

THE RELATION BETWEEN ETHICS AND LAW

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Abstract

It is said that the ethics and the law resemble as they pursue the same goal: Justice achievement and the truth. Also, generally speaking, the foundation of law is or should be a moral one, the law becoming a "moral enacted". The following paper aims to establish the relation between ethics and law, examining, also, the differences between the two types of rules - the judiciary and the moral ones

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1. Preliminary remarks

Social order is secured by a plurality and diversity of rules, of customary, religious, moral, legal, economic type (Badescu, 2014: 122). First of all, any human behavior is judged through the moral values, issuing value judgments that relate to fairness or unfairness of that behavior, namely injustice or justice provided by that conduct (Petcu, 2010). In general it is considered (Petcu, 2010) that "the concept of moral refers to the whole set of values and rules, principles of justice and conduct imposed on the individual and group consciousness as founded on the imperative of good."

Thus, human actions are subject to some unwritten laws that circumscribe to an immutable order, part of the theory of natural law and regulatory stable rules (Singer, 2006: 192). Therefore, Aristotle, in his work *Etica nicomahică* distinguishes between two types of justice: the legal or conventional justice (that is achieved by applying legal rules) and natural justice (which remains valid everywhere, hence independent of particular laws).

Although law and morality cannot be confused, they are in an axiological relation, having a common value structure, reason for which it became famous as the saying "the law is a minimum moral" (Andreescu, 2013). Like morals and ethics, the law disciplines people conduct in society, setting out reciprocal rights and obligations and penalties for those who do not comply with the legal norms.

Given the foregoing, the following study aims to develop the relationship between moral, i.e. ethics and law, revealing, also, the differences between the two sets of rules. At the same time, we aim to exemplify using values, moral principles which have been transposed in the legislation.

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2. *Jus est ars boni et aequi*. About natural law theory

At a glance over the historical process of law emergence, in the literature (Popa, 2002: 130) there was expressed the opinion according to which the law gradually detached from the moral norms and habits. The Latin adage "*Jus est ars boni et aequi*" is relevant, knowing that good and fairness are categories of morality. Moreover, as revealed in the legal doctrine (Popa, 2002: 131), law and morality can be understood as two facets of the same phenomenon: "morality is subjective ethics and the law appears as objective ethics". In the same vein, a Romanian author (Popa, 2002: 131), suggestively expresses the idea that "moral rule enters the law easily through ethical conceptions of the legislator or judge or, at best, wanders at the law borders to enter when the opportunity arises (when legal laws are incomplete or are contrary to the moral law) ".

This acknowledges that the law is based on morals, noting that the law scope is narrower than the scope of the morals (Bădescu, 2014:133). Morals is regarded (Popa, 2002: 132) as "a criterion for checking the correspondence of positive law with justice, meaning that the legal rules that contradict moral principles are unjust (*lex injusta non est lex*)". Opinions are expressed (Bădescu, 2014: 164) in that the collision between legal validity and moral validity, a system of rules that do not explicitly or implicitly claim fairness, it is an invalid legal system".

At the same time, we may note an inter-relationship between ethics and law, since legal rules are an important means of moral education in the sense that it influences each and everyone's morality and attitudes (Popa, 2002: 132).

In this context of analysis, we need to refer to the idea that "moral rules and requirements are closer to the natural law and the custom, expressing ancestral and permanent desires of humanity." The theory of natural law is suggestively reflected in the writings of the Greeks, i.e. Stoic philosophers (Singer, 2006: 288) who found that the laws varied from one region to another and that the conventional laws could be put in opposition to a law of nature that is not variable or relative, a law to which everyone has access through individual conscience.

According to a Romanian author (Dănișor, 2011: 142) "morality and law can be defined by one term: *dikaioσύνη* (justice) equivalent to the obligation to the other transposed into moral rules and rules of law [...]".

In explaining the concept of *justice*, (Andreescu, 2013) shows that it is a general principle of law that can be circumscribed in the area of fair values, fairness, legality and good faith. Another description of this concept (Popa, 2002: 117) notes that "justice is among the main factors for the consolidation of the key social relationships, since it embodies the fundamental moral virtue, intended to ensure harmony and social peace, in the implementation of which both religious, moral and legal rules have a contribution".

On the other hand, it is admitted (Dănișor, 2011: 144) that "modernity caused a rupture and favored the individual size, the individual self-consciousness, exteriorising it, but not as a liability to each other, but only as a duty to themselves so

that the Juridical side individualized and conferred individuality to universality. Therefore, people have mainly rights and only in exceptional cases obligations (care) for others. This is how the moral nature of the law has been destroyed both individually and socially. [...] Human rights, which imperatively arose as a revolt against oppression, are individual rights, neglecting not only the right of the individual obligation to the other, but also of the politico-legal obligation to the other, promoting pure selfishness which thus became law."

3. Legally recognized moral principles/values

It is considered (Ungureanu, 2007:38) that morality is not a distinct source of law, but derived there from to the extent it is incorporated in the law.

There are numerous examples of principles/moral values that are included in the legislative plan. Of these, we have chosen to offer a few examples from the Romanian Constitution, and to capture a few moral poses of the Civil Code. As Muraru I. and Tănăsescu S. noted (2001:18), "constitutional references ensure efficiency, validity to the morality".

Thus, for instance, art. 26 and art. 30 of the Romanian Constitution¹ protect *morality*, as follows:

- art. 26 Para. 2: "the individual is entitled to dispose of itself, unless it is in violation of the rights and freedoms of others, the public order or the morals"².

- art. 30 Para. 7: "the law forbids defamation of the country and the nation, urging to war of aggression, national, racial, class or religious hatred, incitement to discrimination, territorial separatism or public violence, as well as obscene events contrary to morality".

In understanding of this concept - morality, we will retrieve the explanations provided by the doctrine (Ungureanu, 2007:33): morality is "a set of rules imposed by a particular social moral, existing at a given time and in a particular place, in parallel with public order, which constitutes a norm, a standard against which human behaviors are appreciated; [...] morality have a customary and evolutionary content".

In the Romanian Civil Code the following provisions refer to morality, which, in general, along with the public policy are founded as limits of the civil subjective rights:

- art. 1 paragraph 4 of the Civil Code that features in the sense that "only usages in accordance to the public order and morality are recognized as sources of law";

¹ Amended by the law for the romanian constitution review no. 429/2003, published in the official gazette of romania, part i, no. 758 of 29 october 2003; republished with the updating of names and posing a new numbering of the texts in the official gazette of romania, part i, no. 767 of 31 october 2003

² The civil code adopted by the law no 287/2009, republished in the official gazette of romania, part i, no. 505/15.07.2011; the same rule content can be found in article 60

- art. 11 of the Civil Code which sets that "one cannot derogate by conventions or unilateral legal acts from the laws affecting public order or morality";
- art. 14 of the Civil Code which requires the exercise of rights and performance of obligations in accordance with the public order and morality;
- art. 84 of the Civil Code governing the rules laying down the individual's first name. Hence, according to paragraph 2.2 "recording by the registrar of indecent, ridiculous and the like first names, likely to affect public order and morality or the child's interests, as appropriate, is prohibited".
- art. 196 of the Civil Code stipulates, among others, nullity causes of the legal entity status if it is found that the business is unlawful, contrary to public order or morality;
- art. 526 of the Civil Code referring to the inappropriate behaviour of the one to whom financial aid needs to be paid in that the rule according to which "no one who is culpable to the person obliged to pay the financial aid for serious acts contrary to law or morality cannot claim financial support";
- art 626 of the Civil Code governing the conventional limits of ownership, as follows: "the owner may agree to limit his right through legal documents, unless violates public order and morality";
- art. 1169, with the marginal name "liberty to contract" shall be read as follows: "the parties are free to enter into any contracts and determine their content, within the limits imposed by the law, public order and morality";
- art. 1225 para. 3 of the Civil Code defines the unlawful object - when it is prohibited by law or contrary to public order or morality;
- art. 1236 Para. 3 of the Civil Code indicates that the cause of the civil legal act, contrary to the principles of morality, is immoral;
- art. 1255 of the Civil Code having the following wording: "clauses contrary to law, public order or morality and which are not considered as unwritten determine contract nullity as a whole only if they are, by their nature, essential, or if, in the absence thereof, the contract had not been signed";
- art. 1402 refers to the legal regime of the civil legal act condition, a condition which has the following traits - impossible, unlawful or immoral, as follows: "the impossible condition, contrary to law or morality is considered unwritten, and if it is itself the cause of the contract, attracts its absolute nullity";
- art. 2263 para 2 of the Civil Code provides: "where the conduct of the other party make it impossible to execute the contract in conditions consistent to morality, the interested party may request cancellation".

Another moral principle which is reflected in the legislative plan is *good faith*. This is a principle which must be respected by the state as well, reason for which art. 11 paragraph 1 of the Constitution of Romania provides: "The Romanian State pledges to specifically and in good faith fulfil the obligations of the treaties to which it is party." In the comments on this constitutional provision, the legal doctrine (Muraru, I., 2008) shows that the principle of good faith, in the relations between

states means loyalty in compliance with the international law, faithful with the international obligations, representing an element of the principle *pacta sunt servanda*, according to which states are obliged to respect and fully implement the treaties to which they are party.

By the fundamental law, compliance with the principle of good faith is the responsibility of citizens, as well, article 57 of the Constitution of Romania, imposing Romanian citizens, foreign citizens and stateless individuals to exercise constitutional rights and freedoms in good faith, *i.e.* without infringing upon the rights and liberties of others.

In the civil law, this principle, eminently moral, finds legislative consecration in article 14 of the Civil Code which provides: "Any natural or legal entity must exercise their civil duties in good faith, in agreement with public order and morals". In the comments on this provision, the literature retains (Baias et. al., 2012:15) that "the entire set of civil duties and the exercise of civil rights is based on the assumption of good faith."

The explanations given by experts of law (Tița-Nicolescu, 2014: 40), in that good faith is composed of 3 key components: the obligation of loyalty, duty of cooperation and loyalty, are notable.

Thus, explains the said author (Tița-Nicolescu, 2014: 40), the duty of loyalty requires "contracting parties to express their sincere and honest intention or purpose in concluding the contract or the purpose of suggesting renegotiation of the contract; this obligation requires, to the same extent, the parties to perform their obligations with honesty, without hidden purposes, *i.e.* without causing damages to the other party".

Likewise, the obligation to cooperate requires "the parties to cooperate effectively in order to execute the contract in good conditions and to do everything possible for the benefits assumed to be fulfilled to their value or extent."

For the third component of good faith – duty of confidentiality, in accordance with art. 1184 Civil Code, it is noted that the parties must keep secrecy of the information they learned during contract negotiations therefore not to disclose or use them in their own interests, no matter if the contract is concluded or not. The law-maker clearly states in art. 1184 Civil Code, that violation of this obligation entails liability of the accountant party.

The exercise in bad faith of civil rights causes harm to the subjective rights or legitimate interests of other persons, constituting, in terms of law, an offense which attracts tort liability of the perpetrator (Boilă, 2010).

Morality is also incorporated into law when it comes, for instance, to punish deception and fraud.

In what concerns deception, that vice of consent which consists of misleading by cunning means to cause it to enter into a specific legal act (Boroi et. al, 2012: 105), we note the following provisions of the Civil Code:

- Article 298 Para. 1 of the Civil Code which provides for annulment of the marriage at the request of the spouse whose consent has been undermined,

among other things, through fraudulent representation;

- Article 479 of the Civil Code, which constitute statutory cancellation of adoption. According to Para. 1 "adoption can be cancelled at the request of any person called to consent to its conclusion and whose consent was vitiated by error on the identity of the adopted person, fraud or violence";

- Article 959 of the Civil Code that requires rules on judicial disqualification. According to this text the person who, by fraud or violence, prevented the person who leaves legacy to draw up, amend or revoke the will, can be declared unworthy of inheriting.

According to art. 1214 Para. 2 of the Civil Code, the party whose consent was vitiated by fraud may request cancellation of the contract. At the same time, article 1257 of the Civil Code provides that in case of fraud, the one whose consent is vitiated is entitled to demand, besides annulment, damages or, if prefers the contract, is entitled to request only to reduce his payment with the amount of damages that would be entitled to.

Also, the ethical exigency of refusal of unjust enrichment at the expense of another person is found in the legislative mechanism of unjust enrichment. About this legal mechanism, the doctrine (Vasilescu, 2012:216) notes the following: "fairness compels us to accept a mechanism that corrects this patrimonial imbalance, mechanism which may allow the refund of previous benefits gained without legal cause. In legal terms, the interest focuses on the obligation to refund, while unjust enrichment is the name of the mechanism under which arises this civil obligation."

In this respect, art. 1345 Civil Code is worded as follows: "the person who, in a not attributable manner, unjustly enriched at the expense of another, is obliged to refund, to the extent of the patrimonial loss suffered by the other person, but not beyond the limits of its own enrichment."

Actually, there are situations where a person feels morally obliged to execute an obligation, although the law no longer requires it (Ungureanu, 2007: 38) – it is about the so-called natural obligations. For these situations, once the natural obligation is performed voluntarily, the law intervenes so that the benefit in question cannot be refunded to the person who made it.

We cannot conclude this analysis of legally recognized moral principles, before referring to professional ethics, i.e. the aspects of professional conduct. One of the bases of any professional conduct is integrity, i.e. "the kind of ethic virtue which incorporates a number of features of moral personality traits, such as honesty, probity and honour" (Capcelea, 2013).

4. The main differences between legislative and ethics

Following the consultation of the judicial literature, we compiled the below list of differences between legal provisions and ethical provisions:

- the goal is a prime criterion of distinction, in the sense that the law is aimed at maintaining social order, while ethics and morals proposes to improve

the individual (Ungureanu, 2007:39). As defined by an author (Crăciun, 2005: 68), "legal rules which prohibit anti-social acts – such as stealing, lying, deception, murder, tax evasion – are aimed at ensuring a minimum level of sociability, in the absence of which society would turn into a jungle, while moral norms, requiring altruistic behaviour, seek to establish a maximum level of sociability, so that society could facilitate personality development and human condition improvement";

- the sources of the two set of rules are different: thus, while morals/ethics has either a religious or a secular origin, the law has State origin (Ungureanu, 2007:39);

- the difference consists in how the two sets of rules came into being, *i.e.* the forms of externalization/advertising are different: (Bădescu, 2014: 132) "while moral norm is unwritten, being created by the public opinion, the legal standard is the creation of the law-maker, but always in a written form. With regard to the way and the time of entry into force of the legal rules, there is a strict indication on publication, as they act for the future, while their cancellation is done by the legislator precisely setting the term. In the rules of morality they are not known, since are acting over many human generations";

- the penalty in the event of failure to comply with the two types of rules is different, that in the event of failure to comply with the legal rules intervenes the force of compulsion of the State (in civil terms we refer to, for example, the enforcement procedure). This difference is suggestively summarized in the doctrine (Bădescu, 2014:345), as follows: "As a rule, the law does not provide for praising sanctions, but merely punitive. The respect for the law is not rewarded, since it represents a duty or an obligation; can be said that the respect for the rule of law entails an indirect award, whereas it confers fair citizen the right to benefit from the State protection while exercising its freedoms. No one expects a reward from the authorities for having not stolen, lied, swindled or killed anyone. Instead, the scope of the law abounds in punishments for those who breach the law. These punitive sanctions are, most often, physical or material damages: fines, compensation, confiscation, deprivation of liberty, the suspension of certain rights". In this regard, the following statements are relevant (Ungureanu, 2007:39): for violation of the law, no one can be at the same time party and judge, while, on the moral side, each individual can be its own judge;

- the addressee of the legal norms, respectively of moral rules is different. Thus, the subject of legal norms is always decisive – whether it's about a group of people, or the citizens of a particular State. On the other hand, the addressee of the moral rule is a generic person – being known that, in general, no one has the right to lie, steal etc.;

- the object of two sets of rules can be considered to be different, from the following viewpoint: "morals aims at the relationship, speaking of the obligation in relation to the other, but that does not deny the relationship with itself, but assumes it. This is about my behavior in relation to the other. This is

not only about a relationship mediated by things, as in law, but about a direct relationship with each other: the care for the other aims at an individual non-litigious moral behaviour" (Dănișor, 2011, 153). The quoted author (Dănișor, 2011: 144) noted that "modernity caused a rupture and favored the individual size, the individual self-consciousness, exteriorizing it, not as a duty to each other, but only as a duty to themselves so that the juridical side individualized and conferred individuality to universality. Therefore, people have mainly rights and only in exceptional cases obligations (care) for others. This is how the moral nature of the law has been destroyed both individually and socially".

5. Conclusions

In relation to the Latin dictum *quid leges sine moribus* [...] the link between law and ethics, morality is obvious. Generally, the law is based on moral values such as good, honesty, justice, fairness, therefore, in its substance having a moral nature.

Although the link between law and ethics is obvious, in that the two assume each other, as we had occasion to reveal in this paper, the two "spheres" do not confound, since the law sphere is narrower than that of morals.

Law does not remove moral rules, but they continue to co-exist. In many cases, in order to ensure their effectiveness there was the need to take over and recognize moral principles as State rules. To provide an example, this study offered us the opportunity to examine how some moral obligations, such as: exercise in good faith of the rights conferred by law, prohibition of unjust enrichment, civil responsibility, exercise of professional obligations with integrity have been legislated.

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