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The Long Way of Actions towards Ethics and Morality

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ABSTRACT: The concepts presented in this article are based on the context of morality.The analytical grasp of morality results in its identification as a property of what is moral, the nature, character, value of a fact, of the conduct of a person, or of a collectivity from a moral standpoint. Morality does not offer answers to specific questions but it only indicates whether something—a fact, an idea, or an action—is acceptable or unacceptable from a moral point of view. Morality may align with a certain set of laws while conflicting with another. In ethics, there are no categorical laws and there are no orders, there are only actions that are congruent with an ethical current and incongruent attitudes. We subscribe to the idea that ethics teaches individuals how to think but does not prescribe what to think. Like morality, ethics is not an absolute phenomenon.

KEYWORDS: ethics, morals, moral values, morality, human behaviors

Introduction

The science of law, in general, is not by itself a philosophy, given that, if it were, it should be translated into common language. Ethics and morality treat what is good or evil in the human behavior; the difference between ethics and morality is that ethics is imposed by legislative norms and customs, while a citizen's moral values and inner beliefs determine the citizen to perceive such norms from the perspective of distinguishing between good and evil in the context of legal norms. Doctrine belongs, however, to the best-known modes of describing, arguing and avoiding rejection of the application of norms, which are mandatory, having recourse to the rules of logic, philosophy and legal dialectics.

Law is science because it has its own area and rules, whereby confusion and subjective states are removed, as it is the aggressive psychological interpretation of some damaging action or inaction. The essence of human emotions in truth or in falseness, lying, and misleading (all being forms of the untruth) confirms by antithesis the terminology of concepts such as *subjective law* and *objective law*. As a rule, we are speaking of *subjective law* as the possibility (safeguarded by law), at the discretion of a natural or legal person, of claiming something from another person. "*Claiming something*" has the positive meaning of not waiving something, not abandoning something, of perseverance, and not of omission, but of its very opposite. Some authors distinguish the tendencies to use factually and methodologically the meaning of the term *subjective law*, such distinction overlapping, in part, the one used when emphasizing the terminology of *objective law* (Tănăsescu, Tănăsescu and Tănăsescu 2014).

Justifying a judicial decision considering legislative matters requires the assessment of pro and con argumentation, so that, eventually the judge is able to pronounce a judgment that is justified by the relevant evidence, taken until a certain phase in the trial, involving the conviction that all the construction issues have been solved. No ideological discussions, political opinions, arguments oriented towards discriminatory movements, or stylizations far beyond the legal language should exist in a judge's judgments.

Justice is organized in such a manner that there is always the possibility that another judge, upon the appeal provided by law, may explore in depth the reasons of the judgment appealed, so that, following a critical assessment of the evidence taken and of the variants of

arguments, in the context of considering legal norms, pronounce a judgment with the help of which, inter alia, the life course is directed and a contribution to social emancipation is made.

Any human relation and any human action are exposed to a regulation, to a set of legal norms, having the function to blur individual excesses and to defend the society as a whole. Individual freedom does not mean *"doing as you like",* for instance, the possibility of doing something or the option to choose one or another course of action, but it means considering the subjective option in light of the legal rules (norms) adopted by each state. The totality of laws that require promulgation in the defense of the individual, of the social, forms the *objective law*. This consists of a system of laws, for a nation, which, based on the existing relations, accepts global regulation in order to guarantee the rights and to safeguard both individual obligations (*statutus civilis*) and national ones (*ius gentium*) (Tănăsescu, Tănăsescu and Tănăsescu 2014).

Adapting one's behavior to ethical rules

a) Any attitude (as a form of individual behavior) and, even more so, any behavior, as an objective mode of expressing one's psyche in relation to the environment, should be permanently changing, more or less convincingly, based on what is required from a person and what such person should offer, in order to achieve an equilibrium in a given situation.

The rules whereby human behaviors are systematized preserve what is positive in social life, even if some of them "expand, under the influence of a minor violation of norms, so that all individualities may return to what is reflected in the existence of most people, according to reality.

b) The stage of development of the individual educative process is reflected in the behavioral norms, which were strictly established over time, and which indicate the sound condition, from a physical and moral standpoint, of behavior, in accordance with the rules of honesty, good conduct and the perseverant defense of such.

Unlike the rules that impose ethical and moral conduct, to enable society as a whole to be able to support a set of positive behaviors fixed in the main dimension of human thinking, the state establishes what actions pose social danger, proposing solutions, by establishing punishments, in order to enable a radical change in the perpetrator's outlook on life.

Before trying to study the moral essence of law, in order to construe goodness and equity as intrinsic elements of law, we should avoid some summary, easily foreseeable interpretations of the moral essence of law. The sentence „*ius est ars boni et aequi"* (*the law is the art of goodness and equity*) postulates a purpose that was valid in the times of the Roman Empire, while its essence cannot be dismissed even in our time. The moral content of law is formed of the most realistic moral rules, which made possible for humans to „*exist*" completely safely (Tănăsescu, Tănăsescu and Tănăsescu 2014).

Crime as a mode of coercion, but also of reeducation of a person

The Law no. 286/2009 is the New Criminal Code of Romania, which came into force on 1 February 2014, consecrating the principle of legality of actions (*nullum crimen, nulla poema sine lege* – no crime without law) and prohibiting the retroactive application of penal law, if applied to the disadvantage of the accused (art. 1).

As regards the assertion regarding the fact that only the penal law provides actions that are considered crimes, this should be retained as a general, basic rule, meaning that the term *penal law* should be construed widely as consisting of any provision of penal nature contained in laws or normative acts, and not only in the Criminal Code, known as a normative act containing the main systematic compilation of general penal rules (Tănăsescu, Tănăsescu and Tănăsescu 2014).

Given that it is not possible to regulate, via the Criminal Code, all the areas of social activity, there are also special penal norms within the normative acts regulating technically some areas whereby penal sanctions are established for the violation of the prescribed rules (Tănăsescu, Tănăsescu and Tănăsescu 2014). Further, penal law does not extend to actions that failed to fulfill previously the conditions to be considered crimes, the analogy procedure being forbidden. The punishments to be applied cannot be more severe than the ones that are applicable at the time when the crime is committed.

The New Criminal Code of Romania established in art. 15 the essential characteristics of a crime.

- If an action, in itself, indicates, from an objective standpoint, the person's reactions to external stimuli, the actions or inactions which are defined as crimes by the Criminal Code externalize such person's incapacity to assimilate and understand the social rules of conduct, as well as to adapt to the related requirements. However, the state was required to identify those actions or inactions, as an externalization of the mode of thinking and assessing their social value, establishing concretely the actions sanctioned as crimes, the limits of applicable punishments and the manner of enforcing them.

In order to delimitate the scope of crimes, as structures integrated into a code, art. 15 in the Criminal Code established the essential characteristics of a crime, as consisting in: the action provided by the penal law, committed culpably, without cause and imputable to the person committing it. Therefore, no other supplementation or consequence of the crime content is to exist, apart from the one established by the legislator, but only a judicial interpretation (CCR – the Constitutional Court of Romania - and ICCJ – the High Court of Cassation and Justice) or a doctrine interpretation of the judiciary content of a crime, considering the concrete action committed by a person.

Undoubtedly, if, in the manner of understanding crime theory, opinions may be identical (analysis *"in abstracto"*), as regards the manner of application of the penal norm, there are some variations, but what should be considered significant is that the random variation must be avoided, when, on the merits, the person is acquitted, while, upon the appeal, based on the same evidence, the same person is convicted.

The legal models regarding crimes the legislator proposes in the Criminal Code indicate a gradual balancing between the state of danger generated and the amount of punishment, as a consequence of the lawful order identified in the collective milieu (Hegheș and Franguloiu 2023). When in the new Criminal Code are included incrimination sections from special laws, in order to remove overlapping sections safeguarding the same social values, one should adopt the rule of repealing the sections from special legislation and adapting punishments for the crimes remaining in such legislation, in accordance with the principles provided in the new Criminal Code (Tănăsescu, Tănăsescu and Tănăsescu 2014).

According to *Aristotle*, two factors are necessary for achieving harmony among people: *justice* and *affection (Dike* and *Philotes)*. Without such elements, social life could not operate perfectly. Thought in the light of truth, in relation to the capacity for tolerance of principles that are useful for social life, the notion of *unlawful* emerges always in the phase of searching for rules and considers that unique action performed by the individual under the governance of other rules or principles that have only limited applicability (to the individual, time and space).

- The capacity of Romania as a member of the European Community made that the provisions of the Criminal Code, as well as the construction of the content of penal norms by the Constitutional Court and ICCJ were performed by derogation from the norms of Romanian legislation, in accordance with the international conventions Romania is party to, as well as with the Directives of the European Community.

Even if the Romanian Criminal Code contains norms that have modern content as regards the description and assessment of the structures of culpability and committing of

crimes, any construction position that is contrary to the European Community, respectively to the decisions pronounced by the European Court of Justice via the two distinct jurisdictions (ECJ) and the tribunal (ECJT) are assessed by the high judiciary authorities of Romania: CCR and ICCJ, only in accordance with the interpretations of the judges of the Court of Justice.

Such an adaptation of the national penal law does not mean waiving its authority or reducing the power of national judicial authorities, given that, through the fundamentals of the European Union establishing such judicial order was accepted, and these should be integrated into the judicial system of each signatory state, the prime importance, prevalence or priority of the European Union law not being a direct or indirect lessening of national sovereignty.

This is the reason why the manner of application and also of construction of the decisions expected by the European Union courts are not different from one member state to another, given that the 27 European Union member states accession meant that natural or legal persons are able to request ECJT to rescind the acts issued by the European Union institutions or agencies damaging them; in their turn, member states may file actions against the decisions of the European Commission or against the Council with regard to some social protection measures, etc.

As regards the jurisdiction of the European Court of Justice, this refers to construing the European Union law. The development of a EU Constitution and of a European Criminal Law are desiderata to be reached only when the ambitions of the prevalence of national judicial systems will diminish until disappearing, a reason for which, at least as regards the collaboration between member states, the European Court of Justice continues to adopt uniform judgments, the enforcement of which is in general mandatory for the European Union member states.

The directives arising from the Court judgments are truly innovative for the member states, as regards the resolution of some complex legal matters for avoiding discrimination at the workplace, for reasons related to religious freedom, recognition of civil partnerships and of same sex marriages, related to the genetic modification of animals, to harvesting and transplanting human organs, to euthanasia, etc.

In the overall assessment of the relations between the mode of regulation of crime in the national penal law and the judgments seeking the uniformity of European penal legislation, there are clear principles whereby the European Union jurisdiction is not tolerated and the member states invoking the abuse due to its dominant position as regards the observance of the general conditions prescribed by the judgments made and of the principles regarding the mode of management of funds assigned to member states is not accepted (the statute of limitations for penal liability, as provided in the Criminal Code, becoming thus inapplicable in this area).

As a consequence, as regards the legislating of some new crimes, or periodically amending the existing penal norms, the legislator and the institutions authorized to construe them should avoid any language or procedure contradiction with the interpretations of the Court or with the real supremacy of the European Union law (Franguloiu, Bitanga and Sanchez-Hermosilla, 2018).

Only in this manner the modernization of national legislation can be guaranteed, and its uniformity with the European legislation can be ensured; the understanding of the concept of "morality" requires a careful review of the theses developed up to the present about the human being. Moral values and virtues, morality norms and principles are undergoing significant changes currently also under the influence of globalization of life models of the Western type, of new technological systems of global communication (geostationary satellites, the internet), of the dominance over the international financial market by the American dollar and the European Community currency.

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