INTRODUCTION TO THE EPISTEMOLOGY OF LEGAL RESPONSIBILITY

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Abstract

According to the renowned theorist I. Craiovan, the knowledge of law cannot be situated in the contemporaneity outside the tendencies manifested in science where there are connections, interferences, transfers of concepts, methods and techniques that receive an important role in approaching the legal phenomenon and, consequently , Theory of Law, as a synthetic legal science, appeals to epistemology because: "the idea of examining by itself the activity of knowledge of law can first give the means of progress of the science of law, to improve knowledge of this phenomenon." The epistemological approach of the legal responsibility system in the methodological scheme we proposed involves, first, establishing the epistemological status of legal responsibility in the General Theory of Law and in the branch legal sciences in order to extract its epistemic features. Secondly, the study aims to reveal, for the first time, the systemic properties that legal responsibility develops as a subsystem of the great system of law, and thirdly, to discuss the conceptual changes it causes in the General Theory of the issue of legal responsibility of intelligent non-human entities, the ultimate goal being to support the epistemological status of structural concept of legal responsibility that we have promoted in the scientific field in our previous works by completing the definition we gave to this concept.

Keywords: *knowledge of law, epistemological status of legal liability, systemic properties of legal liability, legal liability of intelligent non-human entities.*

JEL Clasification*:* K40, K42

1. The issue of legal liability in the horizon of scientific knowledge

The structure of knowledge, as well as the connection and the difference between the release of experimental laws and the formulation of theoretical laws, can be revealed by the empirical and theoretical concepts introduced by the logic of science as a result of the analysis of scientific language[2]. The treatment of knowledge in terms of the language in which it is performed highlights the fact that the stages of transition from experience to the formation of theoretical laws correspond to three types of statements, respectively three sublanguages: the language of observation that designates individual facts, the language of empirical constructions, whose statements records both individual facts and empirical correlations or experimental laws, which appear as generic facts, and finally, the language of theoretical constructions, which contains statements corresponding to the three types.[3]

In the sociological paradigm, the abstractly conceived society, which manifests itself in E. Durkheim in the form of a collective consciousness (external and constraining in relation to the individual) or deep structural matrices of thought or structuring frameworks, at macro or microsocial level, is the headquarters of the formation of our categories and general concepts[4]. In the opposite sense, another way of sociological analysis of knowledge, of neo-Kantian influence, focused its attention on the problem of the objectivity of social knowledge in the conditions in which the transition from the "constraining social" to the analysis of the individual knowing subject is made.[5]

Consequently, the knowledge of law cannot be situated in contemporaneity outside the tendencies manifested in science where there are connections, interferences, transfers of concepts, methods and techniques that receive an important role in approaching the legal phenomenon[6], epistemology is the tool to discover new laws of physical knowledge, then the Theory of Law, as a

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[2] Ștefan Georgescu, *Epistemologie,* Scientific and Pedagogical Publishing House, Bucharest, 1978, p. 194.
[3] Ibidem.
[4] Elena Popovici, „Cunoaștere și societate", in, Ștefan Georgescu, Mircea Flonta, Ilie Pîrvu, *Epistemologia cunoașterii științifice,* Academy Publishing House, București, 1982, p. 444.
[5] Ibidem
[6] Ion Craiovan, *Filosofia dreptului sau dreptul ca filosofie,* Universul Juridic Publishing House, Bucharest, 2010, p. 321.

synthetic legal science, appeals to epistemology[7] because: "the idea of examining by itself the activity of knowledge of law can first give the means of progress of the science of law, to improve the knowledge of this phenomenon." [8]

2. Abstraction and logical-formal operations in legal language

Ideally, the paradigm focused on legal concepts would tend to configure concepts and categories to build the most abstract conceptual systems, which would subsume all the particular situations, able to provide concrete legal solutions.[9]

By the meaning that the concepts have (or by the procedures according to which their organization is reached in the system), the right - viewed not in the purposes that command it, but in the means by which it is expressed, would appear in other words, in a specific kind, as a logical construction[10]. Therefore, we consider it necessary to present some distinctive clarifications between the terms, notions and concepts with which we operate methodologically in this epistemic field.

Thus, according to a common definition, "notions", "concepts" and "categories" are the fundamental elements of the language through which certain informational and knowledge contents are transmitted. The qualitative difference between *notion, concept* and *category* results from their degree or level of abstraction and generalization of the knowledge they express.[11]

Thus, the notion is the superior logical-semantic form through its degree of abstraction and generalization reflecting the essential, necessary and general features or characteristics of some objects, processes or phenomena (in our case of what we mean by "legal liability") or groups or classes of objects, processes, or phenomena. Knowledge is not identical with direct reality, but involves its creative processing. As the process of knowledge unfolds, the notion is enriched, synthesized or summarized, concentrated or condensed the results of a vast set of thought processes.[12] In other words, as an object of object knowledge, the notion "ceases to be a mere idea of the distinctive notes of the object: the notion-result is a complex idea, which sums up a long series of judgments and previous interferences." [13]

The notions therefore reflect a higher content of knowledge beyond the scope of the primary statement or name expressed in terms. Through their higher degree of abstraction and generalization, notions are superior elements of the language of scientific knowledge. In the field of scientific language, however, notions have a different quality and function of knowledge. They become the basic elements of definitions, conclusions, syntheses, generalizations and abstractions expressed in the form of concepts and categories, as elements specific only to this language of knowledge.

Finally, "concepts" and "categories" are the class of those notions or logical forms of reflection that represent the highest stage of abstraction and generalization of knowledge through which thinking rises from individual or particular to general, from concrete to abstract[14]. The concepts and categories are specific only to the scientific and philosophical language, their main characteristic being - as well as the notions - the fact that through them identical, repeatable informational contents can be reproduced and transmitted. In this sense, categories can be considered "the greatest genres, against which we no longer have a greater gender but a transcendent one, such as being."[15] And in

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[7] Gheorghe Mihai, *Fundamentele dreptului. Ordinea juridică,* Vol. I, 2nd ed., C.H. Beck Publishing House, Bucharest, 2009, p. 137.
[8] Ion Craiovan, *Filosofia...,op.cit.*, p. 323.
[9] Ion Craiovan, *Tratat de teoria generală a dreptului,* 3rd ed., Universul Juridic Publishing House, Bucharest, 2015, p. 246.
[10] Traian Ionașcu, Eugen A. Barasch, *Despre relativa independență a unor aspecte ale formei în drept,* „Juridice", no. 2, Year IX, 1969, p. 183.
[11] Gheorghe Boboș, *Teoria generală a dreptului. Note de curs, „*Dimitrie Cantemir" Christian University", Cluj-Napoca, 2008, p. 40, available online http://file.ucdc.ro/cursuri/8_1_do1101_Teoria_generala_a_dreptului_Bobos_Gheorghe.pdf, (consulted on 10.11. 2021).
[12] Traian Ionașcu, Eugen A. Barasch, *op.cit.*, p. 183.
[13] Ibidem, (footnote).
[14] Mircea Djuvara, *Teoria generală a dreptului – drept rațional, izvoare și drept pozitiv,* (republication), All Beck Publishing House, Bucharest, 1999, p. 34.
[15] Iovan Drehe, *Despre generarea categoriilor aristotelice şi câteva consideraţii cu privire la posibilitatea ipotezei dialectice,* p. 15, available online, http://www.schole.ro/files/schole_01_2010_art2_idrehe.pdf (consulted on 10.11.2021).

the same sense, "Categories are substantivized interrogative phrases. In the case of the categories, it is not about abstract terms, but rather about something concrete, in the conception of Constantin Noica."[16]

In principle, each science or philosophy develops its own conceptual or categorical apparatus with which it operates in the process of knowledge. Notions, concepts and categories are the basic elements of reasoning and judgments that are fixed and transmitted through sentences. These few insights into the elements of language are likely to draw attention to the fact that understanding and explaining the phenomenon of "law", the concept of law, as well as subordinate or correlative phenomena and notions, is not sufficient and complete if it remains only in optics. or the terminological (semantic) perspective. It can and must be doubled by the understanding and conceptual explanation of the items we operate with.

The conceptualization and definition of law as an approach to scientific knowledge implies, in turn, a broader and more complex approach to the conditions and determinants of the existence of the legal phenomenon in social life, but also to the concepts and other scientific constructs of the epistemic field in which we operate, for the purpose of in-depth scientific knowledge. In this sense, it is rightly considered that "some of the archetypes of epistemological-legal theory are legal knowledge, derived from the refinement of concepts and consists in reaching the knowledge of the object by extracting the necessary implications from the concepts offered by legal materials."[17] On the other hand, says the logician I. Petrovici, if "simple notions are those whose content consists of a single note, complex notions are on the contrary formed by the unitary union of elements, which, at least in the mental operation, can they separate from each other."[18]

It should be noted in this regard that the complex feature of a notion "is that it can be broken down into several attributes, not that it can be divided into several parts."[19] The following relationships are established between the parts and attributes of a complex: "the parts of an entire complex can also be decomposed into several attributes: its attributes, however, in any generic case taken, can only be decomposed into several parts. A part of the whole complex can have as many attributes as the whole, while it is understood that it will never be able to have a simple attribute of it."[20]

But if in Aristotle the categories are ten in number[21], and their organization in dyads or dialectical couples determines the couple "action-passion", and in the fourth category enters the "refractory categories", respectively substance, relationship, position and possession[22], the problem would be in knowing the ontological foundations of responsibility as a socio-human phenomenon.

3. The epistemological status of legal responsibility in the general theory of law and in the branch of legal sciences

The constitution, in the rigorous sense, of the legal sciences failed to avoid the tension between philosophy and scientific knowledge, in the process of autonomizing the legal phenomenon at the beginning of the 19th century. At this stage, philosophers continued to be concerned not only with the conceptual substantiation of law, but also with the elaboration of its categories, among which we find, along with the subjects of law, the legal relationship and the category of legal responsibility[23].

The general theory of law aims at the legal phenomenon at a level of maximum generality, and “as a generalized and essentialized reflection of legality, it deciphers the genesis and essence of

[16] Ibidem
[17] Sofia Popescu, *Unele aspecte privind conceptualismul juridic*, in, Cezar Tiță, et alii, (coord.), *In honorem prof.univ.dr. Nicolae Popa*, Sitech Publishing House, Craiova, 2010, p. 329.
[18] Ibidem, p. 155.
[19] Ibidem, 175.
[20] Ibidem, p. 177.
[21] Aristotel, *Categorii*, (Translation by Traian Brăileanu, translation revision, afterword and notes by Gheorghe Vlăduțescu), Paideia Publishing House, Bucharest, 2015, p. 5-53.
[22] Iovan Drehe, *op.cit.*, p. 21
[23] Ibidem.

law, its relations with other factors of structuring and regulating social relations, principles and categories of law, organization as well as the process of elaborating, interpreting, realizing and systematizing the law and, last but not least, the legal liability."[24] We find in this important configuration of the field of knowledge of the General Theory of Law elaborated by professor I. Humă, and the issue of legal liability, enunciated among the great themes of legal knowledge and, somewhat, in the mirror with all other subjects as if their final reflection.

From this perspective, the reduction that the same author practices in delimiting the epistemic field of the general theory of law and in relation to the branch legal sciences is also important. Thus, "compared to the particular legal sciences, the general theory of law does not examine the phenomenon of law, but establishes the categories valid for law taken in its systemic integrity. Therefore, the categories of legal norm, legal principle, legal content and form, subject of law, legal liability, etc., are found, with appropriate determinations, in the national system of all particular legal sciences."[25]

At the same time, the delimitations and correlations that Prof. I. Humă practices towards the philosophy of law are useful for us to find out the epistemological nature of legal responsibility: "the categorical edifice obtained by the general theory of law is not the result of a solipsistic approach the categories and principles concerned *ex nihilo*; they claim the ideas of norm in general, principle, content and form, subject and human responsibility in general, etc., ideas that are first embodied in philosophical order (ontological, logical, axiological). (…). Moreover, some categories of the general theory of law not only cannot be configured as non-philosophical, but also as neutral-philosophical, as they claim a certain philosophical conception. Here, the theoretical (scientific) approach of the category of legal liability cannot but differ depending on the philosophical horizon in which it operates. And this is because, let's say, in a way the legal responsibility crystallizes on the Thomistic idea of the absolute landmark of the Eternal Law in another in the case of the Kantian vision of responsibility based on self-determination, pure practical reason and the categorical imperative."[26]

Prof. I. Humă's opinion is not isolated, it is the expression of a contemporary interaction between philosophy and epistemology, in which the latter "is today practiced and understood in extremely varied ways depending on the intellectual, scientific and ideological climate, the philosophical tradition, of the more or less defined schools and currents to which it adheres or to which it reacts critically and operates the great delimitations, according to the disciplines or the levels of the scientific activity and construction on which it carries, according to its own resources of instruments, ways of research, theorizing and control (cutting of the investigated territory, objectification and ideotechnical stylization, etc.).[27]

The best example of the philosophical springs on which such a legal category is based is the definition of legal liability on the basis of fairness and fairness. The authors I.M. Anghel, Fr. Deak, M. Popa, considers equity a general rule of conduct which, being restricted to the rules of law, becomes a principle of legal liability, and all legal rules governing the application of the principle form the institution of legal liability."[28]

Therefore, on these epistemological bases, Prof. Gh. Mihai establishes that legal responsibility has a legal content on a political moral basis and not one with strictly legal relevance[29]. In this sense, the author points out that the function of legal liability lies in "ensuring the preservation, improvement, functionality of legal norms in force, in order to maintain, promote the the law corresponds to a model of its legal responsibility which, not affirming, the individual is held accountable, not in the name of values, as they are, but as caught by the legislator, whose political and legal reasons support his rules."[30] And on the other hand, the same important author shows us,

[24] Ibidem, p. 16.
[25] Ibidem, p. 17.
[26] Ibidem.
[27] Vasile Tonoiu, *Orientări și metode în epistemologia modernă*, in, Angela Botez, (coord.), *Euristică și structură în știință,* Academy Publishing House, Bucharest, 1978, p. 13.
[28] Ion M. Anghel, Francisc Deak, Mircea Popa, *Răspunderea civilă,* Scientific Publishing House, Bucharest, 1970, p. 10.
[29] Gheorghe Mihai, *Fundamentele dreptului. Teoria răspunderii juridice,* vol. V, C.H. Beck Publishing House, Bucharest, 2006, p. 56.
[30] Ibidem.

the legislator builds the normative system in an axiological space, so that "in the law he adopts there is as much truth, justice and wisdom as objective situations and understanding by him, trained in the fabric of general and particular interests of these situations." [31] Noting that the issue under discussion is "legal liability" and not " liability of positive law", the author concludes that the first is a "technical category" and not a "conceptual" one.[32]

But, from an axiological perspective, responsibility is such a concept, in terms of its relationship with other general forms of responsibility, namely, moral and political responsibility, all of which are etiologically related to responsibility[33]. At the same time, not only the quantitative sum of its structural elements revealed by the legal institutions of the branch of liability, the author makes a strictly legal delimitation between these legal institutions (forms of legal liability that are revealed only in terms of positive law) and the impossibility of a legal institution. "Generic" of liability, which, for these reasons, places it in the plan of the Foundations of Law, as a metacategory of law. [34]

This approach has only one equivalent, we believe, in the conception of Prof. D. Mazilu, for whom: "the evolution of the violation of the law, their intensity and gravity, clearly stating the liability for these infringements, on the one hand, implying the prompt application of the sanctions imposed in each specific case, on the other hand. (…) Both in terms of increasing the intensity and gravity of infringements of the law and in terms of reducing or reducing such infringements, legal liability is intended to protect law and order; the rights and freedoms of members of the community, life, health and integrity of the person; to guarantee the normal development of coexistence in society."[35]

Also, for the author Gh. Avornic, legal liability is a general category of law, which necessarily accompanies the law in time and space, "as a guarantee of its assertion", and from this perspective interests all branch legal sciences. In Prof. I. Craiovan's Treatise on General Theory of Law, legal liability is treated at the level of the legal concept, "as a relationship established by law, by the legal norm, between the author of the violation of legal norms and the state, represented by the be it courts, civil servants or other government officials."[36]

For Prof. M. Bădescu, responsibility and liability are "concepts" with different spheres, but also interfering, appreciating that although there are qualitative differences between them, they become "institutions" in the field of legal relations, and in relation to social agents and with their actions, the two terms represent "dimensions" that intertwine and intercondition.[37]

The manual of the General Theory of the Law of the Collective led by Prof. N. Popa, treats responsibility with the epistemological connotation of "notion", as "an essential component of any form of social organization" and problematizes it in the sense offered by M. Eliescu, as affecting the law, the general interests and the particular interests of a natural or legal person or his property, as a result of the commission of an unlawful act. [38]

In another well-established opinion belonging to Prof. L. Barac, she argues that, if legal liability cannot be reduced to a simple obligation, its content cannot be identified only by the notion of a legal relationship of coercion, which is likely to facilitate rather the meaning of its contents, than to define its essence[39]. Consequently, as an expression of the need to qualify legal liability from the perspective of the General Theory of Law, for which it is a legal institution with systemic organization and its own principles; of achieving a much higher level of generalization and abstraction, proper to definitions that tend to cover a vast field of reality; and the determination of the overall aims of the institution, in relation to the requirements of contemporary law, crossed by the imperatives of public order and the common good, the author advances the following definition: "legal liability is the legal

[31] Ibidem, p. 47.
[32] Ibidem, p. 48.
[33] Ibidem, p. 72.
[34] Ibidem.
[35] Dumitru Mazilu, *Tratat de teoria generală a dreptului,* Lumina Lex Publishing House, Bucharest, 2004, p. 387.
[36] Ion Craiovan, *Filosofia...,op.cit.,* p. 433.
[37] Mihai Bădescu, *Concepte fundamentale în teoria dreptului*, V.I.S. Print Publishing House, Bucharest, 2003, p. 160-161.
[38] Nicolae Popa, Mihail-Constantin Eremia, Simona Cristea, *Teoria generală a dreptului,* 2nd ed., All Beck Publishing House, Bucharest, 2005, p. 288.
[39] Lidia Barac, *Răspunderea și sancțiunea juridică,* Lumina Lex Publishing House, Bucharest, 1997, p. 40.

institution that includes all legal norms that arise in the sphere of specific activity carried out by public authorities under the law against all those who violate the law or ignore the rule of law in order to ensure compliance and promotion of law and order"[40].

The author E.-C. Verdeș is not even more determined regarding the terminological level of legal responsibility, which she also treats epistemologically at the level of notion, being aware of "the importance of the category of legal responsibility within the legal system."[41] The author derives the importance of the notion or category of law studied, rightly, from the fact that: "the determination of legal liability is not an exclusively legal act. Not only evaluations of a strictly legal nature, but also evaluations of a moral, social, ethical, etc. nature are interfered with in the act of legal liability. these assessments, which are not strictly legal in nature, but accompany the legal act establishing legal liability, intervene as factors in the form of liability reflected in the sanction applied."[42]

On the line of establishing the epistemological importance that the Romanian legal doctrine attaches to the issue of legal liability, the quoted author exemplifies the study of the author I. Gliga, who treats it from the positions of a general category of law, "taking into account its place in the law."[43].

For Prof. Gh. Boboș, the epistemological level of legal responsibility can only be that of a general category of law. Based on doctrinal views of (still) Soviet law, the author points out that the imposition of legal sanctions involves a conviction by the company against a guilty person, as well as a deprivation of personal, pecuniary or rights, such as imprisonment, fine, the prohibition of the right to exercise a certain profession in the future, etc., and "since the realization and application of these deprivations is contrary to the will of the agent, they can be done only with the help of an apparatus composed of special state organs."[44]

Prof. S. Popescu's opinion can be included in the same category, which argues for "the examination of legal liability in the light of the general theory of law, philosophy of law and legal sociology - overcoming the boundaries, otherwise natural and necessary - of the approach in branch legal disciplines promote in-depth research."[45] But the merit of Prof. S. Popescu lies in the fact that he identifies the importance of legal responsibility, despite the epistemological qualification he attributes to it, that of legal institution, as the "key" to the entire legal system. From this perspective, its research must be interdisciplinary, of a sociological-legal nature, as a result of the extent to which "the law cannot exercise its influence in society, only insofar as it succeeds in identifying the person responsible and establishing its responsibility; lastly, that the effectiveness of legal liability conditions, to a greater or lesser extent, the establishment, re-establishment and survival of the rule of law."[46]

In the case of the more recent authors of the general theory of law, they prove to be even more reluctant to establish the epistemological level of legal liability.

Thus, F. Mangu points out that, traditionally, in the science of law, the emphasis has been on the institution of legal liability - obviously using the term "legal liability" -, being blurred, the other elements that exceed this object of specialized research[47]. Then, after the appearance of the state, the author points out, "the society operates only with the concept of legal liability, (correlatively) with another concept with a much broader, more comprehensive content, which includes the institution of legal liability, it is the concept of social responsibility."[48] Finally, in line with most legal doctrine, the author cites legal liability in the categories of General Theory of Law, which he credits with the following definition: "complex of related rights and obligations, which - according to the law - is born

[40] Ibidem, p. 40-42.
[41] Ecaterina C. Verdeș, *Răspunderea juridică. Relația dintre răspunderea civilă delictuală și răspunderea penală,* Universul Juridic, Publishing House, Bucharest, 2011, p. 64.
[42] Ibidem, p. 66.
[43] Ibidem, p. 67.
[44] Gheorghe Boboș, *Teoria generală a dreptului,* Dacia Publishing House, Cluj-Napoca, 1994, p. 259.
[45] Sofia Popescu, *Teoria generală a dreptului*, Lumina Lex Publishing House, Bucharest, 2000, p. 300.
[46] Ibidem.
[47] Florin I. Mangu, *Răspunderea civilă. Constantele răspunderii civile,* Universul Juridic Publishing House, Bucharest, 2014, p. 8.
[48] Ibidem.

as following the commission of an illegal act and which constitutes the framework for the realization of the state coercion by applying legal sanctions in order to ensure the stability of social relations and to guide the members of society in the spirit of respecting the rule of law."[49]

In his turn, Prof. R. Ploscă is limited to showing that languages of Latin origin use the term liability as a "general category" with multiple meanings and values that go beyond the scope of law, and to outline the "notion" of legal liability are necessary some correlations with correlative categories, such as liability, sanction and guilt.[50] The author C. Tiță opts for the status of "notion" of legal liability, which he defines as a legal relationship.[51]

The only author who has captured the dimension of epistemological clarifications of legal responsibility is Prof. D. Baltag, an exponent of the science of law in the Republic of Moldova. Making the appropriate distinctions between the qualifier of legal institution, proper to positive law and that of legal category, proper to the general theory of law - which he considers the most representative knowledge platform for knowing this extremely complex legal reality, which ensures the necessary connections with philosophy, sociology and other socio-human sciences, without whose contribution legal liability could not be understood in depth in its multiple meanings and foundations - the quoted author provides an important definition of legal liability, which is "a category by which the obligation of the subject of as responsible for bearing the consequences of non-compliance with a legal rule in force in order to restore the rule of law in society."[52] In this sense, he points out that legal liability must be investigated in connection with the other categories of social responsibility, i.e. political, moral responsibility and the concept of responsibility. Thus, the author points out pertinently that, on the one hand, an analysis of the particular forms of legal liability "will not lead us to the universally valid concept" and, on the other hand, "legal liability derives from the principles of law, and its species is derived from the principles of the branches of law."[53]

Generalizing at doctrinal level the options of the authors he considered in compiling a more comprehensive definition of legal liability, the same author issued the following epistemological formula in terms of the general theory of law: "legal liability is a category by which the obligation of the subject as responsible for bearing the consequences of non-compliance with a legal rule in force in order to restore the rule of law in society."[54] For a disciple of Prof. D. Baltag, legal liability is defined as "abstract notion", but also as an institution, because it contains a set of principles, and all forms of legal liability have the same functions and purposes, regardless of the object of regulation."[55]

Thus, whether taken as a notion, category or legal concept, in epistemological terms, we consider that legal liability has, at first glance, three characteristics: first, it is *abstract* (as much as social responsibility);[56] secondly, it is *multi-epistemic*, insofar as its foundations derive its sap from different normative orders or cannot be explained in isolation from them, morality, ethics and law constantly interfering, thus guiding human action socially; third, it is *general* and *complex*.[57] In this sense, legal liability qualifies for the attribute of abstraction because like notions such as state, family, master, honest, polite, "are abstract notions, for the word that all these are systems and kinds of relationships, not intuitive content as elaborate."[58]

In the sense of interdisciplinary correlations, - interdisciplinarity which is the reflection of the variety of connections with other epistemic areas from which it derives its foundations -, legal responsibility being a reflexive notion, later conceptually configured it separates itself by "a more or less spontaneous detachment of the essential parts, at the composition of these notions the material

[49] Ibidem, p. 11.
[50] Roberta Ploscă, *Teoria generală a dreptului,* 5th ed., C.H. Beck Publishing House, Bucharest, 2020, p. 322.
[51] Cezar Tiță, *Teoria generală a dreptului,* Universul Juridic Publishing House, Bucharest, 2020, p. 250.
[52] Dumitru Baltag, *Teoria răspunderii juridice: aspecte doctrinare, metodologice și practice,* ULIM Publishing House, Chișinău,2007, p. 135.
[53] Ibidem, p. 124.
[54] Ibidem, p. 135.
[55] Oleg Chicu, *Legitățile evoluției instituției răspunderii juridice (aspecte istorice, teoretice, practice),* PhD thesis, State University of Moldova, Chișinău, 2009, p. 35, http://www.cnaa.md/thesis/14623/, consulted on 10.11.2021.
[56] Andrei Sida, *Teoria generală a dreptului,* "Dimitrie Cantemir" Christian University Publishing House, Cluj-Napoca, 2003, p. 237.
[57] Ibidem.
[58] Ion Petrovici, *Teoria noțiunilor*, 2nd ed., „Jockey Club" Publishing House, Bucharest, 1925, p. 146.

evidence of a union of elements does not predominate, but their latent correlation."[59]

In the Commonwealth legal literature there is no concern focused on establishing an epistemological level of legal responsibility in terms of the General Theory of Law. For example, for Peter Cane, liability is a term used in many ways, which plays an important role in both practical reasoning in law (where the term is often used as liability, as it is imperatively linked to a legal sanction) as well as in morality, which is why this author prefers to refer to it as a "complex concept."[60]

In Herbert L.A. Hart, the terms *responsibility* and *liability* "cover different but related ideas"[61], and the author considers that they are not descriptive, but are either assumptive or have a function of assigning legal responsibility for the acts committed. The English philosopher also considers that in a specific context legal liability and liability have the same meaning to claim that an individual is liable for an action or injury if his connection with the action or injury is sufficient from the point of view. of the law to be punished for it.[62]

4. The systemic properties of legal liability

Therefore, we can state, in the spirit of the same epistemological approach, that, within the legal system, the form of legal liability manifests mainly operational valences.[63] As we have shown in another paper, as far as we are concerned, we associate these operational valences with certain properties of the legal liability[64] that it manifests in its systemic and intra-systemic relationship and development. These properties differ both from the functions of legal liability and from the conditions of legal liability, which have the character of generality for all its forms, regardless of their legal nature.

As a positive justification, Prof. Gh. Mihai noted that legal liability reveals the first two attributes (properties), which are manifested in its capacity as a subsystem of the positive law system and only in connection with its structure and purposes, namely: duration and organicity, which consists in the continuity of manifestation and devolutive development between certain temporal limits and through technical-procedural specificities that are relevant only in connection with the concrete systems of law, "related to the branches of law of the same system of law."[65]

In developing this assertion, we appreciate that the duration of legal liability is determined by the action of Romanian law in time and space. Within the period of action of the Romanian law in time and space, the legal liability intervenes and manifests itself between the date of committing (with guilt) the wrongful act and the terms of its prescription, which differ from branch to branch, or between the date of committing the wrongful act and, in the case of criminal conviction or civil obligation to indemnify, until the effects of the criminal conviction are exhausted and the convicted person is legally rehabilitated to a criminal punishment, or until the full execution of the civil damages by the defendant. In turn, the organicity of legal liability translates into its organization and functioning according to the general principles of law, adapted to the branch principles in which it operates and, in carrying out its specific functions, through its principles of legal institution at the forefront of concrete realization. of the purposes of the law.

Complementarity is the third systemic property of legal liability, more precisely of its normative forms established by law. This property of the forms of legal liability which, in our opinion, could not exist if they did not have the quality and would not manifest themselves as components of the subsystem of legal liability and, therefore, as elements of the Romanian positive law system. Complementarity, as a systemic property of the forms of legal responsibility, is translated in the legal

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[59] Ibidem, p. 147.
[60] Peter Cane, *Responsibility in law and morality,* Hart Publishing, Oxford-Portland, Oregon, USA, 2002, p. 2-3.
[61] Genoveva Vrabie, Sofia Popescu, *Teoria generală a dreptului,* „Ștefan Procopiu" Publishing House, Iași, 1993, p. 142.
[62] Herbert L.A. Hart, *Punishment and Responsibility. Essays in the Philosophy of Law,* Oxford University Press, 1970, p. 222.
[63] Ibidem, p. 229.
[64] Lucian-Sorin Stănescu, *Corelația dintre ramurile de drept, formele răspunderii juridice şi capacitatea de cogenerare reciprocă*, „Dreptul", no. 9/2017, p. 49-77.
[65] Gheorghe Mihai, *Fundamentele dreptului…,* Vol. V, *op.cit.,* p. 87

space by their cumulative action. As far as we are concerned, we consider that the property of complementarity of the forms of legal liability is, in fact, only the obverse, the visible interface, of procedural nature, of an intrinsic property of them, namely, the *associativity*.

This matrix of complexity is maintained and even amplified in the case of newer types of legal liability, such as those in environmental law. Thus, as summarized by Prof. M. Duțu, the repair of environmental damage (ecological damage), damage to the environment (pure ecological damage) and damage to persons or property through the polluted environment, harmful actions and disasters, is done through several legal regimes, as follows: tortious civil liability, under the terms of the Civil Code (with subtypes: liability for own deed, based on guilt, independent liability for misconduct, liability for abnormal neighborhood disturbances); environmental liability (regulated by Directive no. 2004/35/EC, transposed into Romanian law by Government Emergency Ordinance no. 68/2007 and Article 95 of the Government Emergency Ordinance, no. 195/2005); objective liability of legislative origin and liability for damage caused by defective products.[66]

Despite the fact that all these distinct regimes of legal liability presuppose their own rules of employment and achievement, they also develop a new variant of cumulation. Thus, "in addition to the specific mechanism of prevention and reparation of environmental damage, the liability of the polluter may be engaged on the basis of various legal grounds, the victim having the right to choose between liability for fault, liability for deed or theory of neighborhood disturbance."[67] As such, we consider that the property of associativity and complementarity of the forms of legal liability is based on the existence of a general property of the system elements, namely, the related functioning, as well as on the specific property of the branches of law within the Romanian positive law system to "legally hang from each other"[68], which makes the methodological loans much easier.

The fourth system property that legal liability develops through the ways of expressing its particular forms in the positive law system has been defined as *transversality*. The foundations of this property consist in the quality and position of the forms of legal liability of legal institutions, ie secondary structural elements within the positive law system, which bring together a set of rules governed by a common object and method, but which are impossible to regulate within a single branch of law. This property is manifested by the forms of legal liability within the system of positive law under the action of complicating the new types of illicit acts and, consequently, of the legal relations whose objects they constitute, which has determined a process of adaptation and search of the appropriate procedural means of resolution from the perspective of legal liability.

The process of adapting to change involves the ability and tendency of forms of legal liability to break the patterns and boundaries of the branches of positive law and to develop rather horizontally, perpendicular to their topology within the system, never substituting for each other, but through methodological borrowing and institutional interference.

These structural interactions between the forms of legal liability and the branches of law within the system of positive law determine an important change of vision on the correlative structures between these two categories of systemic elements under the action of factors complicating social life and the law system itself. Thus, over the tree-type structural model under which the law is traditionally presented, with its branches of positive law, which "legally hang between them", to repeat the style figure of M. Djuvara, overlaps another structure of modular (or network) relationships that are generated with a whole new dynamic between the forms of legal liability and that is transversal in relation to the initial tree system.

5. Human and non-human actors with artificial intelligence in legal relations and the issue of legal liability

Traditionally, in the general theory of law, legal liability has been and continues to be

[66] Mircea Duțu, *Considerații în legătură cu delimitarea și corelarea sistemelor (regimurilor) juridice de prevenire și reparare a daunelor ecologice în dreptul român*, „Dreptul", no. 3/2013, p. 261.
[67] Ibidem.
[68] Mircea Djuvara, *op.cit.*, p. 37.

defined in relation to the person-in-law and the act that he or she has either committed or is in a relationship of responsibility to. and with the legitimate social reaction that comes from society, as a measure to ensure equality of satisfaction of individual interests and, thereby, to ensure social cohesion.[69] This deeply anthropocentric paradigm begins with the rule *neminem laedere* and corresponds to realities known "since ancient times", which for a long time was "natural to be so, because the issue of responsibility arises wherever we encounter human activity, the existence of certain forms of conduct, including all rules of law."[70]

To a large extent this majority approach responds to a multi-century experience, consistent in its essence, in which the evaluation of human behaviors as a result of direct human interaction was based on a rather small effective scope of action, for a limited time. setting the objectives and the responsibility of the agent of the action, as well as the control of the circumstances[71] in which the deeds of the human agents took place.

The appearance in the social life of Artificial Intelligence creates a paradigm shift not only in technology,[72] but also in the physiognomy of legal responsibility, as well as the foundations of its knowledge. It produces cleavages on all the conditions of manifestation of legal liability in positive law, as well as on the concepts on which they are based, respectively, the subjects of legal liability, prohibited act or conduct, consequence, prejudice, damage or negative consequence produced, guilt, causal link between the active subject, the deed and the socially dangerous consequence and the non-existence of circumstances that exclude legal liability.

The broadest meaning of the notion of conduct in law, which so far concerns only the actions or inactions of human beings, is that of will and conscience objectified by positive law, and the defining note of this conduct is the objectification of conscience in deliberate acts and deeds[73]. If we can now talk about a "behavior" of artificial intelligence systems and several models of criminal prosecution[74], from the perspective of the general theory of law and, in particular, what is of interest is, indeed, the answer to the question that Prof. Laura Maria Stănilă also launched in the scientific field, namely: "Does society need a new subject of law?"[75]. And to this question we will add the question of whether law will allow and recognize the entry of a new actor in legal relations, which will produce profound conceptual changes in the general theory of law and, in particular, in the general theory of legal liability.

6. Conclusions

As we have argued in another paper[76], we consider that, from an epistemological point of view, legal responsibility has the meaning of a structural concept, which belongs to "another type of discourse - epistemological or metatheoretical."[77] However, in order to overcome the stage of research on legal liability, we have discussed new approaches and issues, which traditionally do not appear in the formulation of scientific statements about it,[78] namely the properties that legal liability manifests as a subsystem of the legal system and, on the other hand, the issue of intelligent non-human entities as subjects of law and their legal liability.

Thus, to the extent that the general theory is challenged to formulate answers and theories regarding the recognition of subjects other than law, taken individually or in collective entities, we

[69] Dan Banciu, *Control social și sancțiuni sociale,* Hyperion XXI Publishing House, Bucharest, 1992, p. 42.
[70] Ion M. Anghel. Francisc Deak, Marin F. Popa, *op.cit.*, p. 11.
[71] Hans Jonas, *The Imperative of Responsibility – In Search of an Ethics for the Techonological Age*, The University of Chicago Press, 1984, p. 5.
[72] Laura Maria Stănilă, *Inteligența artificială, dreptul penal și sistemul de justiție penală: amintiri despre viitor,* Universul Juridic Publishing House, Bucharest, 2020, p. 36.
[73] Gheorghe Mihai, *op.cit.*, p. 173.
[74] For details and nuance remarks, see Laura Maria Stănilă, *op.cit.*, p. 106-128.
[75] Ibidem, p. 102.
[76] Lucian-Sorin Stănescu, *Prolegomena for a definition of the structural concept of legal liability*, „Perspectives of Law and Public Administration", Volume 10, Issue 1, March 2021, p. 124-139.
[77] Vasile Tonoiu, *op. cit.*, p. 15.
[78] Ibidem, p. 15.

consider it appropriate to make an amendment to the conceptual definition we have given of legal liability in the above-mentioned work as follows: "legal liability is an end of the law, constituted in a system of rules and judicial procedures, by which the person in law who committed an illegal and imputable legal act provided by law, or who is responsible for it, regardless of whether comes from a non-human entity without reason or from an intelligent AI system, causing harm to a subjective right or a legitimate interest of another, at a particular or general level, or has produced a social risk, is legally and legitimately constrained by the state courts to bear a legal sanction, fair and proportionate, which restores or compensates a given legal situation so that the legal order of the company is protected, respected and reaffirmed."

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