

THE JUSTICE - CONSTITUTIONAL GUARANTEE. THE CONCEPT OF JUSTICE IN HEGEL'S PHILOSOPHY

Associate Professor Emilian CIONGARU, PhD.

University Bioterra Bucharest-Romania;
Associate Scientific Researcher – Romanian Academy,
Institute of Legal Research „Acad. Andrei Radulescu”
emil_ciongaru@yahoo.com

Abstract

To understand, in the positive sense, the concept and theory of achieving justice in Hegel's sense, it must first be noted that, for him, the State is seen as an ethical community, but without identifying with the civil society, therefore the State is into some relationship with the individual, the state is an objective spirit, while the individual possesses in his substance no objectivity or truth and ethical character, he, the individual, only pursuing his singular interest. To understand the practice of justice in a rule of law, Hegel started from the fact that, in relation to culture and development of thinking, the self of each is the singular in the form of universality, that beyond the singularity of one's existence, through physical and intellectual accidents, as by the individuality of the aims pursued at the level of one's subjective being by singularity, any self as a person belongs to the universal, that, essentially, all people are identical.

Keywords: *justice; rule of law; constitutional guarantee; power of law.*

1. Brief viewpoints on Hegel's philosophy

In the history of the Western Philosophy by Bertrand Russell, he is largely quite critical of Hegel's philosophy of the law and the State, especially as regards the doctrine on the State thereof stating that: Such is the Hegelian doctrine of the State - a doctrine which, if accepted, justifies any imaginable internal tyranny and external aggression [1].

Much more critical, basing his opinions on the texts collected in The Phenomenology of Spirit which was published by Hegel in 1841 but also on his reference book Principles of Philosophy of Law or Elements of Natural Law and Science of State which was published by some students of Hegel in 1854, is Karl Popper, who accuses Hegel of being a forerunner of modern totalitarianism [2], whereas he claims that the Prussian State and its entire German spirit is the spirit of the new world that aims to achieve absolute truth as infinite self determination of freedom, therefore an apology for the Prussian State.

Considering that Hegel has exercised the greatest influence upon all, another author points out that Hegel's philosophy, by stressing the ascendancy of the State over the individual, as well as by the role given to the police or the administration in regulating the relationship between the citizen and the State, directly and strongly inspired the fascist ideas regarding the corporation and the totalitarian State and that it distorts the concept of rational to cover assessments likely to justify autocracy [3].

Just as Friedrich C.J. also criticizes the Hegelian philosophy of law, as Hegel believes, on the one hand, that the police and the corporations should have an important role in ensuring the legal order, the one contemporary with the time of his Prussia - according to his famous thesis that what is real is also rational, therefore the political order of the Prussian State is the highest level where the Spirit, the absolute Idea becomes substantial in its achievement as universality and, on the other hand, as the Prussian State, representing the universality made by the Spirit, is the ethical achievement of the absolute Idea [4].

An idea nuanced in value judgments regarding Hegel's overall philosophy, also valid, by consequences, in terms of philosophy of law, was introduced, it in the early 80s, Heinrich Heine, poet, and Engels, Marx's comrade in ideas, noticed that the very pedant, cumbersome, boring Prussian State philosophy of Hegel can hide behind it the revolution, what Hegel then wrote in the Preface to his Principles of Philosophy of Law... What is rational is real and what is real is rational [5], it is not only a deeply conservative thesis, but it contains its opposite, able to reveal afterward: everything that exists deserves to perish.

2. Short connotations of the concept of State and the concept of rule of law

To understand, in the positive sense, the concept and theory of achieving justice in Hegel's sense, it must first be noted that, for him, the State is seen as an ethical community, but without identifying with the civil society, therefore the State is into some relationship with the individual, the state is an objective spirit [6], while the individual possesses in his substance no objectivity or truth and ethical character, he, the individual, only pursuing his singular interest.

On the one hand, the State as a whole ethical and achievement of freedom, is the universal, as the universal is the whole, is a power of what is right and ethical [7], while the individual, i.e. as an expression of singular, subjective, non-ethical and untruth, as the truth is the whole - another Hegel's thesis [8].

The State, according to Hegel, also enjoys a predicate, which also is essential in understanding justice: the State, ethical reality, is an interweaving of substantial and particular [9], it can not be regarded as a mechanical sum of individual singularities, with individual purposes, therefore subjective, but it represents an organicity universal in character that integrates individuals and their private and selfish purposes. Therefore the State must be considered the spirit of a people, another interesting thesis in understanding of Hegel's theory of justice applicable and applied in a rule of law.

The concept of State and especially the one of rule of law had many doctrinal approaches. The rule of law is defined by a certain type of State that developed in the historical conditions of the modern era, in response to a large part of the requirements, needs and demands of real life, having a socio-economic and ethical-cultural nature. [10] The same author considers that the legal State is an expression of that nation-state that is specific to the French school and is characterized by parliamentary sovereignty and law, in a formal sense, as a superior, general and unconditional act.

In Ion Deleanu's value judgments, the rule of law is not a simple combination of words, but it expresses a condition on power, and also gives birth to a new conception on law, regarding its functions and role. [11]

The rule of law is defined as "the type of political regime in which State power is framed and limited by law"[12].

The State identifies with the law because it is nothing but a legal system, a system of human behaviour and an order of social constraint [13]. The State can act only under legal rules, defining it as such. [14] Trying to legitimize a State as a rule of law is actually perfectly inappropriate, for the simple reason that any State should be a rule of law.

Richard Abel - American sociologist - referring to the definition of the rule of law warns that the law should guarantee equal access of all citizens to legal means of correcting injustices. [15]

The name of the rule of law theory is meant to suggest the idea that the State is not absolutely independent in its activity, but is limited by the authority of law. [16]

3. General considerations on the concept of justice in Hegel's philosophy

To understand the practice of justice in a rule of law, Hegel started from the fact that, in relation to culture and development of thinking, the self of each is the singular in the form of universality, that beyond the singularity of one's existence, through physical and intellectual accidents, as by the individuality of the aims pursued at the level of one's subjective being by singularity, any self as a person belongs to the universal, that, essentially, all people are identical. As, Hegel says in thesis particularly valuable and more than contemporary for our time, Man has value because he is man, not because he is a Jew, Catholic, Protestant, German, Italian etc. [17].

As such, says Hegel, the law should become and it is an external necessity, to be able to consider this universality where the man is possessed as a man, not as a lonely self, as a private individual with singular, particular interests, opposing to the interests of others.

Therefore, the law is objective when addressing the man as identical to others through universality, i.e. when it is known as a positive law in general, thus acquiring the form of universality, as an entitlement for all, which means, however, knowing the content of such law by all stakeholders, thus achieving equality before the law.

This is why Hegel believes that justice begins its achievement under the universal form from the very moment of being legislated. Namely, the enactment is not only limited to the fact that by the law, something is declared as a rule of conduct applicable to all; but the internal essential moment is the knowledge of the content in its determined universality.

For Hegel, the only law of interest in achieving justice is the written law, especially in terms of coding the written law. Assuming that the law would be restricted to common law, even if common law collections would be drafted, we are not in the presence of an objective law, as the common law is for itself, undetermined. The common law or even the common law written collections reach undetermination, because it stands on accidental cases, with no elevation to the level of thought, of general and abstract

principles [18] reached by the written law. A common law legal civilization promotes and supports the lack of real justice, as they are known in a subjective way and by accident, on the one hand, and on the other hand, their knowledge, of the common laws, remains generally as a random property of just a few [19].

But the code of laws - and Hegel stands as a proponent of a codification of the French type, especially in the private law field - provides access to overcome the accidental, the non-determined and the subjective, as the code has the property of systematization, so of gripping the universal on the way of thinking, therefore grasping the principles of law in their universality.

Therefore, under the positive law what is under the law is the source of knowledge of what is the law [20], that is what is appropriate to justice. Being put into form, the law is put as a law, it captures the universality and can be applied to the particular, by the very logic of its internal systematization, and it also captures the singularity of causes raised by litigants before the judge. As such, the judge executes and achieves justice in that the law is an universal determination to be applied to the singular case.

Citizens, in all cases - enrolling each of them, taken as a singularity, within the logic of the universality of the concept of citizen, have an obligation to obey the law, or, for this, the need is that laws be brought to general knowledge. As, Hegel highlights, it is injustice that the citizen can not know the law because it is not published or is ordered only in collection of common laws and jurisprudence (the case of the common law system, so criticized by Hegel), also taking into account the fact that professional jurists, organized into guild or caste, consider the knowledge of law as a professional monopoly, preventing who is not a qualified jurist to express opinion on the law [21].

4. Characters and theory of justice in Hegel's philosophy

So, the concept of justice and the theory of justice in Hegel show up to this point of the recital, the following features:

a) justice means overcoming, in the Hegelian sense of the term [22], the single subjectivity of the person, in that the axiological recognition of the equality of all human beings enables and ensures raising to the level of universality, achieving legal equality before the law;

- b) justice is not a state of grace, a natural condition, but it is the result of an activity carried out by a court, therefore by the State, which is a structure, an organic entity by which single individuals, as the civil society, are recognized as an organic whole, as the embodiment of ethic, prevailing not their singular and contradictory interests, but the freedom and the ethical sense of the State;
- c) justice that arises from the practice of justice [23] involves the objectification of the law as a positive law, i.e. as a law, under the requirement that the State law to be written and encoded to be able to capture such universality, overall determination of what is right;
- d) justice, in one of its important elements, is only carried out and in consideration that once coded, the positive law ceases to be a monopoly of the professionals' caste, the knowledge of the content of the encoded law by members of the State, in their quality as citizens, also guaranteeing their equality, in terms of knowledge of the law to be presented as something familiar in its general determinations;
- e) justice achieves the next step in that the assembly of encoded laws once known by the citizens of the State, the law, raises the man, in considering the universality of his being, in the sphere of freedom; the law, once coded, captures the general determinations of the community-State under the form of obligations and the man, knowing them, becomes free. But a freedom paid with the price of the loss, the melt of individuality, its singularity in the supra-individual ethic of the State as a reality of the moral idea [24].

Conclusions

Continuing the analysis of how the law self-exceeds, Hegel observes that the law can only be a formal law, as transgressing subjectivity and manifesting as a free and rational will, it must acquire stability and validity as a recognition from the part of the other/others in the legal form of acts that ensure recognition of the acquired right and in ensuring the demonstrable nature of such a right recognized by law.

So and only so Hegel believes that, through the practice of justice, the civil society, the social status where the Idea is lost in distinctiveness and de-composed in a triple duality, namely: the indoor-outdoor duality, the subjectivity-objectivity duality, the freedom-non-freedom duality returns to the unity of the universal.

Noting that it is rather about a justice that is achieved in the ethical level of the State, regardless of the particular and individual aims of the individual, by self-exceeding it and them, the State ensures justice as constituting an indifferent ethical community, generally, in relation to the individual, in relation to the general welfare as the sum of the individual welfare.

This paper is written during the sustainability stage of the project entitled “Horizon 2020 - Doctoral and Postdoctoral Studies: Promoting the National Interest through Excellence, Competitiveness and Responsibility in the Field of Romanian Fundamental and Applied Scientific Research”, contract number POSDRU/159/1.5/S/140106. This project is co-financed by European Social Fund through Sectoral Operational Programme for Human Resources Development 2007-2013. Investing in people!

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