



THE 12TH EDITION OF THE INTERNATIONAL CONFERENCE
EUROPEAN INTEGRATION
REALITIES AND PERSPECTIVES

The Concept, Traits and Functions of Judicial Values

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Abstract: The concept of value is central to the legal phenomenon. Reviewing the core values that are promoted, protected and guaranteed, the author presented the concept, specific features and functions of legal values. As a conclusion to this paper, the author emphasizes the role of legal values in the development and application of the normative acts (entire Law). This role can be considered as being the indicator of legal culture and civilization.

Keywords: value; legal value system of values; the characteristics of value; legal value functions

The concept of value has a central role in Law, considering the fact that it is a normative science. The act of establishing judicial rules mainly supposes and imposes the research of social values which Law intends to study in depth and to promote. In Law we find a trilogy of judicial values. (Ceterchi & Craiovan, 1993, pp. 22-25). The author Barac L., considers that this trilogy consists of the following values: *security* (reliability, stability), *justice* and *social progress*. (Rigaux, 1974, p. 337) Craiovan I. considers that, apart from these values, we should add another one – *the public good*. (Djuvara, 1995, p. 310)

Commenting on the role of social values as a configuration factor of Law, professor Ceterchi I., stated that, the values which guide the Law are not strictly and exclusively judicial values. On the contrary, they have a larger dimension, that of a moral, political, philosophical and social nature, which needs to be understood through their socio-historical dynamics. Although some of them can be found in all Law systems, such as Justice, their historic peculiarity and particularity mark them as special. A society's social values must be inferred from the philosophy (social, moral, political, judicial) which presides over and gives direction to the social forces existing in that society.

Referring to the social values which give direction to Law during this era, I. Ceterchi lists, together with justice, *democracy*, *human dignity*, *security (judicial certainty)*, *human rights*, *the constitutional state*, *property* in its various forms, *civil society*, *national sovereignty*. (Roubier, 1986, p. 187) According to another author, the Belgian Fr. Rigaux, Law expresses the supreme values of our society nowadays. The fundamental value of Law, together with the existent ones, in his opinion, which we agree with, is the *perspective*. "If Law has a meaning, it would be that of offering a project of our future society and playing its part through its various methods to accomplish the project. Law has the mission to insert the future into the present, guaranteeing that the social system will work. Law is a social project, which aspires to equality (freedom for all) and justice". (Roubier, 1986)

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The philosopher M.Djuvara believes that one of the values promoted by the Law is also the human dignity. “The fundamental idea, which is at the basis of Law is (...) the respect for the human dignity, the respect towards every man, the warm-heartedness towards your fellow men, meaning the respect towards the people’s legitimate rights, that is to say, of those which do not represent the violation of other people’s freedom” (Dabin, 1953, p. 165).

Another author, Paul Roubier points out that, the positive law rule, which aspires to govern the human societies, has to be pursuant to a certain *ideal of justice*, meaning that the rule will not be respectable or respected if it rejects this ideal too much. Law, this author states, forms value judgments founded on the idea of a finality, there is a concept that is the most important and in which you find the origins of the imperatives of Law, that is the value. “The issue is that, to set the judicial rules, in search of the social values, they have to be embodied in Law for it to accomplish the finalities, to establish a harmonious order and solve disputes between people” But which are these values? P. Roubier, together with the other authors mentioned before, state that the values which guide Law are: *judicial safety* (which set a series of beneficial consequences in society, authority, peace, order); *justice* (as an essential value of good order between human relations, with its own qualities of equality and generality); *social progress* (well-being, abundance, culture). (Craiovan, 1993, p. 26)

The Belgian author, J. Dabin shows that, as Law is co-substantial to the ideas of society, the finality of the Law rule will be the value of society itself – the common good. As the common good for the society-state is *the common public good*, the value of the Law rule is the public good. The subject – the instant addressee and beneficiary of the public good is the public in general, without any reference to the characteristics of individuals, of social categories and of specific communities, considering current and future generations.

The public good comprises a series of biological, economical, moral, intellectual aspects, which present the values that make the individual and the community better, “including in itself the universality of the values of human interest”. In case of a value conflict, the author suggests that the answer be inspired by truth and the abiding to Christian tradition and he summarizes three points:

- the spirit is more important than matter (and by spirit we understand more than the intellectual values, but more importantly, the moral values – virtues and character);
- the human/the individual is more important than the collectivity;
- the whole society is more important than the society-state (Bergel, 1985, p. 13).

Going through the main values, which are promoted, defended, guaranteed and preserved by Law, as an objective of the judicial mechanism, and the studying of the judicial phenomenon through these values we can formulate main directions of action of the system of social values promoted by Law:

- accomplishing contemporary social progress,
- accomplishing a desirable social project;
- defending human dignity, rights and fundamental liberties of man;
- solving conflicts in interhuman relationships, accomplishing justice of a certain historic time;
- configuring, developing, ordering, orienting fundamental social relations;
- assuring coherence, functionality and self-adjustment;
- repression and preventing antisocial acts.

The complexity of the values of Law must not constitute a reason for pessimism towards knowing them and their role. We support prof. I. Craiovan's opinion, who believes that, only starting from the coming together of different suggested perspectives, taking into account the central position of the human personality, when we discuss the values of Law, but making sure that the game of inequality and the non-correlation between individual liberties doesn't lead to anarchy, protecting society, social life, but blocking the possibility of abuse and tyranny from the state, cultivating civilization and culture, but not as a purpose in itself, but for the real human, it can lead to contemporary understanding of rationality of being of Law, of the meaning of its values. (Craiovan, 1993, p. 26)

The reflections on social values, promoted by Law at the level of generality and integrity, approaching "law as law", do not exclude, on the contrary, they suppose investigating the values of Law at the level of department of Law or even judicial institution. As J.L. Bergel stated, there are situations in which Law is indifferent to the idea of justice, some rules of Law or judicial institutions having a purely technical role, like those regarding the civil state of a person or land publicity¹.

Professor I. Craiovan considers that this way we can shape a system of the values of Law, which integrates the subsystem as a department of Law and the judicial institution, between which there are complex relationships and whose contemporary features cannot be ignored in the process of elaborating and applying the Law and by the judicial doctrine". (Craiovan, 1993, p. 66)

By accepting the social character of values and value systems, it becomes obvious that to solve the value problem it is necessary to build a model of research based on a systemic approach. The fact that the human field can be approached through different perspectives, gives us diverse possibilities of choosing the success of the component parts, of the reference domains, of the types of relationships and hierarchic levels. Thus, the judicial values are and remain the object of reflection for all judicial sciences, which have as a purpose the research the domain of the human.

We also conclude that the values of Law as semantic entities contain terms and the significations which correspond to them. The reliability of terms is due to the constant character of the types of situations or processes. Thus, the terms which designate values are taken from generation to generation, continue to express the same types of values and change any time new criteria or new rules of evaluation appear. This situation is signaled by a great number of studies made by sociologists, philosophers, anthropologists, psychologists and also in the ethics treaties.

Judicial values, like other types of values, are characterized by *diversity, historicity, autonomy, normativity, hierarchy and polarization*, as specific traits

1. *The first trait* of the judicial values is diversity. Judicial values (equity, justice, lawfulness, constitutionalism, independence, equal rights, civic conscience, rights, liberties and civil duties and so on) govern the relationship of the individual with the constitutional order, the constitutional institutions.

2. *Another trait* is historicity. The contemporary axiological perspective regarding the Law has to benefit from the "value experience" of Law to which we present some "sequences" just to illustrate philosophy and judicial doctrine. Philosophy and judicial doctrine show a true temporary kaleidoscope of the evolution of judicial values. To this we mention: the good (Plato), justice (Aristotle), order (Cicero), peace (Saint Augustine), the common good (Saint Thomas), the power (Machiavelli), certitude (Bacon), security (Hobbs), equality-democracy (Rousseau), freedom (Kant), general use (Bentham), the state (Hegel), foreknowledge (Compte), solidarity (Duguit).

¹ Fully in: (Speranția, 1946) and the following (Craiovan, 1993, pp. 52-66).

Thus, as we can see, value appears in different aspects of the judicial world, it is placed in the center of the judicial doctrine or lessened, involved in controversial positions, or rejected, but all in all, being an important part of the judicial phenomenon.

The judicial concepts presented, regarding values are subject to contemporary evaluation and reevaluation and they fully participate or “reverberate” to a major synthesis through multidisciplinary view of the Law, able to show the actual mutations of the judicial phenomenon, to contribute to judicial progress.

3. *Autonomy*. Socio-historic determinism of judicial values is not a rigid one, values showing an independent relationship. Autonomy also expresses itself through the specific features of every type of values, for example, public good, peace, order, power – these being values found in any community, in the same historic moment, thus influencing, having a specific content and dynamic. Judicial values through law, influence society through the relationships they establish between values and norms, facts, judicial relation. Values are not independent but interdependent (the connection which bonds the values of knowledge and social action, the moral, religious, political, judicial), the possibility of values to go from one category to the other (false-truth, good-bad, political freedom-judicial freedom, moral freedom-religious freedom), their mutual settlement (the values of knowledge settle the values of action, moral values settle religious values and viceversa)

4. *Normativity*. Judicial values play the role of rules of social life. When a judicial norm is constituted this implies an inherent valoric dimension, because it sets itself in relationship with the whole of possibility and virtuality, keeping something from the field of possibility, the will being in relationship with what it might be, an ideal to which a reality aspires. Judicial norms can be seen as “abstract and general models of intervention in interindividual and group relationships, so that, they obtain the coordination of individual behaviour with the objective valorical aspirations estimated and at the same time, to satisfy material and spiritual interests of the majority of individuals in the community.” (Dobrinescu, 1992, p. 35)

Having at the basis the Law norms, many values become ideals (for example justice, freedom, equality), they give direction to the human behaviour, individual or collective. A separation must be made between the norm and the value, norm having the statute of means, value being an end in relationship to the norm. Not every norm constitutes a value (for example, people driving on the left or the right side of the street) as not every value is sustained by a system of norms.

5. *Hierarchy*. Values have verticality, according to the individual’s interests. All through history, the human has not seen itself the same way in relationship to the judicial values, he gave importance to the way and to the degree in which different values contributes to satisfying certain necessities, needs, aspirations of humans in that specific historic moment.

Introducing the concept of value in the center of the judicial theory, states M. Virally, is not an useless act, or orientation towards idealism, or philosophical or moral speculations, on the contrary, it means appreciating with accuracy the way in which Law protects individual and collective interests (Virally, 1960, p. 62).

6. *Polarity*. Value is made of two polar terms: value and non-value. The axiological field is not a neutral one, absolute positive or absolute negative, that is why we talk about positive and negative values. The valoric operation imposes accepting or rejecting certain values, approving or not approving them (the public good appears in connection with the public evil, truth with falseness, justice with injustice). Going through the traits of the valoric justice we will set some of their functions. Judicial values have the following social functions:

- the normative-educational function motivates the action of subjects in Law, sets the development of personality;
- the adapting, integrating in the judicial field function, it sets the behaviour and the human existence, because human existence takes place under the values' horizon;
- the communication function provides communication between generations and communities;
- the leading with the society function. Values, constituting a factor of judicial progress, ensure cohesion and order in society, determine continuity and the dynamics of judicial values through conflictual situations, cohesion and promotion. Judicial values are an indicator of the degree of judicial civilization and culture.

As a conclusion, we will mention that, the attempt made in this article to make some notes on judicial concepts and the values of Law, from an axiological perspective, makes us observe implicitly or explicitly, a certain axiological attitude. Value appears in a diversity of aspects of the judicial world, it is placed in the center of the judicial doctrine or lessened, implied in controversial positions or rejected, but it constitutes a significant guiding mark of the judicial phenomenon.

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