Associate professor Valerică DABU, Ph.D
Ana-Maria GUŞANU, Ph.D

Law and liberty. Legislative inconsistencies. The importance of differentiating between law and freedom

Associate professor Valerică DABU, Ph.D
National School of Political and Administrative Studies, Bucharest, Romania
valerica.dabu@comunicare.ro

Ana-Maria GUȘANU, Ph.D
Lawyer, Bucharest Bar Association, Romania
amavgusanu@yahoo.com

Abstract**:** *Many of the authors in these field, treat the concept of distinct right and freedom, in the meaning of behaviours, guaranteed to satisfy such needs through coercive force of the State. Under these circumstances, we aimed to highlight the main inconsistencies concerning the semantics and significance of the two terms, starting from the analysis and interpretation of some normative acts. We also consider implications of the two terms for theory and practice, including presenting some proposals of lege ferenda related articles10 from European Convention of Human Rights.*

Keywords**:** *law; freedom; obligation; free-choice; difference; behavior; precision; sharpness*;

Introduction

The notion of law has more senses such as "*all legal norms*", "*science of legal norms*" and that the State guaranteed the behaviors a teen-agers. In doctrine, in legal documents, and even in the basic acts we find the expressions "*right to liberty*", "*right is a freedom*" and "*freedom is a right*" or that "*the right of freedom from*" what creates problems of understanding and uniform implementation of the law, and sometimes confusion with great implications.

For instance Jean Morange confusion of public liberties critique and rights. This author points out that: "*public individual rights, represents the possibility recognized individuals to require the State to take concrete steps, assuming positive obligations, so that they can fully benefit from the exercise of these rights*". Thus defined, "*individual public rights are distinguished public freedoms, they shall only be recognized individuals opportunities to exercise, sheltered from any external pressure, a number of activities*" [1]. The doctrine and the jurisprudence, we find the phrase "*the right to liberty and security*" in a questionable background such as: "*The right to liberty and security are intended to protect the person's physical freedom against any arrests or detentions arbitrary or abusive*" [2]. We have reservations concerning the expression "right to liberty" but also to the fact that physical freedom would only reduce the protection of freedom of the person against any arrests or detentions arbitrary or abusive because apart from freedom of physical state can be affected by any person or entity other than daughter State. In other treaties, we find the expression "rights-freedoms" [3].

In terms of confusion with special implications, we analyze, for example, the expression "*the right to work is guaranteed*" (art. 77 of the Romanian Constitution of 1952, article 18 of the Constitution of the 1965 Romanian) expression that requires in addition to protecting it and providing a job for the State. Or the phrase "*freedom of work is guaranteed or defended*" differ from the first because it does not require the provision by the State of a job through distribution. Thus, art. 21 para. 3, of the Constitution of Romania in 1923 to provide "*freedom will be defended*".

Associate professor Valerică DABU, Ph.D
Ana-Maria GUŞANU, Ph.D

1. Approaches to concepts of law and liberty. Inconsistent legislative

Having regard to the requirements of the principle of legality as regards the accuracy, clarity, accessibility [4] and forecasting [5] you need to specify the legal norms, we believe that there is a short utility approach to the concepts of law and liberty in the meaning of behaviours.

Unfortunately even in the Universal Declaration of Human Rights we find expressions with different meanings for the words right and freedom, even incompatible, you might say. Thus in article 2 and article 29 it follows that the freedoms rights differ when it states: "everyone is entitled to all the rights and freedoms set forth in this Declaration ...", or when using the expression "rights and freedoms". In article 18, article 19 and article 20 of this Declaration, uses the expression "right ***to*** liberty" which may be considered a tautology if these concepts would be the same if not identical, to opine that phrase, is contrary to the concepts used above. In the article 30 of the same act, the expression "rights ***or*** freedoms" induce the idea of differences between these two concepts, though in art. 18 and article 19 we find phrases like "this right includes freedom to" establishing a different relationship between the two concepts.

Different, inconsistent meanings of this kind appear in art. 5, article 9, article 10, article 11, article 17 of the European Convention on human rights [6]. The expressions „rights and liberties proclaimed", „rights and freedoms" used in the Convention would result that these are two different concepts. Instead of the terms "right to liberty" and "this right includes freedom" it follows other uses and meanings for concepts of law and of freedom what appears as inconsistency. In these conditions if we consider that both the right and the freedom are concepts that define the behaviors to satisfy needs we will find it difficult to accept that all the acts from the scope of the concept of freedom, which in our concept are endless as forms, contents and number, might be included between the acts falling within the notion of law. It is indisputable that these expressions involve discussions with respect to accuracy, comprehension, accessibility, and compliance with regulatory foresight, including their implications.

In the Declaration of the Rights of Man and of the Citizen do we find phrases: "right to liberty", "this right shall include the freedom", instead we find: "*Men are born and remain free and equal in their rights*" (art. 1). "*Freedom is to be able to do everything that does not harm each other*" (article 4) and "T*he law is not entitled to prohibit only actions that are dangerous to society. Everything that is not prohibited by law may not be prevented, and no one can be constrained to do what the law does not require it*" (article 5). However in article 11 of the Declaration of the Rights of Man and of the Citizen, we find the following formulation: "*the free communication of thoughts and opinions is one of the most precious rights of man*", which also forms include discussion because it could be interpreted that induce the idea that freedom of communication is a right. What's more in the article 2 of the Declaration of the Rights of Man and of the Citizen, we find the expression: "*These rights are liberty, property, security ...*", what in our view the formulation does not meet the requirements of accuracy, clarity, accessibility and forecasting because it asserts that freedom is a right.

In the Romanian Constitution does not find the expressions: „right to liberty", „this right shall include the freedom", but on the contrary we notice a distinct usage of those two concepts the term respectively as when enshrining the right to life (art. 22), the right of defence (art. 24), the right to information (article 32), the right to vote (art. 36), etc., and the term *freedom* when referring to *freedom of conscience, freedom of opinion, freedom of belief, freedom of thought*, (art. 29), the *freedom of expression* (art. 19), *freedom of Association* (art. 39) etc. Unfortunately, contrary to art. 31 of the Romanian Constitution, in article 70 of law no 287/2009 amended by law No. 17/2011 on the new civil Code it uses the words "right to free speech", "the exercise of this right" and not "free speech" and "the exercise of this freedom". Thus the question arises whether between freedom and

law there is a distinction? If there is a difference then it presents theoretical and practical interest? These questions is taking shape two different opinions. In a first opinion it is claimed that between law and freedom there is no difference and in another review you can argue that the meaning of guaranteed to satisfy such needs through the force of compulsion of the law differs from State freedom differentiation that theoretical and practical interest.

2. There are differences between the concept of law and the concept of freedom?

The question about the differences between right and freedomFrédéric Sudre says: "Apart from the fact that the distinction between civil and political rights, on the one hand, and economic, social and cultural, on the other hand, between "*rights of...* ", which I assume an abstention on the part of the State, and "*rights to...*", which advertises its part, benefits from an extremely simplifying terminology, whereby more individual liberties appear under the name of "rights to…", in the relevant international conventions: the right to liberty and security, the right to a fair trial, the right to freedom of expression, etc. It is necessary to notice that there is a categorical opposition between the two categories of rights" [7].

In the first review of Prof. I. Muraru show that constitutional terminology relating to these two concepts, law and freedom, while nuanced, designate a single legal category, namely the *fundamental right*, claiming the *right to liberty and freedom is a right*. He argues that there is no legal distinction, being in fact a single legal notion. Refinement of terminology, show he has at least two explanations. An explanation has an historical view. The second explanation relates to the legal language *expressiveness and beauty*, but that take advantage of the initial meaning and tradition. Often, human rights are called *public freedom* of citizens. Expression of public freedom is a comprehensive expression, she evokes both the freedoms and human rights (citizen), and the fact that they belong to public law and constitutional law, and is therefore subject to a special legal regime. Referring to the historical explanation of the concepts of law and liberty, Prof. Muraru shows: "*At first, in the catalogue of human rights arose as requirements of human freedoms in opposition to public authorities, and these freedoms do not signify any from other than a general attitude of abstention. The evolution of freedoms, in the wider context of political and social developments, resulted in the crystallization of the concept of human right, the concept and complex legal meanings. Especially in relation to State authorities, human rights (public liberties) got involved and correlative obligations of respect and defence. Over time, these freedoms had to be not only proclaimed but also promoted and, especially, protected, guaranteed. We can thus see that today, between law and freedom there is a synonymous of legally binding*" [8].

In the second opinion, we consider that *there are differences between the rights and freedoms*, on the other hand, but to explain this opinion, first we consider that it is necessary a few words about free will, absolute freedom, freedom and necessity, right and obligation.

The right to an instance of an individual right or as a collective are able, *faculty recognized by society, or behavior imposed by it through the State to meet the needs of active and passive subject, in the spirit of fairness, to do, to do, to give or not to give, or to claim or receive anything, provided the needed by the force of compulsion of the State*. Right into the assumption above is always at least a correlative obligation it owed to a person, group, company, which may be in the form of *positive* obligation [9], *negative* or *mixed* requirement.

We believe that *the obligation is recognized or enforced by the company through the State, a topic to another topic, whereby the first is kept as in the spirit of good and of equity, to do, to do, to give or not to give something, according to the rights and freedoms of the second, under the sanction of state coercion.* So the obligation is a legal person whose execution is guaranteed to need through the

force of compulsion of the State [10]. In this instance *the law* society *recognizes, protects and guarantees the interests of legitimate goods, and other values* of the individual, the community and society in order to meet needs, while ensuring the necessary force necessary in bringing about compliance. So in this respect the right assumed behaviors [11], of the subject and the subject right obligation law, correlative behaviors, guaranteed and protected by the State to defend certain values. This instance has the right not to be confused with the acceptation of the law as a set of legal norms governing the rights, freedoms, obligations, duties.

Through freedom, according to D.E.X. means "*able to act after its own will or desire; the possibility of conscious human action in terms of knowledge (and under) the laws of nature and society development*" [12]. This definition is questionable because it relates only to a part of physical liberty [13] and action and no inaction as the part of other activities. Also, this definition does not include mental freedoms, intellectual, faith, conscience etc. On the other hand we see that this definition is freedom shores of knowledge and ruling the laws of development of society and nature. Referring to the social laws which limit the freedom we appeal to John Stuart Mill who draws a clear distinction between „*the scope of the acts, conducts individual concern the sphere in which neither the state nor community have nothing to intervene, the individual is fully sovereign acts or conducts field concern (touch) and the other (the only sphere in which state and society would be entitled to interfere, affecting the interests of others or certain general interests*" [14].

The notion of "free will" requires absolute freedom of man, completely independent of the need [15] and objective causality [16] what behaving discussions. We reckon that a man can not have absolute freedom if we consider the possibility or impossibility of removing causal, and the need for natural laws. In a universe where there is no natural causal, necessity, links more or less stable, natural law, *natural order* would certainly not exist to enable the existence, construction, processing, mastering nature, systems, ecosystems, etc. In such a universe that only God can create, transform, destroys an object, act without regard to causality, necessity and any natural law. Without natural order, space, structure, system time, stability, interaction, motion, etc., is amorphous, undefined and only God could let them out of the spatial-temporal dimensions, motion, energy, etc. The man can act taking into account the necessity of knowledge and foresight, avoiding the effect by removing the causes or prevention or delay of the causes, but cannot destroy the necessary natural link cause and effect. For instance, the man does not destroy the causal link between the fire and the heat level but there is acting on the cause of the fire, extinguishing or controlling can protect a loose but does not prevent heat dissipation of the heat. We consider that even freedom of conscience is not absolute and is limited to the individual's physical and mental capabilities of its preparation, experience, etc. Romans people said "*sublata causa tollitur effectus*", meaning, "*cause and effect fades away*". Or, and this is a way to act on time effect but does not destroy the causal link required such as that of fire and heat. In the same vein, the indeterminism determinism denies claiming that the phenomena and processes in nature and society are not causally determined, not subject to the natural law of objective necessity and are determined by the hazard, free will manifesting itself as a chaos of chance. In our opinion that we do not discover, or we don't know the cause doesn't mean that it doesn't exist.

Montesquieu define freedom as „*the ability to do what the law allows, if a citizen could do what they forbid he would not have the freedom that others could do the same*" [17]. If we consider the natural laws then current count this definition. But reporting her to social laws can not agree with this definition because social laws can be unjust certain natural rights and freedoms against which would affect so-called freedom. Patrick Wachsmann defines such freedom: "*Freedom is the person who does what he wants and not what one wants to do; It assumes the absence of extraneous constraints*" [18]. We believe this definition is also questionable because it does not specify what "strange compulsion" shall mean respectively a natural compulsion, coercion or arbitrary constraint should be human. The concept of freedom means not only the greater than or less than independence which possess the

individual versus society, but also the degree of independence which it considers as normal and happy both to society and nature. Thus one can speak of freedom or liberty limited. In the same context Immanuel Kant defined the idea right through the idea of freedom of the individual, but respect freedom limited to others.

Jean Rivero considers that „*freedom is the power to self-determination, by virtue of which man himself chooses his behavior*" [19], so it is a power that exerts himself. Other authors the freedom to accept that "freedom" and "power" are "two antithetical terms". According to Rivero, "freedom" and "power" are two contrasting realities and therefore incompatible at concerning the relationships between two people. One of them extending power, namely the power to command or prohibited reduces negative freedom of the other, and vice versa, as the two expanding its sphere of freedom, decreases the power of the former [20]. We note that this definition of freedom only reporting what another power does not include the nature.

In an essay Humboldt State shows that the objective is only "safety", understood as "freedom's certainty in the law" [21]. We consider that is questionable phrase "freedom within the law" because we believe that freedom is infinite and can not be defined and exhausted in law because the law defines what is forbidden showing freedom and not its contents or what is permissible.Thus, according to article 4 of the Declaration of the rights of man and of the citizen of 1789 as part of the Constitution of France ordering: "freedom is to be able to do everything that does not harm another. Thus, the natural rights of each man knows no limits other than those required of other members of society to enjoy the same rights. These limits can be determined not only by the law". In our opinion, that definition of liberty is restricted and is only in relation to social constraints and omits reporting freedom from the necessity of the natural limits of the object oriented individual. And in article 5 shall read: "*The law is not entitled to prohibit only actions that are dangerous to society. Everything that is not prohibited by the law may not be prevented, and no one can be forced to do what the law does not require it*".

Article 29 of the Universal Declaration of Human Rights also defines freedom shores it only the rights and freedoms of others, man-made laws, just requirements of morality, public order and the general welfare in a democratic society omitting the limits set by necessity, by laws of nature, by cause and effect, by forces of nature, etc. De facto, considering that "*Freedom consists precisely in understanding the necessity of objective laws, knowledge of reality and the forces of nature and social life, based on this knowledge*" [22]. F. Engels, quoted by Pavel Apostol in his paper, show: "Freedom is not in your dreams, independence towards the laws of nature, but also in the knowledge of these laws and the possibility of putting them consistently into action in order to achieve certain purposes". Therefore we believe that *freedom is the class that defines the scope of the individual in relation to the need, the laws of nature and laws of social objectives, including legitimate rights and freedoms of others.* For instance, we consider in this regard, that the property is the result of an agreement that restricts the freedom of others in space became private property. Understanding and fulfilling a "legitimate property fair" does not mean the limitation of freedom since surrendering to the exercise of a discretion does not mean limiting freedom.

As a result, *between law and liberty in the sense provided above, we believe that there are differences,* as follows:

a. *the exercise of a person's freedom assumes certain powers by it* what it requires from other subjects only a negative obligation, not to do anything to prevent the exercise of that power unhindered (freedom) by the holder thereof;

b. *freedom does not require, as a rule, the positive obligations on the part of other legal subjects and individuals,* concerned to do something its correlative, as it implies a right. Thus, freedom

to work does not imply the obligation of the State to provide employment, or another is the situation when constituantul has the right to work is guaranteed, provided that it would assume and ensuring employment by the State. For instance, the right to life "under whose protection is established by article 2 of the Convention, is of the essence, requirement of a general nature to the Contracting States not to prejudice, through its agents, this right, that is not the cause of death of a person, except as specified in the second paragraph of the text, and interpreted narrowly. At the same time, the text imposes a positive obligation on States to take all appropriate measures for the effective protection of the right to life" [23]. It also assumes debt obligations of the borrower to pay the creditor's claim. Right to vote implies the obligation of authorities to organize and carry out the exercise of this right (to do), including to comply with it;

c. *freedom involves only the State an obligation to defend and ensure the conditions for unhindered exercise thereof*;

d. as opposed to liberty, the right to assume obligations, *both positive and negative*, that is to do, to give, required, not required, and does not give. In the same time, it is true that freedom means p*ositive obligations*, but *only for the State*, in a limited way, where a guarantee is required to prevent the violation of them and defend it when breached. Positive obligations assumed are rights for others;

e. *contents of a right shall be governed by rule defined by law*, in order to establish *credentials* for the right and obligations of the *positives and negatives of others*, its correlative, including of the State so *those behaviors that are allowed and those behaviors that are required and the correlative warrant*, such as in the case of the right to compensation for expropriation, the right to education, the right to pension, etc.;

f. *subject to the right is specified*, and it involves delivering, marking, regulation by law, when the *subject is limitless and liberties but sometimes exercise of freedom is limited by the legitimate rights and freedoms of others, and other prohibitions laid down by law*. We consider in this respect that, Freedom of expression as freedom of expression, so in a private environment is unlimited as long as does not exceed the private sector. Only when we speak of freedom of expression as freedom publishes some limitations, are involved specified in the Constitution, in relation to the rights and freedoms of others. For example: "Freedom of expression may not harm the honour, dignity, private life of the person and the right to their own image", says article 30 section 6 of the Romanian Constitution or this provision implies certain limitations. Outside these limits the freedom of behavior with the exception of prohibitions *is infinite* and cannot be described in a law. Although in *freedom*, the behavior can not be described fully by law, we consider that it is wrong to argue that everything that is not forbidden is permitted without expressly excludes from this assertion, constraints, limiting exercise, suppression, etc. implies that there touches the right or freedom. Or just the constraints, limiting exercise, suppression, etc. implies that there touches the right or freedom to be allowed should be provided for in the regulations, and subject to certain conditions provided by law otherwise abuse appears in law or in fact. For example, the doctrine referring to the breach of the right to privacy through audio and video records, without the consent of the person, claiming that the authorities may make such intrusive while expressways are not prohibited, "*whereas the audio or video recordings may be authorized when, and about the preparation of some serious crimes and for identifying and locating offenders, what it involves and information work, in the absence of a prohibitive, these records text can be carried out and that, if precursory act are authorized according to the law*" [24]. Unfortunately such mistakes we find them in law. By way of example, might invoke and article 916 paragrapf 2, final thesis in Cod of criminal procedure, where the legislature provides: "Any other recordings may constitute evidence unless they are prohibited by law";

g. in terms of the behaviors included *the right number is located in a closed interval*, when *freedom is an open interval*;

h. it can be argued that the right to liberty, the right of appearing as a limitation of the freedom. Thus, freedom of thought, belief and opinion is unlimited; that's why we believe that the talk of a right of thought, belief, expression, incorrectly, as a means to induce the idea of thinking, of faith, of what they think or believe, which seems absurd. We consider that it is inspired, and the phrase "the right to freedom of thought, freedom preceding the right, and the right rule implies some restriction of freedom. "Men are born free and equal in rights";

i. in terms of limiting social, are considered as absolute freedoms: *freedom of thought, freedom of conscience, freedom of opinion*;

Conclusions and proposals

Considering the above, given the importance of differentiating between right and freedom, we consider that, in the right way, in the Constitution of Romania, how differently and in a number of international documents, is spoken differently about the fundamental rights and fundamental freedoms. The fundamental freedoms are recognized and guaranteed: *individual freedom, freedom of conscience, freedom of expression, freedom of Assembly, freedom of movement*, and that the fundamental rights: *the right to life, the right to defence, the right to life or private family, the right to information, the right to education* and others.

In this context, we believe that *the difference between law and liberty is useful in theory, in practice and in legal jurisprudence*, with special effects:

1. is a difference between the terms: "the right to work is guaranteed" and "freedom of work is guaranteed". In the first case, the State is obliged to provide jobs. In the second case is not;

2. right to information covered by article 31 of the Constitution of the Romanian and the obligation to assume the information. Freedom to receive information without the express provision of the law, do not assume the obligation to inform the one who has the freedom to receive information;

3. freedom of opinion, freedom of belief, freedom of conscience cannot be limited by any law, as opposed to rights that may also in certain circumstances be limited by law;

In our opinion, are also very important the provisions of article 2 of the Declaration of the Rights of Man and of the Citizen provides: "*Everyone is entitled to all the rights and freedoms of all set forth in this Declaration, without distinction of race, colour, sex, language, religion, political opinion, or other opinion, national or social origin, wealth, birth or any other situation resulting therefrom*".

Considering the aspects mentioned above, we consider that the provisions of article 4. 10 section 1 of the European Convention on human rights (ECHR), are not sheltered from criticism when they provide:

(1) "*Everyone has the right to freedom of expression. This right includes freedom of opinion and freedom to receive or impart information or ideas without interference of public authorities and without regard for borders. This article shall not prevent States from subjecting undertakings broadcasting, cinematography or television licensing arrangements*".

(2) "*The exercise of these freedoms involving the duties and responsibilities, may be subject to certain formalities, conditions, restrictions or penalties as are prescribed by law which are necessary in a democratic society, for national security, territorial integrity or public safety, for the maintenance of order and preventing criminal offences, the protection of health or morals, the protection of the reputation or rights of others, for preventing disclosure of confidential information or to ensure the authority and impartiality of the judiciary*".

Firstly, the use of the phrase "the right to freedom of expression", in the spirit of the above, we consider this inaccurate and ambiguous. That's why we believe that the wording "*Any person has the right to freedom of expression*", is outdated and that it could be replaced with: "*Everyone has the freedom of speech*" or "*Freedom of expression is guaranteed under the law, any person*".

Secondly, the phrase "This right shall include freedom of opinion…" we find questionable because:

a. the possible behaviours, freedom cannot be contained in a law, because the law subject, behaviours and secured permits, are laid down in law, while in the case of the law only prohibited behaviors and not allowed;

b. deem wrongly included freedom of opinion in the freedom of expressionbecause only the freedom of expression of opinion may be restricted by law and freedom of opinion. On the other hand, freedom of opinion is a fundamental freedom in its own right with a different legal regime. The formation of opinions must be free, on the basis of the necessary information, accurate, complete and timely. No one may be coerced to adopt an opinion. But freedom of expression of opinion can be included in the freedom of expression but with some distinctions, as the expression of opinions is usually very limited;

The third, article 10 section 2 of E.C.H.R. as it is worded as follows: "The exercise of these freedoms involving the duties and responsibilities, may be subject to certain formalities, conditions, restrictions or penalties as are prescribed by law, ...", may lead to confusion when referring to freedom of opinion and freedom of expression of opinion. In these circumstances, we believe, not freedom of opinion, but, like freedom of speech, generally *only the freedom to express their opinions duties and responsibilities and may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law*, which are necessary in a democratic society, for national security, territorial integrity or public safety, prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of confidential information or to maintaining the authority and impartiality of the judiciary.

In conclusion, we believe that in both theory and practice, particularly in the law, it is necessary to use two distinct terms of *law* and *freedom*.

References

[1] Jean Morange, *Public Freedoms*, Rosetti Publishing House, 7th Edition, updated, Bucharest, 2002, p. 5;

[2] Engel and others, on June 8, 1976 in GACEDH, nr. 4 paragraph 58, and Frédéric Sudre, *European law and international human rights*, Polirom Publishing House, Iaşi, 2006, p. 239;

[3] Jean-Francois Renucci, *Treaty of european human rights law*, Hamangiu Publishing House, Bucharest, 2009, p. 85;

[4] In a ruling, the ECHR refers to conditions with which they must comply with a law that "...*applicable law must be sufficiently accessible to the citizen*…". Other condition: "*the law must be sufficiently precise to allow the citizen to provide, to an extent reasonable, the consequences of its behaviour*". See, The Silver 's case and others, versus United Kingdom, Judgment of 25 March 1983 (room) (series A No. 61) in Vincent Berger, jurisprudence of the European Court of Human Rights, 6th Edition of IRDO, Bucharest, 2008, p. 507;

[5] The notion of predictability depends much on the content of the text in question, its scope, and even the number and quality of its recipients. See ECHR, 28 March 1990, Groppera Radio AG and others v. Switzerland, series A No. 175 paragraph 68. In another decision of the ECHR is spoken by the requirement that "*the law must be reasonably predictable*". See C.R. 's case v. the United Kingdom Judgment of 22 November 1995 (room) (series A No. 335-C) in Vincent Berger, op. cit. p. 387;

[6] The same observation can be made if we are referring to some articles of the International Covenant on Civil and political rights, ratified by Romania by Decree nr. 212/1974, and other foundational documents;

[7] Frédéric Sudre, *European law and international human rights*, Polirom Publishing House, Iaşi, 2006, p. 185;

[8] I. Muraru, Simina Tanasescu, Constitutional law and political institutions, Lumina Lex Publishing House, Bucharest, 2001 p. 162. See in the same sense Corneliu Birsan, The European Convention on human rights, Comment on articles, vol. I. rights and freedoms, All Beck Publishing House, Bucharest, 2005, p. 13;

[9] Positive obligations can be any natural person, legal person including the State. For the positive obligations of the State to see Frédéric Sudre, *European law and international human rights*, Polirom, Iaşi, 2006, p. 187. Jean-Francois Renucci, *Treaty of european human rights law*, Hamangiu Publishing House, Bucharest, 2009, p. 90-91;

[10] In the article 1164 of the New Civil Code provides for that: "*the obligation is a right by virtue of which the debtor is kept to provide a benefit to the creditor, and it is entitled to obtain the benefit due*";

[11] Referring to this last thesis of law, Al. Otetelişanu show: "*The right includes rules of conduct that are born under the influence of social factors and individual factor, in order to achieve the happiness of individuals who cannot be provided with due regard for national interests*". See Al. Otetelişanu, *Some basic principles of law science*, Law Magazine, festive number, 1942, Bucharest, p. 82;

[12] DEX, Romanian Academy, Institute of Linguistics "Iorgu Iordan", Edition II, Univers Enciclopedic, Bucharest, 1994, p. 570;

[13] We believe that it refers only to a part of physical freedom as: *Until the coming of the island Friday it is conceivable only a physical, mental, etc., of Robinson Crusoe obviously limited. At this stage we can't talk straight as a correlative obligation of another person. After his appearance Friday on the island appears on competition and limitation of freedom to those two people but also any rights of everyone if they lay down certain rules, habits*;

[14] John Stuart Mill, *On liberty*, Humanitas Publishing House, Bucharest, 2005, p. 55-62;

[15] The need to designate properties and relations that have an internal theme, arising inevitably from the essence of things, their laws. See Paul Apostol and collectively, *Dictionary of philosophy*, Political Publishing House, Bucharest, 1978, p. 490;

[16] Pavel Apostol and collectively, *Dictionary of philosophy*, Political Publishing House, Bucharest, 1978, p. 406;

[17] Montesquieu, *The spirit of laws*, vol. I, Scientific Publishing, Bucharest, 1959, p. 82-83;

[18] Patrick Wachsmann, *Libertés publiques*, Ed., Paris, Dalloz, 1996, p. 1;

[19] Jean Rivero, *Les libertés publiques*, Tome 1, P.U.F, 1991, p. 20;

[20] Norberto Bobbio, *Liberalism and democracy*, Nemira Publishing House, Bucharest, 2007, p. 38;

[21] Wilhelm von Humboldt, Ideen zu einern "*Versuch, die Grenzen des Staates zu bestimmen*" (1792) quoted by Norberto Bobbio, Liberalism and democracy, Nemira Publishing House, Bucharest, 2007, p. 42;

[22] Paul Apostol and collectively, *Dictionary of philosophy*, Political Publishing House, Bucharest, 1978, p. 407;

[23] Corneliu Bîrsan, *The European Convention on human rights*, vol. I, *Rights and freedoms*, ALL Beck Publishing House, Bucharest, 2005, p. 175;

[24] Grigore Teodoru, *Treatise on Criminal Law*, 2nd Edition, Hamangiu Publishing House, Bucharest, 2008, p. 416;