GENERAL CONSIDERATIONS REGARDING THE HISTORY OF THE RELATIONS OF LAW WITH MORALITY, SOCIAL ACTION, HUMAN CONDUCT AND ITS NORMATIVE REGULATION IN A RULE OF LAW

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Abstract:
The normalization of human activity is an indispensable requirement for any form of coexistence regardless of the degree of its evolution. This requirement is much more necessary in today's societies characterized by a marked diversification of forms of exchange between their members. All kinds of human activity are generally subject to regulation because they cannot be carried out in a disorganized manner. Any process of evolution, adaptation or integration in society will take place in an organized, normative, regulated framework. The diversity of social relationships determines the existence of a multitude of social norms, but also a variety of forms that influence people's behavior in these relationships. The system of social norms is a complex system consisting of the following categories of norms: ethical norms, ordinary norms, technical norms, political norms, religious norms, legal norms.
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General notions regarding the rule of law

Human activity takes place in a complex social-human, physical and natural environment. As a result of the existence of individuals in the same space, they satisfy

their needs for material and spiritual life and thus we are dealing with social life. It is found that within it there are permanent links, a permanent system of dependencies between individuals. Man's actions are generally determined by his interests and according to these he establishes his strategy of action.

The human being involved in an action participates in a multitude of dimensions of social activity but we are particularly interested in the normative dimension, which imposes an action model, a variant of behavior (ethical, political, religious, legal) programming certain limits (thresholds) in relation to which man must do something or must refrain from doing something. [1] Social norms concern social behaviors, they consider the distinction between indicative and imperative, the transition from the domain of "sein" (what is) to the domain of "sollen" (what must be). Acting in a social environment, the results of human action are evaluated according to their social resonance and not only according to personal intimate resonance. [2] It should be noted that the subject of the action always manifests itself under a particular program based on its closest or farthest interests.

The existence of various forms of regulation of human activity requires the delimitation in time and space of normative systems, and the examination of their determining features.

Correlation of legal norms with ethical norms

If we take a look back at the historical process of the emergence of law, we can see its gradual detachment from the norms of morals and customs. Thus morality precedes law and in assessing the relationship between law and morality legal theory has evolved in two directions: that which conceived law as a minimum of morality (justice by law and morality) and that corresponding to legal positivism - the state is the only basis of law (the rule of law without morality). The Roman jurist Celsus defined law as "jus est ars boni et aequi" (good and equity being categories of morality). [3] Here are the Romans, as Roubier remarked [4] they take the first steps in the independent explanation of law in its separate conception of morality. In Ulpian's definition, the precepts of law include both moral principles, "honest living," "we do not care," and the principle that by law everyone must be given what is his own - "suum cuique tribuere," a principle that

holds the functioning of justice (distributive justice). [5] Within the first definition, law and morality are understood, as stated by Prof. Nicolae Popa, as two facets of a phenomenon: morality which is ethical and subjective, and law which appears as objective ethics.[6]

Morality, said M. Djuvara, "has as its object the appreciation of internal facts, of conscience of human intentions, while law uses as its object the appreciation of external facts of persons in their relations with other persons. [7]

The French jurist Georges Ripert considers that there is no difference in scope, nature and purpose between the moral and the legal rule. Using expressions from civil law, the moral rule, says Ripert, easily penetrates the law through the ethical conceptions of the legislator or judge and indicates among the legal moral obligations: civil liability, prohibition of unjust enrichment, execution of contracts, exercise in good faith, and abuse of the rights conferred by law. [8] Of course, when the law no longer conforms to moral principles, it will fall into disuse.

The legal sciences study the laws of the existence and development of the state and law. As stated by Giorgio del Vecchio, the science of law studies the laws of existence and development of the state and law, political and legal institutions, their concrete historical forms, their correlation with other components of the social system, but also how political and legal institutions influence society and support then social influence. [9]

Human activity takes place in a complex environment - social, human and physical - natural. The human being (homo faber, but also homo sapiens), as well stated by Prof. N. Popa, must be understood both as an anatomical-physiological system, able to exert an action on the environment, but also as a system capable of predicting and anticipating the course of events in which he participates, as an agent, as well as to select, from several alternatives, the optimal variant of behavior. [10] Throughout the action, the human being must reflect the law and moral principles.

We must see that in its first moral phase it is confused with law and religion. Ethical norms and norms that we call legal have their origin in the divine will. Pythagoras and his school taught that all rules of conduct come from the gods, and those who disobey them offend the divinity and are punished by it. In Homer's literary work "Iliad" we find the presence of repeated vengeance of the gods against those who disobey their orders.

Socrates, Plato and Aristotle confuse law with morality, also on the same religious basis, and the idea of justice for them is as much legal as it is moral. [11]

With the Stoic philosophy, the moral norms began to detach from their religious origin, taking the form of superior, metaphysical principles, the law remaining closely linked to morality. Natural law, whose true authorship must be attributed to the Stoics, is only a system of moral principles, and the best proof of this statement is the definitions of natural law that we find in the Roman philosophers, Cicero and Seneca. [12]

In the Middle Ages there was again a confusion of morality and law with theology. Scholastic philosophers saw everything in terms of religion, and especially morality and law. However, the Renaissance, humanism and Cartesian rationalism reached the release of philosophy and all disciplines in general from the chains of theology, but morality is not yet legally separated. Grotius, who was said to have secularized natural law by building it on purely rational cases, even admitting the hypothesis that God did not exist, confuses law with morality.

The first thing that makes the difference between law and morality, as Alex rightly pointed out. Vălimărescu, is the philosopher Christian Thomasius in his work "Fundamenta juris naturae et gentium" (1705) [13] Thus, for Thomasius, law is distinguished from morality by the fact that morality prescribes the rules of conduct towards us, and law deals with relations with our fellow men. [14] Thomasius also distinguishes between moral and legal obligations, which he calls perfect, because they are provided for in public coercion - he reiterates the distinction made by Thomasius and considers that the idea of sanction is lacking in morality, but is essential to law. The path taken by Thomasius and Kant will be followed by most philosophical jurists.

The constitution of law as an outlined entity can be said to take place with the establishment of public power as a state power in the countries of the ancient Orient and in Greco-Roman antiquity. [15] Then, along with customary legal norms, comes the written law, illustrated by certain normative acts - true legislative monuments in the history of human law and culture (Hammurabbi Code in Mesopotamia - Babylon, Manu Code in India, Solon's Laws in Greek and the Law of the Twelve Tablets in Romans).

Historical reality shows us that law is a phenomenon inherent in human society. As a social phenomenon, law is evolving historically and bears the imprint of historical epochs as well as the spiritual peculiarities of peoples. [16]

The influence of morality on the law concerns both the process of creating the law and the process of its application. Legal law is an important means of moral education. Laws influence the mentalities and morals of each individual. It should be noted that there are legal norms to which moral principles are indifferent. [17] Thus, the traffic rules on public roads, economic, administrative norms, etc. they have a purely instrumental character. Law is detached from any other reality, it is a construction in itself, the only reality with which it correlates is the state. Since the state is the sole basis of law, in the absence of the state the idea of law is inconceivable. [18]

Starting from theses asserted and demonstrated in philosophy by Hegel, well-known authors in the theory of law such as M. Waline, Carré de Malberg, Kelsen, come to the conclusion that the rules of unjust law also constitute law, as they are elaborated by the state.

The Romanian public administration has the legal norms elaborated by the state and has a certain importance in the administrative life of the state, it can be constituted in a criterion of distinction of the different administrative regimes, during its historical course. [19] Since the emergence of the state, the need to maintain its unity and that of a management of the general interest has made the central power to reserve all its powers of government and general administration, intervening even in local affairs and leaving the commune only the powers to he watched over local interests, to an extent that varied with the extent of guardianship instituted at the state level. [20]

Hans Kelsen wrote that "since justice is a requirement of morality, the relationship between justice and law is included in the relationship between morality and law." [21] To say that the law is moral and, consequently, essentially just, is to conceive of the existence of a single valid morality, of an absolute morality. Kelsen considered this thesis unacceptable. Moral values are relative and no one can determine what should be considered absolutely right. To say that law is moral, Kelsen said, means, at most, to say that it is a social norm with relative moral value, and in this case the relationship between law and morality does not refer to the content of law but to its form. [22] The rules of law

essentially contain the idea of law and obligation (I am obliged to repay what I have lent to my creditor and I am obliged to respect the life and freedom of others). Therefore, the existence of the right is given by the need to establish some social rules, some obligatory norms of conduct. Law is an instrument for establishing in society certain social rules, certain social values. The legislator, in the process of creating the right, takes into account the social conscience, the feeling of sociality, social solidarity. [23]

Correlation of legal norms with customary norms and technical norms

The legal norms know specific forms and means of ensuring the transposition in life not found in any other category of social norms. The legal norms, due to the special consequences of their action, are subject to permanent operations of organization, systematization and publicity. The norms of habit represent an important category of the system of social norms. It is well known that, historically, law has been derived not only from morals and morals but also from customs. However, the law developed in close connection with custom. As social norms, habits are patterns of conduct that express the needs of social groups and are related to group-specific values. Along with the habits, there are also the uses, which have a conventional character. Regarding their legal treatment, we see that usury, due to its conventional nature, must be proved before the courts, while the customs can be invoked directly in court as a positive right. As Dimitrie Gusti wrote, "the custom is the own legislation that society gives itself in order to live and develop". [24] Habit binds both the individual and society through its imperatives. There are three subjects that produce legislation: the individual, the state, and society. [25]

Technical norms are the rules that guide the process of producing goods. These are established between people in their participation in economic, social and cultural life. The development of the complexity of the economic processes determines a continuous specialization of the productive activity, but also an increase of the volume of knowledge of those who participate in this activity. Failure to comply with the technical regulations in many cases also has legal consequences. The various variations in the needs of the community determine a process of variability of legal instruments. The legal consequences of non-compliance with technical norms are increasingly involved in the process of social organization. Moreover, the problem of the existence of technical norms

is also raised in the case of the analysis of the normative legal complex, in the sense that within the various components of the legal norms system there are also technical rules or with a pronounced technical character. [26]

The rules of normative elaboration, with a methodological character, are norms of legal technique. Thus, most of the norms of civil, criminal, administrative procedure have a more pronounced technical character. For example: the norms that guide the process of drafting laws (initiating the project, approving, submitting it, debating, adopting and publishing it), the norms regarding the structure of the normative act, the methodology of interpretation, modification or abrogation of normative acts. And the rules of procedure regarding the courts (by action, complaint, indictment), the order of hearing the witnesses, giving the floor on the merits, etc., are technical legal norms.

From the presented it appears that the social life presupposes norms. These norms have the role of organizing forces of human interaction. Legal norms do not remove but join other categories of norms, coexist with them, intertwine their regulatory action with the action of other norms. The law cannot exist and cannot be explained outside its normative reality.

The legal norm represents a model of behavior that contains the pretensions and exigencies of the society towards the conduct of its members in certain categories of relations. The legal norms, together with the legal relations born on their basis, make up the legal order, a component part of the social order.

The social order is not limited to the rule of law. We must, however, specify that the rule of law forms the core of the social order, this is the basic condition for the balance of the order of society, the guarantee of the realization of the essential rights of the individual and the proper functioning of institutions. It is necessary to understand exactly the role of the legal order in the process of affirming and maintaining the social order in a state. Thus, Prof. Gheorghe Boboş shows that the name of the rule of law theory suggests the idea that the state is not absolutely independent in its activity but is restricted by the authority of law. [27]

In continental European countries, the principle of separation of powers has led to the development of a theory of the subjective rights of individuals in their relationship with the state through the public law system. It is designed as a set of rules aimed at protecting

the individual against the arbitrariness of administrative bodies. [28] The formal concept of the rule of law is based on the principle of the hierarchy of norms. In particular, Kelsen points out that law is conceived as a system of rules related to each other and articulated not only statically but also dynamically. [29]

In modern societies, the state legal order has progressively imposed its supremacy, substituting or overlapping pre-existing legal orders and becoming the only legal framework of reference for the whole community. All legal norms are conceived as emanating from the state, they are not validated unless they are inserted in its legal order, strictly respecting its determinations. The state is, as stated by G. Burdeau, the institution in which the idea of law is incorporated, which is the vital principle of the state. The idea of the state is the idea of public power, which carries out the destinies of the nation according to the principles contained in a certain idea of law. [30] A sovereign state is the state that has power in its territory and enacts the rule of law, and outside it receives no provisions from anyone and is not subordinated to any external force. The rule of law is a state in which the cult of law is practiced. The essence of the rule of law is normativism. The sovereignty of the law and the legality of the citizens remain in reality the pivots of the modern state.

Conclusions

1. The influence of morality on the law concerns both the process of creating the law and the process of its application.

2. Legal norms know specific forms and means of ensuring the transposition in life, forms and means that do not meet in any other category of social norms.

3. The legal norm is the basic cell of law, it is the elementary legal system.

4. Although fundamental rights were conceived as subjective rights, allowing the individual to oppose certain state interventions, today they are at the origin of many rules of objective law, imposing on the state the obligation to act.

5. The reactivation of the rule of law has taken place due to a broad movement to return to fundamental human rights and to the obligation of the state to protect and guarantee them.

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