

Revista Romaneasca pentru Educatie Multidimensionala

Romanian Journal for Multidimensional Education

ISSN: 2066 – 7329 (print), ISSN: 2067 – 9270 (electronic)

Covered in: Index Copernicus, Ideas RePeC, EconPapers,
Socionet, Ulrich Pro Quest, Cabell, SSRN, Appreciative Inquiry
Commons, Journalseek, Scipio, EBSCO

The Premises of Responsibility

Camelia IGNĂTESCU

Revista Romaneasca pentru Educatie Multidimensionala, Volume 5,
Issue 2, Suplimentary 1, December, Year 2013, pp: 41-50

The online version of this article can be found at:

<http://revistaromaneasca.ro>

Published by:

Lumen Publishing House

On behalf of:

Lumen Research Center in Social and Humanistic Sciences

The Premises of Responsibility

Camelia IGNĂTESCU ¹

Abstract

The juridical principles, anterior logically to any juridical norms, have axiological dimension turned up on the legal dispositions; the auto-engagement of respecting them by the state and the individual means juridical responsibility for the two sides, namely the one to respect principles, values and institutional rules. The responsibility has like foundation the general interests of social companionship and involves as organized reaction more or less from its side.

Keywords:

responsibility, value, society, norm

¹ Camelia IGNĂTESCU – Lecturer Ph.D., Stefan cel Mare University of Suceava, 720229, Romania, Email Address: cameliai@seap.usv.ro

The social life, the living together, is normalized, any norm being the engagement of the values in the directional terms. Our personal opposition to the order “kill another person!” is not instinctively, but a cultural one, is connected with the human’s value, as the reality of living together, the person who kills another person is its killer, and his acts were called by Romans “taking the life of somebody”, meaning to infrange a disposition; the assassination is an antisocial act, is a non-cultural act within the society, within the culture.

We assume the responsibility of killing an aggressor, not from alimentary reasons, but when our life, family, nation, country, liberty are in danger, which are considered to be juridical values, not having another solution to save them. But, in the same time, only in the homo sapiens species the individuals and groups of individuals fight responsible between them; the fight phenomenon is strictly human, the fighters referring in a way or another to the protection of the values, invoking fake values, from selfishness, vainglory, revenge, pleasure, there are wars between organized communities in the name of fake values or because of the excuse of defending the values (in Persia the Roman soldiers were fighting for “the Roman people good and happiness”, weren’t they aggressors? Neither were aggressors the English soldiers who were fighting in India in the XIX th century for “the English people good and happiness” or for “the Indians’ civilization?” etc.), some are manipulating skillfully the aggressive instincts and the instincts of others’ self-preservation.

It is impossible to enumerate all the values and it would not have utility, but we could tempt approximate typologies of them: juridical (the justice, the caution, the equality), political (the democracy, the demagogy), moral (the sincerity, the moderation), religious (the piety, the devotion), aesthetical (the ugly, the beautiful), economical (the efficiency, the output), philosophical (the sagacity, the balancing), lato sensu scientific (the verifiability, the probability). On their turn the juridical values appear like juridical values of their own (the caution, the legality, the conformity etc.), juridified values which are not juridical (the equity, the personality, the interest, the truth, the dignity, the fatherhood, the honesty etc.).

It would be an excess to distinguish some civil values between the juridical values, others penal, others administrative, because in codes

it is about means of defence of the values and not about values – particular goal. Thereby, the good is not only civil, but also penal, administrative and custom, under the aspect of the instruments used to protect and promote them.

The value is not something given, as the qualities of things are, its base is not on an existence, but on an ideal world, of a pure validity. The Beautiful, the Just, the Good, the Liberty are not particular or universal characteristics of something, independent of the reporting of those some things to the human being subjectivity, but contrary, exactly the reporting to it, the one who values, appreciates diverse realities like being – beautiful, just, good, etc. (Andrei, 1997).

The concrete society is for its members emotional-educational environment, the educational and emotional factors must be looked for on what concerns the conformists, the anti-conformists, and the nonconformists. We are each born with certain personalities; with diagrams of thinking that get valuable consistency under the intervention of the multiple social educational-emotional factors.

Under this aspect for the existence of anti-conformists individuals, whom break the moral and/or the juridical duties, the society has its part of contribution, which is not diminished by the state nor through the positive law's humanization (in the European political-juridical systems) or through the increasing of the general material "well-being" (in North-American political-juridical systems). In all the three systems the criminality, the private litigations, the interethnic conflicts are increasing permanently, invincible; the strengthening of the religion role in state (the Iranian experience), of the revolutionary spirit (the Soviet experience) have attenuated temporary the increasing index, not the increasing itself.

The subject is individual and not the community, is not a natural being, or a rational one. He escapes the community through the instrumental reason and escapes the market through the collective identity and through the collective identity and through the personal one (Tourain, 1996:10). This assertion don't seem to be arguable: on the contrary, the subject is an individual and the community without which his individuality is his poem, he is a natural being through his flesh and blood, but also rational being, even more spiritual being, the individuality can't be define like person outside that.

The free existence belongs to the one who knows who is in the world; the human being born free from the nature, which doesn't mean the new born child knows who he/she is on the world, but if he/she was born free from the nature, when he/she would find out who he/she is on the world, he/she would find out who he/she is on the world, he/she would find out about the freedom of his/her existence; it is a necessary premise, not also enough of the responsibility, because the autonomy knowledge in existence does not appear, it itself, the choice. The knowledge of itself and of the world gives the human being the possibility of getting away makes possible the discovering and the affirmation of the concrete situation in the world. The second necessary premise concerns the knowledge of the values, always social, from which some are put to do; they give the measure of autonomy (Ripert, 1927).

We detach here three moments: the knowledge of the values by the individual-personality; choosing between them those which, on a determinate situation, impel the action – the measure of autonomy; the action, together with its result, which objectifies the author.

Thus, conscious of himself, the human being – the recipient of the juridical law – chooses between the legal and illegal acts, between the licit or illicit deeds (moral or immoral, religious or atheistic, etc.) decides which of them he wants close, he engages to perform them, which is responsibility, he is responsible human being autonomous chooser, has power to decide and he is employed in his spiritual and material acts. In application, the autonomous human being knows the values from the juridical norms, interiorize them and in this way he hangs on to them, he engages to transpose them; we say he is a responsible human being from the juridical point of view. If he doesn't adopt them and he chose others, which he engages to transpose in deeds and acts, again he is juridical responsible.

There comes that the degree of responsibility depends on the conscience development of the human being. Therefore, in the evolution of the responsibility the society is necessary involved and thus it has its part of reflection in the person's complex of attitudes and conducts, where it sits like conscious internal dimension. This is the explication why the individual feels he/she is responsible for the facts that will happen and he/she takes upon him/her the facts that already happened.

From this transposition of the society, involved accordingly to the interactions normatively revaluated, derives the responsibility – obligation of standing the consequences of non-observance of some conduct rules. Indeed, the concrete society affirms a system of normalized relations like prescriptive model of its own possible existence and any other conduct incompatible with its normativity, answers towards the whole system, which can not be in the same time can not have a contrary relation to the model (Cadiet, Le Tourneau, 1996).

Spiritual life affiliation of the concrete person, his responsibility is expressed in the social life, the authority of estimation is himself, he imposes what derives from assumption, accordingly with the values he took upon himself; not because the society asked him, but because he asks himself, he forces towards himself. A responsible person judges himself/herself, and like result he/she takes upon him/her what has resulted from the judgment; he/she is severe with his/her person, just because the result of the self-judgment and the assumption of the exigency.

The social liability is due to the individual situation like person in the social system of normalized relations. He faces this system of the assumption of the compatible with the social normalized order requests. This is why it is said that the social liability is of social requests. This is why it is said that the social liability is of social normalized order, like something exterior towards which the obeying is compulsory, not like expression of the individual's requests that he forms for being social (Pătulea, 1988).

The social liability sense is also instrumental: the organized system to be directly conserved in a determinate way, whilst through responsibility is endorsed that, through the improvement of the human being, to improve the society itself. The normalized social system tackles in a determinate way the human like person, so the responsibility returns to the person-human; the responsibility returns to the human being-responsibility, who is in a society, in his own generic environment of life. Through the formal or/and informal setting up of the social responsibility, the normalized social system joins, in a determinate way, in its structures the individual-person, through the responsibility the individual-personality integrates in society.

The responsibility and the social liability sit on a certain conjunction: indifferently if the juridical law recognizes or not, any human being advances on the responsibility's co-ordinate; irresponsible person means a person who haven't fulfilled his conscience and has conscience of no value (with the specification that the values are always socials, their assimilation from the person is procedural, and in a certain measure is subjective). Learning about society, accordingly to the thinking diagrams, involves also learning about its values, which gets to a normal thinking, possible deformed on the way, more or less, sometimes irreversible, other times just temporary (Pătulea, 1988).

The empirical observation shows that the responsibility is due to everyone in a certain measure; that everyone advances with its own intensities and speeds, and finally, the absence of responsibility in a situation can be accidentally, under one aspect; the situational softness of the responsibility does not decide that its owner does not has it. If someone committed an act being totally drunk in that moment, does not mean that person is a irresponsible one, but – according to a detectable reason –he accidentally lost it, in that very moment.

The value constitutes the responsibility landmark (the values is always social; there is not somebody who creates or to have a value of itself, absolutely unique); there comes that the juridical responsibility is related to the values deposing in the norms of a law system, whom it is affirming with its gentle personality. But we will agree that a law system does not reevaluate, wholly and completely, on its norms, the perennial core of the values, either sits entirely on the universal valuable horizon ground, the lawgiver and also the human being are situated in this unilateral condition of time and place (Craiovan, 2010).

The lawgiver's problem is on adapting the two unilateral conditions, meaning to offer to his generic subject a way of juridical existence, according to his possibilities of practical autonomy, following in the same time the approaching of what is perennial in juridical values; but the limits of his laying in the same context with the recipient does not allow him more then an imposed probability like specified reality (Darbellary, 1987).

The moral assumption of the human life's value is universal and absolute and no speculative derogation from it can't touch its substance, while the juridical assumption of the same value, suddenly is nor

universal, or absolute as long as the same lawgiver falls into contradiction according to the same matter. In consequence, a person who does not assume the juridical values as they kept in the working regulations does not have juridical responsibility, but if he acts according to them, the fact that he does not assume responsibility doesn't represent any importance for that law, on its punitive side; what he is asked to is to act accordingly with the exterior juridical duty. The juridical duty is situated on distinct co-ordinates from the moral duty; distinct co-ordinates, but not isolated from those, as my duty like citizen is nowhere else than in me, the human being, the judge's juridical obligation is getting together with his moral duty, on what is called the magistrate's professional ethic.

But, if contrary, it does not act accordingly with the juridical obligation, exterior, invoking other values than those captive in the working norms *hic et nuc*, he is hold responsible, being a responsible human being. We think that here takes place a transformation in the signification of the concept of responsibility; we said that the responsible individual is the one who knows, reflects and expresses on its absence the assumption of fact can't take place, but it investigates the fact that is already done connecting it with the assumption mood of that value.

The juridical responsibility has juridical content on a moral political fund and not on one with strict relevance. Indeed, admitting that its function is to ensure the conservation, the improvement, the functionality of the working juridical norms, having like aim maintaining the promotion of the concrete law order and the "public good", we admitted implicitly that every law system corresponds with a model of juridical responsibility that if he is not affirming, the individual is hold responsible, not in the name of the values, as they are, but how the lawgiver has caught them, of whom juridical-political values sustain its norms (Erechia, 1998).

In this way, the evaluation criteria of the juridical responsibility is looked on not in principles, but in interpreted principles, adapted to these reasons, but now we are asking which could be the criteria establish that this law system is the standard we base on when classifying the others? The contemporary world is situated in this theoretical and practical difficulty, which insecure on landmarks, decided we have one – the system of the values included in the collocation "the human's rights".

The collocation itself provokes questions: what right is it about? On what are founded the human's rights?

P. Fauconnet wrote that the juridical responsibility is the form "on which a thought of social value is manifested" (Fauconnet, 1920). Indeed, a positive law system crystallizes juridical the values, even though not on their plenitude, in the unilateral character of some principles of social-political efficiency. The values juridical clothed are circumscribed in norms, and so like any human action it is carried on normalized, implicit reevaluate positively or negatively such values.

Here is about a logical anteriority, according to which the juridical responsibility looks towards the assumption of the juridical values on their logical anteriority, not to how they are kept on this or that law system; for example not the one who assumed the value of justice, kept in the norms of the communist law, has the juridical responsibility, but the one who crossed the unilateral character of time and place. But not having an instrument for the practical outlining of the universal signification of the jurified values, we obey to them, because otherwise it would be very difficult to distinguish between anti-conformity and inconformity, between any creation and destruction. The law is as universal as the screw, but when we makes screws we don't make the screw on its abstract universality, but for the immediate needs, without any of the concrete screws to break out the abstract of the screw's compulsory character (Ripert, 1927).

A wile ago it was made an interesting observation regarding the penal law: "the responsibility, like a condition of being, of the active subject of the infringement of the law, don't have to be confused with penal responsibility, which is a form of juridical responsibility, containing the penal juridical report of the conflict, on which the delinquent has the obligation to respond and to support the legal sanctions for doing the forbidden fact under the penal sanction. Indeed, between the penal responsibility and the liability is a natural bound. The penal liability is the consequence of committing an infringement of the law and the responsibility is a premise of the infringement of the law, because without it the guilt does not exist" (Bulai, 1997).

Of course, between responsibility and liability, in general, the bound is natural; the juridical liability is the consequence of committing an illicit deed, and the responsibility is the premise of the illicit deed,

because on its absence there is no juridical guilt (Hegel, 1969). Like law subjects, the states between them, the state's bodies, internal and international organizations, citizens, juridical and physical persons etc., having juridical responsibility, respond juridical.

Indeed, without the norm's existence the responsibility is powerless, without generality it does not lead to the protection of the social interest, without the multiform character it does not allow the particular and singular applicability. We invoke an older idea, understandable and valid today too: "The non-observance of the social norms involves – after case – a political, moral or juridical liability, all this liability forms, including the juridical one (without the civil liability, where the accent is on repairing the damage), having a constructive role on the action of formatting the individual behavior in the spirit requested by the social norms" (Anghel, Deak, Popa, 1970).

Let's think about magistrates' liability; if we take the term of political in the public safe (all the actions which are about the realization of the public safety, through the particular form of duty, but indirectly having its constant object – the justice; the Justice contributes to the public safety), the magistrates have the obligation to respect the political norms, the moral norms, the juridical norms, thus they have all the three liability forms; a corruptible magistrate destroys the justice, the same happens with a magistrate without professionalism, the same case is with a magistrate who does not care about the Good like value.

References

- Andrei, P. (1997), *Filosofia valorii*, Ediția a III-a, București, Ed. Polirom
- Anghel, I. M., Deak, Fr., Popa, M. F. (1970), *Răspunderea civilă*, București, Ed. Științifică
- Bulai, C. (1997), *Manual de drept penal. Partea generală*, București, Ed. All
- Cadiet, L., Le Tourneau, Ph. (1996), *Droit de la responsabilité*, Paris, Ed. Dalloz
- Craiovan, I. (2010), *Filosofia dreptului sau dreptul ca filosofie*, București, Ed. Universul juridic
- Darbellay, J. (1987), *La reflexion des philosophes et des juristes sur le droit et le politique*, Paris, Editions universitaires
- Eremia, M. C. (1998), *Interpretarea juridică*, București, Ed. C.H. Beck
- Fauconnet, P. (1920), *La responsabilité*, Paris, Ed. Alcan

- Hegel, G.W.F. (1969), *Principiile filosofiei dreptului sau elementele de drept natural și de știință a statului*, București, Editura Academiei
- Pătulea, V. (1988), *Răspunderea și responsabilitatea socială și juridică*, București, Ed. Științifică și enciclopedică
- Ripert, G. (1927), *La règle morale dans les obligations civiles*, Librairie Générale de Droit et de Jurisprudence, Paris
- Tourain, A. (1996), *Formarea subiectului*, in Social researches, number 4/1996, pp.10