, hundreds of unnecessary laws, some impossible to understand not only by common understanding, but also by the professionals of the science and practice of law. The situation was created in the first decade after the Revolution, and then perpetuated and amplified during the preparatory accession of Romania to the EU, when several thousand laws have been adopted, some obviously necessary in the

spirit of Community law, other remaining superfluous.

A surgical intervention is necessary for the purposes of radically cleansing the judicial map, otherwise the Romanian law today remains hindered, hampered in the exercise of its true essence and mission.

The operation will be tough and laborious but the effects will benefit the entire judicial system, in essence, each litigant.

In this work, the identification and eradication of unclear laws should be pursued as a priority.The laws should be clear on what is allowed to do and what is not allowed, otherwise no one will take responsibility in the administration of justice and the public administration.

The state is mandated to provide good laws for the people's needs. In the judiciary system, however, ambiguous laws have made their way, laws contradicted by certain orders given by the ministries in charge, laws that allow "loopholes" through which one can escape without violating another law. In that vein, the application in Romania of certain legal provisions that operate in the European community is in some cases inoperable without their adaptation to the Romanian realities. The recourse to judicial statistics is now imperative. Thus, in 2014, an uncomfortable record of Romania's convictions was attained at the ECHR: of the 89 lawsuits, our country has won 2 and lost 87.The trend since 2004 has been increasing:

2004-1 sentence at the ECHR
2005-1 sentence at the ECHR
2006-4 sentences at the ECHR
.....
2012- 20 convictions
2013- 75 convictions, two lawsuits won

Note that before 2004, there was no conviction. Of the 87 convictions in 2014, a total of 33 come from the prison system where uneven practices function, and there is a different type of justice from one prison to another. The total of fines in 2014 amounts to 1.5 million Euro.

The statistic situation presented refers only to the lawsuits settled at the ECHR, but the number of complaints coming from the Romanian litigants to this body amounts to several hundreds, maybe thousands. It emerges from here, from the convictions and fines given to Romania that in the application of law, we encounter misused laws, some incorrect sentences with force of res judicata, defective laws, incorrect solutions, uneven practices, unequal treatment in law, abuse of law, etc.

An examination of these shortcomings also reveals other issues likely to reduce the effectiveness of law in its proper achievement: non-unitary judicial practices, both in proceedings and decisions given, poor standards or even lack of, obscure legal interests, political pressures affecting the impartiality of justice. The approach to remove these faults is still timid, and it is not energetically conducted by the CSM.

The major changes to be made in the judicial system depend on the legislation.

A priority among many others would be to eliminate the unclearness in the Finance Act and the Tax Code, ensuring their long-term stability so as to be attractive to investors, for the functioning of the economy.

The process of cleaning the Romanian legislation should be focused on the elimination and avoidance in the future of double standards that currently lead to circumventing the application of the law. Also, the double standards determine the fear of law in its application, hence the administrative blockage.

A solution must be sought to the following problematic situations:

The Constitution proclaims and guarantees democracy but, for example, the local authorities would like to consult

the citizens through referendums but the organizational costs prevent such a public consultation, and no legal alternative is provided to this situation. Significant spaces of arbitrariness appear as an expression of the existence in this field of many rationales, generators of knowledge, practices and rules in each organization. There is disagreement at the level of fundamental principles, which is not likely to provide the same type of fundamental representation [3] .

The realization of law means its validity and effectiveness. The two fundamental aspects imperatively require the existence of accuracy, exceptional professionalism in interpreting laws, on the one hand, and, simultaneously, the presence of legal standards leading to the total avoidance of the inequalities of judicial treatment, abundant in the practice courts of Romania.

The problem of interpreting the law correlates with its application. Often, the problem of law enforcement is reduced to the problem of settling the litigations by the courts. This view is poor because the application of law means achieving its functions and aims in terms of social life, and the interpretation of the law is essential in the process of implementing the law, it is not satisfactory because it involves the interpretation of the law.

In a consistent approach to this problem, L. Barac states about the interpretation of the written law "... we understand by interpretation that legal activity which consists in determining the applicable rule of law, its manner of application in order to highlight its meaning in relation to its own purposes and in agreement with the aims of the law in general, based on its own legal reasoning and with the help of an appropriate legal methodology, with the purpose of enforcing the law" [2] .

The interpretation of the law in its enforcement is, indeed, a complex process that involves:

- applicable rules of law
- capturing the meaning and the sense of law in correlation with its aims
- its own legal reasoning
- an appropriate legal methodology, having the purpose of enforcing the law.
- a competent authority to carry out the activity of interpreting the law.

According to the source cited previously, an essential matter is the link between the deed and the law. The complexity of this connection requires that any legal solution result from a particular argument, linked to a variety of intellectual methods (the method of exegesis, the sociological method, the metatextual method): "When the consecration of a rule of law has been decided, when the choices it involves have been made, it must be translated into a formula which expresses its content, to observe the meaning and purpose, depending on the motives that inspired it. This is achieved by interpreting the law and raises the issue if it should target the text in its acceptance, in its spirit. The law provides no indication likely to serve as a guide to the interpreter. The doctrine is the one that provides methods and techniques of interpretation " [9] .

From the foregoing notation it follows that in the interpretation of the law, interconnected problems are attracted: the letter and the spirit of laws, the legal reasoning, the deed-law, judge-lawsuit rapport. In this way, the legal phenomenon goes into the concrete relationships of social life.

A thorny issue regarding the interpretation of the law is that of knowing whether it is intended only to fill the gaps, loopholes, to regulate the ambiguity of the written rules, therefore, to develop the ancillary activity, helpful in applying

legislative texts or covering essential aspects of law enforcement in general.

Currently, the interpretation of the law is seeking to fill the gaps, identify the ambiguities, but this action is not an end in itself, but it is intended to increase the efficiency and rigour in its substance, of the rule of law in line with the aims of law in general, so that the law becomes effective in social life.

The state is mandated to provide good laws for people's needs. Even if the legislature would give only good laws, which is unlikely, complications arise in the application of laws by the issuing of enforcement guidelines. Here comes a problem generating confusion in the application of law, a source of injustice and ultimately of vitiation of the law itself. All these reflect a significant dose of ineffectiveness of the law. The result is that laws create, by interpretation and enforcing guidelines, animosity in society, which acts as a bottleneck in the validity-effectiveness relation. The law is normative, but people are not subject to regulations.

If the law does not respond to people's needs in its content and method of application, they have a deep sense of injustice. The situation is evident in case of formal legality, which issues ins and outs favouring some and doing injustice to others. There are quite frequent cases of laws that allow or are made for one to steal without violating the law.

The effectiveness of the law is impeded by a number of corrections in administering the law and in procedure. Other sources to reduce the efficiency of the law are those laws contradicted by certain orders given by the ministries in charge, changing the legislation in the same field, giving emergency ordinances which are then modified, generating unequal treatment of law, an abnormal situation in a state under the rule of law. The different legal treatment in similar cases is likely to destabilize people's perception and confidence in the act of justice. Recently, such controversial cases were recorded in 2014 by the enforcement of the two codes: the Criminal Code and the Criminal Procedure Code, situations that persist despite the fact that the High Court of Cassation and Justice attempted a uniformization in the interpretation of legal texts in the criminal field, without completely succeeding in this endeavour.

The question naturally arises: who is the competent authority to make the interpretation of the law?

Rome's lawyers placed great importance on the interpretation of laws, in order to apply them as effectively as possible to the conditions of social life and to adapt them to the dynamics of new events occurring in the social life. In this activity, in Rome, the interpretation of laws in the classical era fell on the legal counsellors, then to the Senate, and together with the strengthening of the imperial regime, to kings.

Grammatical, lexical or terminological methods were then employed. It starts from the terms of law on the grounds that a word is the material expression of an idea.

Later, in the era of classic law, these methods have proven unsatisfactory, the logical interpretation being chosen. From now, the jurists do not confine themselves to the word, but they seek the reasons of the law, the goals of law and the methods making the law effective. Celsius stated that the law should be considered in the integrity of its text, as an interpretation that is limited to a few paragraphs can vitiate the intention and the will of the legislature.

Knowing the law, according to Celsius, is not limited to knowing the words, but it requires knowing their effectiveness in legal life. When words are not clear, the interpretation that requires the observance of the norm in the purpose intended by the legislator is recommended. Moreover, the

interpretation must be made in favour of the "litigant". Note that these principles were also found in modern law.

In interpreting laws, Rome's lawyers have resorted to a constellation of reasons: a contrario reasoning (through more), a pari (through equality), a majori ad minus (from more to less).We owe to Cicero the analogy method justified by the fact that the legislature cannot exhaust the full range of provisions that the society needs. And in that line (analogy), famous jurists evolved such as Trebatuis, Ofilius, Ulpian, Iulianus, Solvius etc.

In Rome, in the post-classic era, the emperor is the only creator of law and its only interpreter. A different conception can be found at Justinian, who required that no lawyer should dare to interpret the laws, seen as unchangeable. However, posterity has not complied with this indication and during the Byzantine emperors, it went on codifying their laws and commenting them, and commentators of the Renaissance adjusted Justinian's legislation to the necessities of those times.

In the modern era up to today, the principle that the interpreter must always start from the intention of the legislature (especially in psychologism) in order to explain his/her silence, the legislature's thinking and to fix the meaning and application of the legal provisions has materialized.

In our law system, the interpretation of laws falls on judges and for the constitutional cases, on the Constitutional Court. In both situations, sources of confusion and ambiguities appear, generating negative perceptions of justice.

A probative example was given to us by the Constitutional Court regarding the president's immunity. The Constitutional Court has given two conflicting decisions on the same issue. The dualistic thinking of the Court's magistrates produced short-sighted and unfair solutions: it first decided that the president has immunity as members of Parliament for political statements; on the other hand, he has no immunity for his deeds. The question for the instances here and for the entire political spectrum is whether the president has or doesn't have immunity? The Constitution pronounces itself rigorously in the matter: he has immunity as MPs. The Constitutional Court generates confusion in this matter by the two contradictory decisions, one for political statements and one for facts, thus diverting the meaning of immunity, a term which is not fragmentable, resoluble, with alternatives of meaning, with ambiguities.

Regarding the status of the judge to interpret laws, more difficulties arise and require adequate explanations.

They say that the beauty of law is that it allows interpretations, because the law is not mathematics. And a Roman adagio says, "Give a man what he deserves." How can this be done when the act of justice passes through the interpretation of the law, an activity that takes place in the judge's consciousness.

The judge can not go into the courtroom relying only on his intuition and his convictions but on evidence. The lawyer and the prosecutor can follow their intuition. The judge will encounter laws with serious flaws, procedural errors, exaggerated evaluation reports, the lack of a regression law against the convict that prejudiced the state, necessary permits given in a case but some of them had been issued with the violation of the law.

There are other situations that generate confusion among judges, the appearance of legality of certain administrative acts, the existence of laws that revolve around people's interests, hopes. Recovery techniques are to be found in the judicial activity in reclaiming properties (restitution) through false documents, "the

resurrection of the dead", assaulting and threatening the elderly.

Therefore, in law enforcement, the judge does not have an easy task. More, the lack of well-thought out legal standards generates other kinds of difficulties in enforcing the law.

For these reasons and others, often, judges are in the position of not knowing what to do when formal legality exists, but behind it, obscure interests are hidden.

Ordinary people want justice, but in situations such as those listed above, sometimes solutions which feed a painful sense of injustice can be given, and it requires an effective intervention in what would be the formula of justice.

CSM guarantees judicial independence that goes up to judges and prosecutors. They are required by the magistrates' statute to be fair, not to respond to signals of any kind, to judge correctly and professionally. The judges are immovable and the prosecutors stable. There is, thus, a formally provided framework for some correct trials to accomplish justice.

However, the inefficiency of democracy is reflected in the justice system so that the institutions cover one another, the authorities do not control each other. It is noted that the people see the act of justice as sovereign, but paradoxically, they cannot control it.

Sovereign in the implementation and adoption of laws is and must be the people. But the shortcomings of democracy impede the realization of this magnificent principle in its completeness.

The major changes which have to be made in the judicial system depend on the legislation. The laws are interpreted in extenso for the state to maintain control. The legislator is obliged to provide the most functional basis possible for the people to become the true sovereigns of laws. We consider that the first priority should be the principle of equality of judicial treatment. It is however left to the self conscience of judges.

The violation of this principle has become the biggest deficiency of the law in law enforcement, even if people are convicted, they compare the solutions given in similar cases and find large differences between them that they do not understand, much less accept.

Strengthening the independence and impartiality of the magistrates, the state simultaneously ensured that the judiciary system does not get to humiliate the person even if they turn out to be guilty.

No person can be humiliated in court or in the execution of sentences, it is a problem of human rights, of dignity.

The law, as a legal phenomenon, some experts thus state, cannot be reduced to normativity. It includes individual judgments, interests and even counter-interests, it is the most significant cultural moment of society [4] .

As a legal phenomenon, the law manifests in infinite ways, in concrete cases.

Therefore the judge must relate to the knowledge of each case on trial, as well as to an unrepeatable uniqueness. His/her judgments must be unique with respect to the uniqueness of the cases solved. In this way, it is possible to avoid the negative consequences in the legal doctrine and jurisprudence that can come from not knowing truth from error.

The law and the science of law have a limited character in relation to "the legal reality", which is much broader than what we find in laws, in case law, in the practice of courts. The components of law are related to social discipline, its precepts being intended to guide the conduct of subjects.

In consequence, the law should be applicable, practicable, be elaborated in specific technical conditions which ensure its implementation. In developing the

conceptual rules of law, the legislature simplifies, schematizes, presumes. This technical "deformation", J. Dabin notes, is a trick to allow the scientific truth to be implemented. It may accredit the thesis that legal propositions represent the quintessence of social philosophy. They condense models and paths, visions and collective experiences. Any allegation of legal sense means that a certain person has rights and obligations towards others. These rights and obligations include social activities that allow, prohibit or impose them, the rights and obligations can no longer be conceived: they are already in the sphere of law, any social activity has its counterpart in the law.

Any action from social life should be considered by anyone as permitted or prohibited by reason, there is no other logical possibility.

Social activity to the smallest details is under the guidance of vast networks of rules of law. The state is the irradiation center of the rules emanating from the legal organization.

The state shall ensure the realization of the law by means of the three powers: the legislative, the executive and the judicial.

Within the state activity, a division occurs, a separation of powers, in order to balance them, in order to prevent the abuse of power. In its form known today, the theory of separation of powers was founded by Montesquieu in his "On the spirit of the Laws"; the three powers (legislative, executive and judicial) must exercise independently and self-limit in order to prevent the abuse of power.

Everything would be lost if the same body would exercise those three powers.

The separation of powers appears as an indispensable condition for achieving a moderate government.

The law comes to confer stability and security to the state's connections with the rest of the social and political institutions.

Montesquieu noted that "There is no freedom if the judiciary power is not separated from the legislative and the executive one". If it had been combined with the legislative power, the power over the life and freedom of citizens would be arbitrary because the judge would also be the legislator. If it were combined with the executive power, the judge might have the force of an oppressor.

As a political organization, the state has the monopoly of a coercive force, of drafting and enforcement of the law, it exercises in a human community on a certain territory, the sovereign power of a given society. Essentially, the State means the force. The existence of the state is inextricably linked to the rule of law. The state and the law are a unity of opposites.

The law has the role of "corset" of force, of this power in order limits, the "calming" tensions that arise in exercising leadership through the activities of state. On the other hand, the state guarantees the realization of the law and reinstates the judicial order, affected by illegal activities.

As a tool for organisation and social management, the purpose of the state is to defend state interests, or as often said, the purpose of the state is (or should be) the happiness of its citizens as if they do not find that the intercession of this satisfaction is the state itself, as such, then the state is weak [8] .

In conclusion, the law as an articulated coherent assembly of legal norms has a protective effect on the public, it protects their rights and fundamental freedoms. Thus, the rule of law in a society is reflected and stored precisely through these legal norms, which are the functional engine of the society's existence with all its social activity. It is these legal effects that are the most obvious clue in assessing the validity and effectiveness of the law.

The law is the most important regulatory document, issued and published according

to certain rules; it does not exclude the action of the other components of the legislative system in regulating social relationships, even if their dispositions must comply with its provisions.

The relationship between the components of the legal system consists in the fact that for each one of them, there is a regulatory domain reserved.

The correlation between these components provides the functionality of the legal system with the dynamic of the social relations that it regulates.

The role of instrument of social control that the law fulfils is undeniable. Both through the system of legal rules which it elaborates, by the fact that it aims at the establishment of individual and group behaviours consistent with it, as well as by its practical aims, the general aim of law is the progress of society. Its contribution manifests in defending and promoting social and human values, defending human dignity, their fundamental rights and freedoms, ensuring the functionality of the social system, preventing or sanctioning antisocial deeds, settling conflicts and re-establishing social peace by making justice, putting into effect an expected and necessary social project.

The rules of law exist and are recognized only to the extent to which they regulate real activities and actions carried out in a society or human community.

In some cases, the laws and normative acts elaborated, although they gather the legislative technique, ignore or neglect the rapid changes occurring at a time. This is the case of laws designed to combat usury, corruption or restrict the possibility of certain people acquiring illegal income.

Typically, although these laws follow purposes regarding social justice by combating some forms of enrichment at the expense of others, they are insufficiently grounded in terms of legislative technique, imprecise as legal formulation and insufficiently protected against any violation.

In other cases, a well drafted law in terms of legal construction ignores the "expectations" of the public opinion, and does not let itself be driven or dominated by a normative act, manifesting resistance to its application. There are the so-called "unpopular" (not popular) laws which, although accompanied by severe penalties, met the public opinion's resistance, tacit or overt, becoming ineffective or obsolete.

In this context, we may refer to those laws which have introduced certain taxes or duties which had to be collected after meetings and popular demonstrations, as they were not accepted by the public opinion.

The principle of respecting the law and legality is a higher principle of social and legal order, consisting of the respect for law and justice of all organizations of state and social institutions, of all specialized agents of control and all individuals.

The law is sovereign and becomes binding not only because it is the expression of national will, but rather because it is the primary means of achieving and maintaining the social order and protecting the main individual rights and freedoms.

The jurisdictional activity by its content differs from the activity of the legislative and of the executive. It incorporates and integrates activities within the activity of the state because the judiciary is part of the state organization. For completion and obtaining judicial efficiency, the judicial power must be given a set of guarantees:

- the courts' autonomy
- their own organizational structures
- a distinct budget
- the independence of judges who find its application in the judicial activity
- the immovability of judges, which gives them stability in their position, without the possibility to be dismissed,

transferred or suspended in exceptional circumstances

The independence of judges should not be understood simplistically. This is not an unlimited independence. The independence points to the fact that the judge settles the case submitted to court and delivers the sentence free from any form of interference or influence. In terms of maximum accuracy, we understand that the judicial activity must be outside any hierarchical form of subordination.

Otherwise, the judge would not have full opportunity to apply the law. In this activity, s/he is subject only to the law and his/her own conscience. On this basis, his/her solution materializes as a mitigating circumstance in the particular case of the law, which is general and impersonal by its nature. The specific status of the judge in state system activities should express itself in a position of independence from the state, towards the civil society and politics, towards the public opinion and the mass-media.

To judge does not only mean to enforce the law, it is something more than a simple syllogism.

To judge basically means "to speak the law". In doing so, the judge chooses the rule applicable to a concrete case, which most often means not a single, clear text, but a multitude of legal rules whose connection is precisely the task of the judge.

In order to administer justice, the judge has the moral and professional duty to interpret the legal rule and to deduct it from the concepts, institutions and the general principles of law when the legal rule is not formulated explicitly in the text.

Referring to the judge's mission, the famous jurist and economist Friedrich Hayek, Nobel laureate, states that this "is to explore the implications contained in the spirit of the whole system of legal rules in force or to express as a general rule what had not explicitly been set previously."

The French jurist Fr. Geny emphasized that "the law, like any human achievement is necessarily incomplete". It follows from these arguments that the situations presented turn the judge into a creator of law. But s/he has this creative power only in the current case that s/he judges. The solution that the judge adopts (the panel) is the judicial act of ruling of the court. By this act the court declares itself no longer competent in the matter that they judged.

The immediate effect from the legal point of view is that the judgment has authority (power) of res judicata, so that the same case judged by the court can not be reopened subsequently, thus ensuring the stability and security of the legal relations. In other words, the judge is no longer able to go back on his opinion. Ensuring the stability and security of legal relations, the judicial decisions with the force of res judicata are one of the most relevant indicators of the degree of validity and efficiency in the attainment of justice.

2. Conclusion

Legality is a fundamental principle of any legal system, requiring the observance of the laws and regulations by the state and non-state institutions and organizations, by all the "agents" empowered to enforce the law, as well as by all the individuals in a society. The legislation also represents the main guarantee for social and legal protection of the individuals and social groups against potential abuses and bureaucratic manifestations that may harm the status and rights of citizens.

Therefore, the individuals accept and recognize the legality of legal rules issued by the public authority in a society, adhering and conforming to them.

When the individuals' adherence manifests towards all the existing rules in a legal system, the presumption regarding

the legality of rules involves the presumption of their legitimacy.

In this regard, certain opinions expressed in the legal literature state that a legal rule will be necessarily valid and effective either based on the criterion of legality (formal validity) or according to the criteria of legitimacy (informal validity), expressed by the degree of adhesion of the individuals to the rules. However, neither of the two forms of recognition, acceptance and adherence to rules necessarily implies the other, although they tend to converge in the space and time of the legal system.

On the other hand, the effectiveness and functionality of a legal system is not reduced to the mere adherence to all rules and legal requirements, but also involves the identification of certain "secondary" rules of "secondary" consequences arising from the application of the "primary" rules to various individuals and social groups. Consequently, in assessing the legal and legitimate validity of the legal norms, embodied in their degree of adherence to them, three components involved at social scale must be analyzed: the legislator, the judge and the social actors.

References

1. Albici, M.: *About the law and the law science*, 2nd edition. Bucharest. Universul Legal Publishing, 2010, p.198.
2. Barac, L.: *Elements of the theory of law*, 3rd Edition. Bucharest. C.H. Beck Publishing, 2013, p.137.
3. Berger, L., Lucman, P.T.: *The social construction of reality.* Bucharest. Univers Publishing, 1999.
4. Ciucã, V. M.: *Lessons on the sociology of law*. Iasi. Polirom Publishing, 1998, p.43.
5. Craioveanu, I.: *Introduction to the Philosophy of Law*. Bucharest. All Beck Publishing, 1998, pp.153-154.
6. Duguit, L.: *Treatise of constitutional law*. Paris. Dalloz, 1921, p.195.
7. Popa, N.: *General Theory of Law*. Bucharest. All Publishing, 1992, pp.82-84.
8. Portalis: *Discours preliminaire, in Locri*, tome I, p.259.
9. Virally, M.: *La Pensée juridique*. Paris, 1960, p.30