

Moral Norms and the System of Legal Norms. Legal Ethics

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ABSTRACT: For a long time, after the appearance of man on Earth, the human being lived in disorder, relying only on animal instincts, strictly satisfying his primary needs for food, shelter and reproduction. Evolution, however, forced him to adopt another way of life, the social one, settling and grouping in systems of administrative organization called, at first tribes, and then villages and cities. This way of systematizing and stabilizing the population brought great changes in human psychology, especially in the nature of its consciousness, developing the concept of incipient morality. A little later, but also in the same period, the legal system appears on the background of the development of the fortress. The latter sought to derive its essence from the already existing rules, being closely related to the system of moral norms. The article aims to briefly analyze the psychological and social factors that led to the emergence and structuring of moral norms by comparison with the legal system, viewed through the prism of the evolution and organization of human life, both socially and philosophically. Some conclusions drawn at the end of the paper will aim to clearly highlight the fact that law, in general, and its system, in particular, has its beginning in moral psychology merging with it and forming mandatory socio-behavioral rules.

KEYWORDS: civil law, morality, legal ethics, philosophy, psychology, criminal law, religion, legal system, conduct, general theory of law

The emergence and development of human consciousness as an arbitrary factor of morality

The first period of the emergence and development of the human being as an exclusively dominant species was under the sign of animal individualism, in the sense that to ensure its existence, man performed actions on his own, designed to provide his primary needs for food, shelter and reproduction, to the point of committing certain acts against his peers which, nowadays, could be considered at least incriminating. In those times, however, the degree of danger and threat to human life was very high and we cannot talk about the psychological phenomenon of intuitive remorse for aggression manifested by the threat factor against the individual's own way of life (Marr 2012, 24).

The presence of such a psychological system of instinctive self-control over human behavior and manifestations within the species can be talked about only in the pre-state period of human settlement and stability, because, against the background of complex activities resulting from the need to develop lifestyle, but also due to the increase in the number of individuals within the species, the latter was forced to work with his fellows and, naturally, to take into account their needs, desires and needs. Thus it can be stated that the psychological mechanism called consciousness arises in the pre-state period of human evolution (Zlate 2000, 36).

Two great sciences have come to the aid of the development and psychological stabilization of remorse in the behavior of the human being, namely Theology and Philosophy. The former appearing before the latter, this also and because its reason for existence has its essence in the continuous need of the species to report to a superior form of organization and administration of life. Philosophers, however, took the essential ideas from theological studies, chiseled them and adapted them to social events depending on the period in which they exercised their purpose, thus giving rise to the system of social-behavioral rules called morality (Mareş P. and Mareş C. 2003, 65).

However, a system of moral norms as it is understood today can only be spoken of at the beginning of ancient times, when most of the world's migrant populations that were previously organized into tribes settled down to form their cities and social communities. During this period, in addition to the system of moral norms already entrenched in the social consciousness of the people, the forms of administrative-territorial organization allow the birth of a new set of structural and explicit norms. It is the beginning period of the legal system, formed by the totality of the legal norms springing, in essence, from the existing moral norms (Molcuț and Cernea 2013, 285).

In their incipient state, the norms that regulate the social and socio-economic relations between the members of a community and which are obligatory have extracted their essence from the rules already existing in the society at that time, in the sense that the legal norm has its roots in the moral norm which developed based on the evolution and structuring of human consciousness as a factor of self-control, which, over time, has led many jurists to consider that law comes from morality, being an integral part of it (Păiușescu 2016, 54).

However, nowadays, the continuous development and systematization of the legal system has led to its realization as an autonomous object, it still having a correspondent in the system of moral norms only a few almost insignificant elements, which makes the great contemporary jurists to consider that law and morality complement and harmonize individually in society, each source not being influenced by the other (Luburici 2014, 68).

The system of law and the system of moral norms

The development of the state as a body for controlling and ensuring the observance of the order and proper functioning of society has led to the development of sets of rules that it imposes on all its citizens through specially established institutions and mechanisms whose role is both validation and law enforcement checking its compliance. All of them are called the legal system, constantly adaptable to the dynamics of society, to the factors that contribute to its evolution and to the complexity of the relations born between its members (Ion 2008, 113).

Similar to the system of moral norms, that of legal norms is inspired by the same two moralistic sciences, namely Religion and Philosophy, with the only difference that, compared to the first which is an idealistic system that tends to elaborate abstract and universal rules, the second presents concrete aspects, general or particular applicable on narrow fields of activity, which leads to the division of the legal system into several branches of law, depending on two major social directions considered, the public and the private (Djuvara 1995, 83).

Thus, from the point of view of law, in the public domain we find branches such as Criminal Law, Administrative Law, Fiscal Law, International Law and others, and in the private domain branches such as Civil Law, Family Law, Labor Law, Commercial Law, Environmental Law and others are subject to the appropriate legal rules. However, all these areas must imperatively submit to Constitutional Law as a branch of public law, which is the fundamental law of any state and in connection with which any law of any kind must align its regulations (Cristea S. 2016, 31).

From a constitutional point of view, fundamental rights such as the right to freedom and free movement, the right to identity, the right to free expression and the right to social life correspond and identify their reason for being in the concepts of moralistic philosophy according to which the freedom of any individual ends in which the freedom of another person begins, in a fair, correct and concrete way (Ionescu 2012, 325).

In Civil Law, absolute real rights such as the right to name, personal property, housing, privacy and others related to the general and imperative obligation of all citizens of the community not to affect in any way and under any pretext these guarantees offered and protected by the state, are the real and materialized expression of the biblical Christian commandment not to

affect the good of one's fellow man, as a moral factor of social conduct and good understanding between its members. (Truşcă P. and Truşcă A. 2016, 137).

Regarding the rights and obligations characteristic of the person as an active civil subject, they correspond to philosophical and psycho-social moral perceptions so that the existence of a limited capacity to exercise or lack thereof has its equivalent in the vision that man is a continuous cognitive being active development and improvement, based on the accumulation of interpersonal relationship experience (Truşcă P. and Truşcă A. 2017, 167).

At the other pole, in the field of public law, the branch of Criminal Law also regulates social behaviors similar to religious dogmas and philosophical thinking, but which have a closer connection with the development of human consciousness, going beyond the material sphere of reason itself, directing and finding its essence in physical actions undertaken directly by the individual against his fellow man (Ştefănescu and Miroiu 2003, 132).

In this way, mandatory rules such as the prohibition of murder, theft, physical violence or any kind other than civil cases, harm in any form and by any means to a citizen are both elements of the legal system, as well as that of morality (Mitrache C. and Mitrache C. 2019, 33).

In the case of Administrative Law, as in all other related branches of law, the social conduct of civil servants must respect fair legal relations between citizens and state institutions expressly invested with special prerogatives for the administration of public patrimony in general and of relations of any kind legal with natural or legal persons, in particular, adapted and individualized to each concrete situation (Mihăilescu 2016, 88).

Legal ethics as a factor in controlling the conduct of public institutions in relation to citizens

The state, as a control body and insurer of the proper functioning of society, public order and safety and guarantor of citizens' rights and freedoms, often forms legal relations with citizens, whether natural or legal persons. In order for these relations to be capable of resolving social problems or resolving certain conflicts in favor of and in the interest of the citizen, he must keep under control the conduct of all his institutions in relation to relations between officials and individuals (Bejan 2010, 186).

To do this, a number of mandatory rules have been developed, which any civil servant or law enforcement official designed to ensure compliance with the law and good social understanding must comply with, called rules of legal ethics (Capcela 2010, 58).

In order to control its implementation, the state institutions have been ranked, so that for any public administration body or anybody of the state coercive force there is a higher institution that has the power to decide on the decisions and solutions issued by them (Sandu 2012, 218).

Thus magistrates composed of prosecutors and judges have an ethical duty to investigate criminal and civil trials, in the case of the latter, or only the first category, in the case of the former, fairly against all parties to the trial, weighing or gathering both evidence. brought against the plaintiff or the perpetrator in criminal proceedings, as well as those which favor him, in a non-discriminatory manner, regardless of the political affinity, race, color or sex of the person being tried or investigated, and if the latter is constant that any of the criteria necessary to comply with legal ethics has not been met, the law gives him the opportunity to appeal the decision of the magistrate, his trial being taken over by a higher court, competent to annul or confirm the initial decision. In this way the observance of the moral and physical integrity of the citizens in relation to the force of coercion of the state is ensured (Pivniceru and Luca 2008, 164).

Similarly, there are methods of control and conduct of civil servants in administrative institutions. They are obliged, through their job descriptions, to adopt a moral, fair and non-discriminatory behavior towards all passive subjects of law who enter into a legal relationship with them. Citizens who find that an injustice has been done to them, that they have been the victims of an abuse of power or any other irregularity that they may report, the law gives them the opportunity to complain about the incorrect situation to the hierarchical superiors of the guilty

official in case of conflict in which the local public administration is involved or to address the administrative contentious courts in case of a decision of the central public administration.

The particular sanctions that negligent or abusive civil servants may suffer vary depending on the seriousness of the act, from a simple written reprimand to the loss of a job or even a criminal sentence for very serious cases (Vasilescu 2017, 73).

Conclusions

In its beginnings, the human being lived individually, ensuring the strict necessities of food, shelter and reproduction, a period in which, his consciousness being underdeveloped enough, the formation of social relations cannot be questioned.

The evolution and stabilization of certain occupations of man has made him feel the need for his collaboration with his peers to achieve certain common goals, at which point the psychic system of self-control of behavior is born and develops.

At the beginning of the ancient age of mankind, religion was in a sufficiently advanced stage to offer rules of moral conduct, and the emergence and development of philosophy as a moralistic science allowed the birth of a system of moral norms.

Also during this period, the administrative and territorial organization of the population in cities, makes possible the emergence of a new system, that of legal norms.

If at the beginning, law as a science, found its support and essence in the already existing moral norms and grounded in the collective consciousness of citizens, the accelerated evolution of forms of social organization led to its individual development, nowadays, the norm having very few aspects in common with the moral norm.

However, it can be clearly seen that legal norms, regardless of the branch of law they regulate, respect both religious precepts and philosophical thinking on the issue of social ethics of human relations.

Institutions empowered by the state to adopt, ensure and verify compliance with legal norms must carry out their activity in accordance with legal ethics, namely respecting moral conduct towards the subjects of law with which they form social transports or, failing that, to bear the sanctions established for committing illicit and immoral acts.

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