PROLEGOMENA FOR A DEFINITION OF THE STRUCTURAL CONCEPT OF LEGAL LIABILITY

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Abstract

In an epistemological horizon still unstable in terms of knowing the meanings and interdisciplinary valences of legal responsibility we will try in this study to formulate a new proposal regarding the level of abstraction of this metatheoretical concept. Our attempt is all the more difficult as professor D.C. Dănișor outlined the limits and conditions of legalizing concepts, the scientific impasse being that legal doctrine and jurisprudence tend to use illegal concepts in legal argumentation, without ensuring "proper reshuffle of in order to transfer them from one sphere of knowledge to another." In the following we will try to show the correlations that the idea of legal responsibility maintains with the philosophical foundations of law, with its original values, with its linguistic and ethical meanings, with man as reality and anthropological and sociological subject in permanent relations with the social community and, especially, with the supreme purpose of law - human dignity, starting from a series of definitions and descriptions that have been imposed in the general theory of law. Finally, in order to overcome the stage of research on the level of knowledge of the meanings, functions and epistemic values of legal liability, we will propose a new concept, namely the structural concept of legal liability, which traditionally does not appear in the formulation of scientific statements whereas - as professor Sofia Popescu observed - "these concepts allow a further refinement, in even more abstract concepts, the conceptual system allowing legal solutions for any new situation."

Keywords: *legal liability, structural concept, definition, epistemological sources, correlative categories.*

JEL Classification: K40, K42

1. Introduction

The notion of "legal liability" is a category of maximum generality and, from this perspective, belongs to the Theory of Law[2] because only this synthetic science is meant to highlight the common elements of the definition of law, its foundations, its implementation, therefore the actual realization of the right[3]. Being meant to ensure both the application and the actual realization of the law together with or through the legal sanction, the legal responsibility is inextricably linked to the purposes of the law[4] as a whole in its systemic organization.

From this perspective, the interdisciplinary examination of the idea of "legal liability" is of the utmost importance[5] for the general theory of law because "with liability ends any legal issue."[6]

If until recently, the task of elaborating a theory of liability and legal sanction was divided between the branch legal sciences, whose particular concerns and efforts led to the shaping of forms of legal liability and the highlighting of certain types of legal sanctions[7], activity having more of an applicative character in jurisprudence, at present, the issue of legal liability has a methodological character, and in the future it will have at least a conceptual character[8], outlining new aspects, valences and correlations of this fundamental institution that crosses the whole law.

2. Defining legal liability by legal signifiers

As far as we are concerned, we find that from the perspective of the general theory of law, the notion of legal liability has received a multitude of qualifications through other smaller legal

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[2] Gheorghe Mihai, *Teoria dreptului,* 2nd ed., Ed. All Beck, Bucharest, 2004, p. 141.

[3] Lidia Barac, *Răspunderea şi sancţiunea juridică*, Ed. Lumina Lex, Bucharest, 1997, p. 3.

[4] Ibid.

[5] Gheorghe Mihai, *Fundamentele dreptului, Teoria răspunderii juridice,* Vol. V, Ed. Universul Juridic, Bucharest, p. 78.

[6] Sofia Popescu, *Teoria Generală a Dreptului*, Ed. Lumina Lex, Bucharest, 2000, p. 299.

[7] Lidia Barac, *op.cit.*, p. 3.

[8] Dumitru Baltag, *Teoria răspunderii şi responsabilităţii juridice,* Ed. ULIM, Chişinău, 2007, p. 3.

institutions or conceptual terms, the content of which is more or less clarified. But the unresolved issue of any type of definition is "limiting the perspective on the definite", each definition alternative bearing its unilaterality and being susceptible to criticism[9].

Clearly, however, neither the notion, nor the category of legal liability, and therefore neither the legal institution by which it is expressed, can be reduced to the content of the notion of obligation and "its meaning is not revealed by association with the notion of report legally binding."[10]

For example, professor Sofia Popescu investigates the general legal liability as a legal relationship either of coercion, whose object is the sanction, or a complex of rights and obligations. Thus, if legal liability is a legal relationship of constraint, its constitution is due to a single will, because no one agrees to trigger a social relationship whose object is to be held accountable; or, the legitimate question is, what would be the basis of such a report than the obligation of the subject to perform the duty that replaces a previous duty not fulfilled? If, on the contrary, legal liability is a complex of rights and obligations, then criminal liability must be so, which would contradict the criminal doctrine[11]. Later, in a more recent collective work, professor Sofia Popescu, expressed her conviction that "the extension of the notion can favor the depth of research."[12] Consequently, adding to the analysis and the sociological perspective on the basis of legal liability, the authors consider that this is a form of negative social reaction, repression, coming from society because a certain action attributable, in principle, to an individual, is both reprehensible[13].

In the vision of professor Gheorghe Mihai, the category "legal liability" designates the reality of the obligation of a subject of law to bear the consequences of his wrongful act, provided by the law in force, which infringed one subjective right of another[14].

The following constants follow from this definition: whatever the subject of law, he is responsible for his acts; the subject of law assumes the consequences that it triggers, regardless of their nature (legal or illegal); if these consequences are contrary to the law, he assumes guilt or is blamed, in accordance with the law in force, whether his acts are committed intentionally or through guilt; the subject is obliged to bear the respective consequences because he endangered (infringed) a subjective right, exceeding the legal limits of his freedom.[15]

Developing the notion of "liability rights", which responds simultaneously to the plurality of legal procedures and regimes in which the aim is to repair a variety of damages, professor Sofia Popescu points out an extremely important aspect for the complex epistemological status of the category of legal liability, and which consists in the fact that they are based on the idea of solidarity and as a goal, an equitable distribution of the tasks of repairing the damage, related to activities recognized as socially useful[16].

We observe from these considerations that the respective authors tried to detach certain constants that characterize the concept of legal liability and are located at an epistemic level superior to a single legal institution, which taken *ut singuli* would not have the capacity to express the complexity of one of the essential aspects of law. "It is essential to remember in order to define the legal responsibility that it represents - says professor Sofia Popescu -, the notion that designates the repressive reaction from society, to a human action that contravenes a rule, an action that is mainly attributable, the individual".[17]

Note also in this category of definitions the observation of the group of authors led by professor N. Popa, unfortunately not supported by other arguments, according to which "the purpose of liability is to preserve the system of relations"[18], which introduces the notion of legal liability in

[9] Gheorghe Mihai, *Fundamentele…, op.cit.,* Vol. V, p. 81.
[10] Ibid, p. 78.
[11] Ibid, p. 81.
[12] Sofia Popescu, Maria-Luiza Hrestic, Alexandrina Șerban, Radu Stancu, Mădălina Viziteu, *Teoria generală a dreptului – Curs universitar,* Ed. Pro Universitaria, Bucharest, 2016, p. 330.
[13] Ibid, p. 333.
[14] Gheorghe Mihai, *Fundamentele…, op.cit.,* Vol. V, p. 83.
[15] Ibid, p. 84.
[16] Sofia Popescu, *Teoria generală..., op.cit.,* p. 301
[17] Ibid, p. 303
[18] Nicolae Popa, Simona Cristea, Mihail-Constantin Irimia, *Teoria generală a dreptului*, 2nd ed., Ed. All Beck, Bucharest, 2005, p. 288.

the equation relations of the society that the responsibility is called to preserve.

Also another useful observation for the approach of defining legal liability is the one belonging to the author E.-C. Verdeș, according to which, the concrete determination of legal liability presupposes not only evaluations of strictly legal nature, but also evaluations of moral, social, ethical nature, which accompany the legal act establishing liability and intervene as factors of circumstance of the form of liability reflected in the concrete sanction applied.[19]

We thought it important for the operation of defining legal liability and the approach of professor L.-R. Boilă, who refers to the interdependencies between forms of social responsibility, especially with moral liability, showing that committing the harmful act violates both a legal norm, as well as a moral norm, as a reaction of disapproval to the conduct adopted by the delinquent, likely to prejudice the subjective rights or legitimate interests of others[20].

In a certain hierarchy of legal institutions through which legal liability was defined, respectively through the legal relationship, it is based on the idea of coercion which has as its object the legal sanction and have as a starting point the observation of the important Romanian theorist M. N. Costin, who surprised that this category of law refers to two distinct components, namely: the wrongful act and the legal sanction. Consequently, this category refers to: "the set of related rights and obligations which, according to the law, arise as a result of state coercion, by applying legal sanctions, in order to ensure the stability of social relations and guide the members of society in the spirit of observing the norms of law"[21]

From here, professor Gheorghe Mihai concludes that the legal responsibility, in this case, being the expression of the content of the legal relationship established between the state, represented by its bodies with determined attributions and the persons who violated the legal norms, it is a complex of rights and obligations[22] incumbent on the two parties engaged in this legal and social relationship.

Among the representatives of this current in defining legal liability we mention professor Gh. Boboș for whom, legal liability is "a legal relationship of constraint, and the legal sanction is the object of this report"[23] and professor Gh. Avornic, in whose conception the legal category in question is: "a special legal report, which consists in the obligation to bear the sanction provided by law as a result of an imputable legal fact; this obligation being framed in a complex content, complemented by the corresponding, related and correlative rights."[24]

In another paper by professor Gh. Boboș, made in collaboration, although the authors ultimately opt for a definition of legal liability derived from the classic pattern of M. N. Costin, respectively "complex of legal rights and obligations", they I propose, albeit in a rather eclectic way, several characteristic elements of this "institution of law"[25].

More specifically, the cited authors state that “the legal responsibility would be for the person who committed an unlawful act to suffer consequences that are inappropriate for him: a deprivation applied to that person, a state constraint by which the person in question is obliged to execute the requirements of law; a measure of coercion to the observance of the norms of law, applied by the state organs against those who commit illicit deeds; liability is, first of all, the sanction of the illicit deed, the consequence established by law for committing such an act; an expression of the condemnation by the state of an illicit conduct that consists in an obligation to endure a deprivation”[26]. In the same family of definitions of legal liability can be included the definition of the authors I. Vida and Cr. Vida for which the legal liability is a form of social coercion which consists in obliging the

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[19] Ecaterina-Carmen Verdeș, *Răspunderea juridică: relația dintre răspunderea civilă delictuală și răspunderea penală,* Ed. Universul Juridic, Bucharest, 2011, p. 66.
[20] Lacrima-Rodica Boilă, *Răspunderea civilă delictuală subiectivă*, 2nd ed., Ed. C.H. Beck, Bucharest, 2009, p. 23.
[21] Gheorghe Mihai, *Fundamentele..., op.cit.*, Vol. V, p. 76.
[22] Ibid.
[23] Gheorghe Boboș, *Teoria generală a dreptului,* Ed. Dacia, Cluj-Napoca, 1994, p. 259.
[24] Gheorghe Avornic, Elena Aramă, Boris Negru, *Teoria generală a dreptului,* Ed. Cartier Juridic Chișinău, 2004, p. 488.
[25] Gheorghe Boboș, Gheorghe Vlădica Rațiu, *Răspunderea, responsabilitatea și constrângerea în domeniul dreptului,* Ed. Argonaut, Cluj-Napoca, 1996, p. 13.
[26] Ibid, p. 13.

subject of law by the competent state and social authorities to repair the negative consequences of his illicit act under the law.[27]

As a species of this kind of definitions of legal liability, the doctrine mentions the author Dan Ciobanu, in whose view, this is a situation derived from a previous legal relationship, being a new legal relationship that has its source in an illegal act.[28] More precisely, the unlawful act, as the object of an original legal relationship, determines the establishment of a new legal relationship, the object of which would be this time: "the obligation of the subject to fulfill the duty that replaces a previous unfulfilled duty."[29] From a legal point of view, this opinion is not exactly irrelevant. In fact, in our opinion, it makes the connection with the dichotomy practiced by professor Gheorghe Mihai between the quality of having legal responsibility and that of being held accountable.

Therefore, to be the holder of legal liability means to be subject to it. However, as is well known, in order to be considered a subject of legal liability, the individual or organizational person must have the capacity to answer, in other words the ability to act freely and consciously, a category which is not to be confused with that of legal capacity, i.e. that vocation of the person to become the subject of a legal relationship.[30] The ability to respond is the ability of the person entitled to properly assess the consequences of his act and to understand the obligations incumbent on him, and therefore to bear the sanctions provided by law and applied by the competent bodies after the act.[31] Correspondingly, the ability of one person to be legally liable for the wrongful act is the ability of another person to be held legally liable, an action permitted only in (and by) the competent courts; as a result, we are faced with two distinct legal categories: the ability to answer and the ability to prosecute: "the one who is liable has in court the legal instrument to do so."[32]

From here, professor Gheorghe Mihai observes that from the point of view of the content of the category of legal liability, it consists in the legal relationship established between public authorities empowered to prosecute, on the one hand, and those who violated the law in (thus violating an imperative provision or exceeding the limits of the permit), in which the former are invested with the right to sanction, having the obligation to do so within the limits of the provisions in force, and the perpetrators have the obligation to execute the sanction and the right to legal limits.[33]

As far as we are concerned, we go further with this reasoning and conclude that the legal relationship within which this complex of rights and obligations is manifested is essentially of a procedural nature, while the breach of the rule triggers a substantial legal relationship of law, in depending on the nature of the rule violated. Thus, the (criminal) prosecution is necessarily manifested as a result of the commission of the illicit (criminal) act and "justifies the state directly for the exercise of the coercion and through means justifies the stability of a legal order"[34], and the operation takes place in a report procedural legal (criminal), which has as object the application of the punishment provided by law, i.e. the realization of the state coercion.

In his turn, professor I. Craiovan defines legal liability as a legal relationship, but given the place and role of legal liability in the positive law system, the relationship is established by law, the legal norm between the perpetrator and the state, represented through the agents of the authority, which may be the courts, state officials or other agents of public power. The content of this report is complex, consisting of state law, as a representative of the company to apply the sanctions provided by legal rules to persons who violate legal provisions, related to the obligation of these persons to submit to legal sanctions to restore law and order[35].

Professor M. Bădescu defines legal liability as a legal relationship of obligation by which the

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[27] Ioan Vida, Cristina Vida, *Teoria generală a dreptului – Curs universitar,* Ed. Universul Juridic, Bucharest, 2016, p. 176.
[28] Dan Ciobanu, *Introducere în studiul dreptului,* Ed. Hyperion XXI, p. 102.
[29] Ibid.
[30] Gheorghe Mihai, *Fundamentele..., op.cit.*, Vol. V, p. 91.
[31] Ibid.
[32] Ibid, p. 92.
[33] Ibid, p. 86.
[34] Gheorghe Mihai, *Fundamentele..., op.cit.,* Vol. V, p. 87.
[35] Ion Craiovan, *Tratat de teoria generală a dreptului,* 3rd ed., Ed. Universul Juridic, Bucharest, 2015, p. 501.

state authority imposes on the individual to bear the consequences of non-compliance with legal norms; legal sanction concerns the company's reaction to the antisocial act, the coercive measures applicable to the person who violated the legal rules, but also the solidarity and interference between the concept of legal liability and that of legal responsibility[36], the author being consistent with his own conception and in his most recent treaty general theory of law.[37]

In his turn, professor Dumitru Mazilu defines legal liability as a legal relationship of constraint, the content of which consists in the right of the state to prosecute the person who violated the rule of law, applying the sanction provided by the violated rule and the obligation of the person guilty of liability for the offense and subject to the sanction imposed on the basis of the rule infringed.[38] Therefore, being a legal relationship, the legal liability implies correlative rights and obligations, which are born as a result of committing an illicit deed, which constitutes the framework for achieving the coercion, by applying the sanction provided by law[39].

The author M. Niemesch considers that legal liability is a coercive report that intervenes in case of violation of the legal norm, a report that gives rise to the right of the state, through specialized bodies, to apply a fair and proportionate sanction to the damage caused to the guilty person, subject to the order provided[40].

In a newer opinion, starting from the own identity of legal liability in relation to the notions of coercion and legal sanction, because it represents their very foundation, professor S. Cristea chooses to define legal liability as a set of rights of either the state or of the injured person and of the obligations of the perpetrator of the antisocial deed by which the violated legal order is restored, by applying legal sanctions.[41]

A distinct approach is taken by the team led by professor D. C. Dănișor, in the sense that, rather, he is not concerned with defining legal liability through one of its legal determinants, which would mean a functional reduction and a theoretical limitation anyway. On the contrary, the cited authors are concerned with delimiting conceptually and functionally the legal responsibility from the social and the legal responsibility, but also from the legal institutions of obligation, reparation and sanction.[42] However, in line with M. N. Costin's conception of the content of the legal liability complex of rights and obligations, the cited authors make, in their turn, a singular observation in our legal doctrine, regarding a certain diachrony of legal liability in relation to the branches of positive law through which it is revealed institutionally and refers to it as the "legal framework that allows the application of state sanction and coercion based on the idea that any subject participating in the legal circuit must assume the consequences of its conduct contrary to law or its activities. involves a social risk."[43]

In this way, the legal liability is associated for the first time in its definitions with social risk, a situation that correlates any human action, volitional or not, contrary or not to legal rules, but which has caused any harm to certain interests, subjective rights or the rule of law or produced the risk of their injury, which attracts the obligation of reparation on the part of the one who acted in this way.

Other definitions of the legal liability are also mentioned in the doctrine, of which those that aroused the interest of researchers - the first of these, even to be criticized - are the following: the authors G. Bârligeanu, L.M. Ștefan and M. Achim, consider that this is: "a social fact and it boils down to the organized, institutionalized reaction, which is triggered by a deed considered reprehensible, the institutionalization of this reaction, compliance with legal limits are necessary, as liability and sanction no they are by no means forms of blind liability, but ways of legal reward,

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[36] Mihai Bădescu, *Concepte fundamentale în teoria și filosofia dreptului. 1. Teoria răspunderii și sancțiunii juridice,* Ed. Lumina Lex, Bucharest, 2001, p. 93.
[37] Mihai Bădescu, *Teoria generală a dreptului. Curs universitar,* 6th ed., Ed. Hamangiu, Bucharest, 2020, p. 445.
[38] Dumitru Mazilu, *Tratat de teoria generală a dreptului,* Ed. Lumina Lex, Bucharest, 2007, p. 391.
[39] Ibid.
[40] Mihail Niemesch, *Teoria generală a dreptului,* 2nd ed., Ed. Hamangiu, Bucharest, 2016, p. 196.
[41] Simona Cristea, *Teoria generală a dreptului,* 3rd ed., Ed. C.H. Beck, Bucharest, 2018, p. 185.
[42] Dan Claudiu Dănișor, Ion Dogaru, Gheorghe Dănișor, *Teoria generală a dreptului,* 2nd ed., Ed. C.H. Beck, Bucharest, 2006, p. 459.
[43] Ibid.

reparation of the violated order, reintegration of a damaged patrimony and social defense."[44]

The second of the definitions that approach legal liability from other angles is one of the most widely used in our legal doctrine and belongs to the author I. Gliga. It defines legal liability as "a legal situation specific to the application of state coercion, attracted by the violation or non-compliance with the legal rules in force", the definition being appreciated to eliminate confusion between legal liability and state coercion, which are distinct legal categories[45]. In P. Roubier's view, the concept of "subjective law" cannot satisfactorily and effectively cover "all figures who have acquired the right of citizenship in the context of modern theory of law; to the extent that these new figures cannot fit into the paradigm of subjective law, it means that they are something else: for example, legal situations."[46]

Considered a kind of "ontic deficiencies of subjective law", legal situations refer to figures (legal - author's note, L.S.S.) that do not meet the classical features of subjective rights, such as real and personal rights[47]. We can deduce that all other human behaviors to which the objective law links certain legal effects can be called legal situations[48]. In other words, "the social situation becomes a legal situation by attributing legal consequences"[49] by objective law. Therefore, we consider that we must follow what are the consequences of a legal situation on the individual, of his subjective rights, as well as of his deeds. Therefore, in the state society, the interests of the community are represented by the state, (…) and for the good development of the social relations and, in particular, of the legal ones, it is necessary that each person, as a subject of law, be precisely individualized in terms of his place in society; legally, this becomes a necessity both from the point of view of the state and from that of the individual[50].

In turn, human deeds become legal facts based on objective law. The legal acts, if they are the result of voluntary action, may be lawful or unlawful. Therefore, infringing or endangering the materialization of a subjective right within the limits given by law is an unlawful act precisely because it takes into account all the prescriptive guidelines given by the law in force.[51] Thus, illicit voluntary acts are the actions or inactions that the law condemns and represses; they always have negative consequences for the author, called sanctions[52].

The notion of illicit legal fact plays an important role in all branches of law, but in two of them real coherent theoretical systems have been developed regarding it. Therefore, criminal law links the unlawful legal fact to a certain social danger, called a crime; and civil law divides it into two forms, of crime and quasi-crime, that is, of a disregard of the general obligation of prudence, diligence and loyalty incumbent on any individual in the exercise of his liberty[53]. In criminal law, the deed is not a natural fact, but the result of a normative construction, so, consequently, "even legal liability cannot be established as a natural phenomenon, being always the result of an attribution"[54].

As such, the normative conditions in which an individual, taken as a member of society is charged with "what he worked (therefore, a natural process)", a fact for which criminal liability is attributed, which for the author T. Avrigeanu means the lack of will to respect the order of that society (hence the criminal guilt) and, moreover, the non-recognition of the obligation of this order (hence the social danger), means "a criminal act within the meaning of criminal law."[55]

And as "all individuals of a state are united, bound by a series of reciprocal rights and duties,

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[44] Gheorghe Mihai, *Fundamentele…,* Vol. V, *op.cit.*, p. 80.
[45] Ibid, p. 75.
[46] Gheorghe Mihai, Gabriel Popescu, *Introducere în teoria drepturilor personalității,* Romanian Academy Publishing House, Bucharest, 1992, p. 58.
[47] Ibid.
[48] Dan Claudiu Dănișor, Ion Dogaru, Gheorghe Dănişor, *op. cit.,* p. 302
[49] Ibid.
[50] Gheorghe Mihai, Gabriel Popescu, *op. cit.,* p. 60
[51] Ibid.
[52] Dan Claudiu Dănișor, Ion Dogaru, Gheorghe Dănişor, *op. cit.,* p. 306.
[53] Ibid, p. 306.
[54] Tudor Avrigeanu, *Pericol social, vinovăție personală și imputare penală,* Ed. Wolters Kluwer, Bucharest, 2010, p. 201.
[55] Ibid.

determined by a supreme unitary power, which is precisely the subject of the legal order,"[56] we consider that legal liability is precisely that legal connection (relationship) between the state (society) and individuals who commit illicit acts, but also between the state (society) and their victims because the state is the one who exercises coercion[57] on perpetrators for committing illegal acts in order to restore and maintain the legal order, the initial legal link, functional and integrity among the members of the society, as well as the compensation of the injured and, above all, for safeguarding the idea of justice and legal security by equalizing the legal situations in which the subjects of the different legal relations are. In other words, resuming an idea of M. Djuvara, the two poles of our reality, the individual and the social, "must go in a perfect harmony and balance, otherwise society perishes, perishes and individuals who make up the company."[58]

From this perspective, legal liability appears as a mirror legal relationship (relationship) or, rather, a mirror reflection of the internal cohesion of society that keeps all individuals connected to each other through a network of mutual relations, of a nature social, moral and legal, which is thus reflected in the rules of objective law, when the legal sanction is applied by virtue of pre-existing social relations which the law observes, violated.

This is the only way to explain the options of the objective right to appoint the person responsible for wrongdoing in H. Kelsen's view, by directing the sanction against another individual who is with the offender in a (pre) determined relationship[59]. This is, in the Austrian philosopher's view, a contractual liability because "there is no inner relationship between the individual who is liable for wrongdoing and the event caused or prevented, legally unwanted, by the behavior of another."[60] It should be noted, however, that in these situations it is about the responsibilities of civil law because in criminal law, the liability is strictly individual, so subjective (we are not talking here about the criminal liability of the legal person), noting that in a first phase and criminal liability had a collective nature based on the same pre-existing social relations.

However, we note that the evolution of law has led to the preservation of this contractual liability only in the branch of civil law, where it is still allowed to direct the act of state coercion, as a sanction, "against the wealth of an individual, i.e. an individual will be forcibly stolen which suffered damage as reparation."[61] In this matter, the rule is that: "the sanction is only the execution of the forced execution on the assets of a debtor in civil matters."[62] If the offender had no patrimony or was not responsible, the social relations in the old human communities being rather patrimonial, we can not put the emergence of legal liability except in connection with the purpose of protecting this fundamental value, as L. Joserand says, then she it was effective only if the sanction was directed at the patrimony of another individual, to whom the delinquent was patrimonially and morally related, within the immediate family or of the whole community on the basis of authority relations[63].

At the same time, with the perception that sometimes the restitution sanction is not enough, such as the payment of compensation for material damages suffered by a family for killing one of its members, intentional damage to a person's property, a situation in which material reparation can not cover the culprit or in the case of crimes committed against public authority, the idea arises that the causer "must suffer at least the equivalent of his will."[64] At the same time, the punishment has the function of restoring the broken social balance by committing an illegal act by which the delinquent

[56] Ibid.

[57] Ibid, p. 278.

[58] Mircea Djuvara, *Teoria generală a dreptului. Drept rațional, izvoare și drept pozitiv,* Ed. All Beck, Bucharest, 1999, p. 434.

[59] Hans Kelsen, *Doctrina pură a dreptului,* Ed. Humanitas, Bucharest, 2000, p. 61.

[60] Ibid.

[61] Hans Kelsen, *op. cit.,* p. 160.

[62] Mircea Djuvara, *op. cit.,* p. 358.

[63] Hans Kelsen, *op. cit.,* p. 160. Here is how the Austrian philosopher describes this mechanism: "this crime, ie for the non-reparation of the damage caused by him, can be blamed by another individual; this happens when the sanction of civil execution must be directed at the property of another individual, if the former does not fulfill his duty of reparation."

[64] Ibid, p. 361.

has acquired an "unfair advantage" in relation to the citizens who respect the law.[65]

In this case, the punishment is intended to eliminate the illicit advantage acquired by the perpetrator, and the public's perception is that it "pays" for the crime committed.[66] But this payment and its perception in the community, respectively, was no longer enough to restore damage and social balance because the financial restitution would have acquired the meaning of a simple "payment for crime", especially in the case of killing a person or returning money. or illegally taken property.[67] And, indeed, by making the payment back to the victim, either for stealing an equivalent amount of money or a good or, worse, for killing or injuring a person, if that payment had been the only order of the victim. law, it would be "as if the offender had involuntarily benefited from a legal form of credit or loan."[68]

Moreover, in the case of serious offenses (depending on their legal qualification in different laws), where the damage could be paid in cash, it could have led to the conclusion that the damage, i.e. "evil", would not have been and that it could have been considered non-existent, unrealized. In this regard, H. Fingarette argues that: a financial payment cannot repair the crime of rape[69], and the idea that the offender must suffer a punishment is complemented by his corollary, namely, that he "deserves" to endure the suffering or stigma of legal punishment. The material damage caused by the crime objectifies in this case the denial of the right by the offender, reason for which the suffering of the individual suffering inherent in receiving a punishment by the perpetrator "represents the contribution due by the perpetrator to maintaining the rule of law."[70] This is the supplementary nature of the punishment referred to by G. del Vecchio, who, where the law is unable to prevent harm, has the role of equivalence, of compensation, whereas "punishment is never precisely a constraint on observance of the norm, because in the case the norm has already been violated."[71]

Given these considerations, we believe that the social integration of individuals involved two complementary phenomena: the first consisting in the individualization of distinct personalities in the community and, therefore, the separation of civil assets, which involved their participation in the civil and legal circuit as distinct and equal entities, bearing correlative rights and obligations, which the positive law has recognized as persons-in-law and, secondly, correlatively, the individualization of legal liability in strict relation to the deed and its perpetrator, especially in law criminal, where the person, body, freedom and property have become distinct and inviolable social values.

It should be noted that of these social and legal values, only property remained tradable within the limits and conditions provided by civil law, while the injury or trading of any of the remaining ones was included under criminal law. We therefore conclude that the differentiation between Kelsen's contractual liability and individual liability (especially relevant in criminal law) is the change of the legal paradigm from "having", as patrimony, to "being", as personality and person-in-law, in which case the sanction is directed at the person of the perpetrator. From now on, any subject must thus be recognized in principle by others as what it is, and each must be assigned what he deserves, and this "is an explanation of the practical-rational necessity of punishment which also avoids the moralistic-retributive interpretation of *suum quique* and a preventive instrumentalization of punishment."[72]

One by one, individual values will no longer be interchangeable, so that the life or integrity of the person, if harmed, can no longer be "rewarded" with the same legal "currency" and the positive law can no longer direct (apply) the sanction that applies it, after the fulfillment of the legal duty by the delinquent or, unmistakably, in his absence, against another person, even if he is in any kind of social, family or moral relationship with the one who violated the law. From this point on, "the

[65] Herbert Fingarette, *Mapping responsibility: explorations in mind, law, myth and culture,* Carus Publishing Company, Illinois, U.S.A., 2004, p. 28.
[66] Ibid.
[67] Ibid, p. 29.
[68] Ibid.
[69] Ibid.
[70] Tudor Avrigeanu, *op.cit.*, p. 196.
[71] Giorgio del Vecchio, *Lecții de filozofie juridică,* after the 4th edition of the Italian text, Ed. Europa Nova, f.a., p. 220.
[72] Ibid, p. 196.

punishment is equally applicable only to the individual who can be said not to want to cooperate in maintaining social formation, namely because this individual, in a state of imputability, worked against his will knowingly or knowingly, although was able to work according to duty."[73]

If the State recognizes by objective law the existence of any subjective right, i.e. it has and manifests this legal guardianship, of course, it has and manifests its legal guardianship even when claiming the individual injured in his subjective rights (or those belonging to his personality - author's note, L.S.S.) or it is ascertained ex officio their injury or other social values protected by law for the necessary reparation to be brought to the violation of that right and/or application of a punishment to the perpetrator (in relation to the violated legal norm). In our view, from this point of view, legal liability is therefore that legal guardianship, by which the State recognizes, first of all, the violation of a subjective right or other social value, and subsequently coercively orders the fulfillment of the obligation to repair of the social injury produced, also applying a legal sanction, through its specialized apparatus established over time, and "this increases the protective effectiveness of the law."[74]

And referring to the idea of protection provided by law, M. Djuvara remarked that "from the idea of social protection has finally slipped and the idea of individual protection of the offender"[75], which places, from our point of view, both the victim and the delinquent, i.e. the subjects of legal liability (regardless of their concrete positions in the legal relations of responsibility in the various particular branches of law) in the same legal framework under the spectrum of the idea of justice, as an expression of equality or restoration of equality.

3. Own contributions for an attempt to define the structural concept of legal liability

A first finding that emerges from the definitions formulated for the concept of legal liability and which we have reviewed above is that it cannot be reduced to any of the legal institutions with which it has been tried to be equivalent. As we have already shown, the epistemological level of this metacategory of law requires an analysis and a description at a metatheoretical level. In this sense, it pleads not only the insufficiency of semantic, institutional and teleological comprehension of the legal signifiers used as a rule for defining this category of maximum generality, but especially its non-positive roots in relation to the legal system, which places legal responsibility in a much more complex horizon of knowledge, which interests and also explains the philosophy, ideology and political regime of a human society.

There are several elements that emerge from the definitions presented above that place legal liability in terms of constants of law or "legal permanence", as expressed by the illustrious Romanian theorist, M. Djuvara. As we have already tried to suggest, using the arguments of well-known authors, the idea of obligation and the sanction with which it must be organized[76] exists in the substratum of law, as well as with society, whose "cooperation" it is called upon to protect it or precisely these are the non-positive foundations of legal liability, as the provocative statement of prof. Gheorghe Mihai sounds.

And if legal liability "started with *neminem laedere*"[77], we could say that liability (perhaps not even in its strictest legal sense) is, to some extent, at least in terms of its genetic affiliation in social responsibility, a priori in relation to positive law. When we make this statement, we have in mind that the a priori refers to "before the experience of a system"[78] or the application of sanctions by one authority or another, on behalf of a larger or smaller social group, more or less representative, was done with long before legal liability was institutionalized and, above all, conceptualized. We base our assertion primarily on V. Dongoroz's vision when he states that: "responsibility in any legal field,

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[73] Ibid.
[74] Mircea Djuvara, p. 222.
[75] Ibid, p. 365.
[76] Mircea Djuvara, *op. cit.,* p. 24.
[77] Eugenia-Carmen Verdeș, *op. cit.,* p. 25.
[78] Gheorghe Mihai, G. Popescu, *op. cit*., p. 33.

before it is a matter of law, is a human and social problem."[79]

This state of latency of responsibility is also described by the author M. Florea, when he states that when it does not intervene effectively and directly, as a result of committing a deed reprehensible to society, "otherwise, it manifests itself only as a possibility, as an alternative virtual accessory and liability reserve; it is a reserve guarantee for the community, a set of additional measures, capable of intervening in cases where liability is absent, insufficient or inefficient."[80] In fact, even professor Gheorghe Mihai admits the existence as a possibility, potentially, of legal liability in the very activity of non-compliance with the provisions of the law[81], so long before the application of a sanction for an illegal legal act, whose realization from project to effect it involves a dynamic and diachronic process.

The liaison between the agent of the action and the other members of the social group or of the company to which he belongs, lies in the fact that "a subject cannot act towards another without making legitimate or fair, in the same circumstances, an action of others self"[82] and, once it acts in a certain way or refrains from a certain action, it expresses a certain social attitude which "therefore implies the intervention of a certain distinct spiritual function, (i.e.) the transposition of the subjective into the objective, i.e. the otherness."

In other words, the inclusion of all individuals, without exception, in the system of rights, duties, obligations and contributions, as a necessary purpose of any just and fair law[83], explains and legitimizes the responsibility of every person to society, i.e. the justification for its socially relevant actions, respectively, of each person-in-law before the judicial bodies of the state, as well as the correlative right of the company through the state bodies to prosecute those who violate the legal norms, understood as prescriptions for ensuring equal satisfaction of to ensure social cohesion[84], to apply the appropriate legal sanction or, in a broader perspective, even to "forget the evil"[85] and to no longer apply the sanction or its full effects, as a result of the incidence of cases that remove legal liability. In this regard, M. Djuvara pointed out that the judicial bodies in charge of applying and enforcing the legal provisions "are thus put in a position to judge in each case whether such an effective achievement meets those needs and is in this sense fair."[86]

Given that it triggers new social and legal relationships with both the victim and the offender in the legal relationship of responsibility, but also with society, whose regulatory tool it becomes, we can say that from this point of view legal liability is a concept of relationship.[87] Australian theorist P. Cane supports the idea when he states that legal liability is a "trilateral relationship between agents (social action), victims and the whole community."[88]

From this perspective, what drew our attention among the constituent elements of the definitions given to legal liability, beyond its common functions, repression, prevention and education, etc. is, first of all, the protective function that the law exercises both in front of the victim, as well as of the offender, in the legal liability report. The difference between the relations that the legal responsibility establishes with the victim and with the delinquent consists in the fact that the Law has as finality the protection of the generic personality, that is, of those "epistemic-pragmatic-axiological features by which the individual subject of law is thus affirmed"[89] or, reiterating the vision of professor I. Craiovan, the supreme finality of law is human dignity, meaning that it shows that:

[79] George Antoniu, *Principalele transformări ale dreptului penal în R.P.R. în lumina concepției marxist-leniniste, apud* Tudor Avrigeanu, *op. cit.,* p. 50.

[80] Mihai Florea, *Responsabilitatea acțiunii sociale,* Scientific and Encyclopedic Publishing House, Bucharest, 1976, p. 82.

[81] Gheorghe Mihai, *Fundamentele..., op. cit.,* Vol. V, p. 89.

[82] Tudor Avrigeanu, *op. cit.,* p. 196.

[83] Dan Banciu, *Control social și sancțiuni sociale,* Ed. Hyperion XXI, Bucharest, 1992, p. 42.

[84] Ibid.

[85] Cristinel Ghigheci, *Cauzele care înlătură răspunderea penală,* Ed. Universul Juridic, Bucharest, 2014, p. 41.

[86] Mircea Djuvara, *op. cit.,* p. 584.

[87] Gheorghe Mihai, Gabriel Popescu, *op. cit.,* p. 33.

[88] Peter Cane, *op. cit.,* p. 56.

[89] Gheorghe Mihai, G. Popescu, *op. cit.,* p. 53.

"law cannot penetrate inside the human person, but he can protect it".[90]

We believe that the subjective rights of the human personality, as well as its material and intangible patrimony, are included in this sphere, while the legal liability and the application of a legal sanction to the delinquent, consider only the person in law, respectively his legal mask, thus recognized by a legal norm of positive law[91]. The law, in its entirety and complexity, aims to protect the subjective rights of the human personality, while positive law, as a component and enforceable by its coercibility, "has a person - a certain - and not personality, and the protection of that person it is the mediated and partial protection of the personality."[92]

For example, in criminal law, the passive subject of crimes against the person is "the man considered multilateral, i. e. in the main attributes", and life, bodily integrity, health, freedom, honor, dignity of the human being are social values that require their defense by the criminal law[93] or all these are, in fact, subjective rights of the human personality received in law. This judgment is also confirmed by the authors Gh. Lupu and V. Lupu when they state that: "the primary function of any form of legal liability is to defend the social values placed under the shield of the law and, first of all, the human personality".[94]

At the same time, one of the criteria for individualizing punishments is (only) the person of the offender (i. e. the legal mask of the individual in criminal law), with his psychophysical condition, occupation (deriving from social role - author's note, L.S.S.), level culture, judicial and social background, attitude after committing the act, etc.[95] The concrete legal relations include in a participatory way a certain person-in-law (legal mask) or another and only to a certain extent the personality of the individuality, which keeps itself beyond the angle that gives the social mirror something of its own ego.[96]

At a superficial glance, it would seem that there is an imbalance in the regulations that law and, consequently, legal liability, give to the human personality and the person-in-law, but if it exists, it is rational, teleological and axiological. The explanation lies in the fact that in the hierarchy of legal values, the first of these is a central value, seen in its prospective dimension, as "personality designates not only what human individuality is in the sphere of values, but also what is not yet, what it wants. to be and consider that it must be"[97] and the second, the person - as a legal mask of the personality - is a particular normative projection of each state and static because it relates to a legal act performed, which is related of its system of general needs, being only a "middle value"[98]. This projection is also reflected in an older definition of the Romanian theory of law on the basis of the state coercion of a person found guilty in the legal liability action according to which this ground consists in "personal and patrimonial deprivations"[99]. In this logic, the punishment can not be directed "on the interiority (human being - author's note, L.S.S.) but, by applying it, must take into account the personal rights of the perpetrator seen as a rational and responsible subject, thus respecting his dignity human."[100] In these considerations lies precisely the relationship between personality and person from the perspective of the function of protecting the right and, respectively, that of legal responsibility, which once again claims the decisive importance of the conceptual determination of human individuality as a personality, which "does not involve man on slices, but the whole man, his

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[90] Ion Craiovan, *Tratat…, op. cit.,* p. 567.
[91] Gheorghe Mihai, *Fundamentele…,* Vol. V, *op. cit.,* p. 67.
[92] Gheorghe Mihai, Gabriel Popescu, *op. cit.,* p. 47.
[93] Ibid, p. 51.
[94] Gheorghe Lupu, Vasile Lupu, *Fundamentul și finalitatea răspunderii juridice,* „Analele Științifice ale Universității „Al. I. Cuza" din Iași" (New Series), Section III - Legal Sciences, Vol. XXXIII, Iași, 1987, p. 56.
[95] Gheorghe Mihai, Gabriel Popescu, *op.cit.,* p. 51.
[96] Ibid, p. 43.
[97] Ibid.
[98] Ibid, p. 44.
[99] Ioan Gliga, *Considerații privind definiția răspunderii juridice,* „Studia Universitatis Babeș-Bolyai Series Iurisprudentia", Year XV, Cluj, 1970, p. 98.
[100] Tudor Avrigeanu, *op. cit.,* p. 175.

personality."[101]

On the contrary, the legal liability, as its finality, concerns only the imputations deriving from the activities carried out in the different social roles of man, legally regulated and therefore, his punishment, i.e. the sufferings imposed by coercion or simple legal sanctions deprive him only of some personal or patrimonial characters or rights, which have a legal meaning for the social community. Thus, the imposed sanction does not seek the destruction of man, but the correction of the agent of the illicit deed (qualification that comes from the legal norm of positive law) and, moreover, "his inner transformation and social reintegration."[102]

From this point of view, the criminal sanction also represents (only) a restriction of the personality of the culprit, without another person benefiting from this restriction, as it happens in the case of restitutive civil sanction[103]. Thus, confiscation of property, reparation of damage and even deprivation of liberty are legal means intended to contribute to the return of the person found guilty of committing a crime "in the normal order."[104]

This is also the meaning for which legal sanctions can be directed depending on their destination on: the person himself (deprivation of liberty, in which case, at the limit, the individual identifies with his background personality - author's note, L.S.S.), on certain rights of the person (forfeiture), of his acts (nullities), of the person's patrimony (patrimonial)[105] or of his professional functions and public dignities, as an expression of the understanding of the social utility of that person, who thus will no longer be able to work for the common good of the company of which he is a legal member.

In other words, legal liability is a relationship of authority from a threefold perspective, namely: the individual, as a person in law, his facts received and qualified in law and the process of assessment in law, which is carried out by to the company, through its judicial institutions, in the activity of legal liability. Thus, from a first point of view, wearing a legal mask becomes imperative in any social relationship that is under the sign of the state, because "it is not the human individual who decides on his person from a legal point of view."[106]

On the other hand, "in law we are in a special world, in the world of appreciation"[107], so that the facts that occur in society are "never axiologically neutral", they constitute the substance of legal values, assuming a subjective positioning of human individuality compared to them, and "the legal value is a measure of the facts, because it assesses the facts according to the accordance with the rules and laws established by the legislator."[108] The subjective positioning of the personality translates into the act contrary to the norm by which its requirements are violated, in which case the act receives the qualification of "socially dangerous"[109], and the valorization comes from the institutions that affirm the purpose to control, verify and sanction the conducts a certain social cohesion is respected "or, depending on the nature of the act and the type of sanction sanctioned, the forum" of the public conscience represented by the structures of state and civic authority.[110]

What is assessed are human actions in society, interpreted as "facts", as a result of understanding a human practice from the perspective of personal self-determination in the sense of respect or non-compliance by people with mutual obligations[111] and responsibilities that the person receives according to the expectations of others for the social roles assigned to the person in law, expectations that constitute the "pattern of socially desirable behavior."[112] Therefore, the forum of

[101] Gheorghe Mihai, Gabriel Popescu, *op. cit.,* p. 39.
[102] Gheorghe Mihai, *Fundamentele...,* Vol. V, *op. cit.,* p. 101.
[103] Mircea Djuvara, *op. cit.,* p. 360.
[104] Gheorghe Mihai, *Fundamentele...,* Vol. V, *op. cit.,* p. 101.
[105] Dumitru Baltag, *op. cit.,* p. 144.
[106] Gheorghe Mihai, *Fundamentele...,* Vol. V, *op.cit.*, p. 53.
[107] Mircea Djuvara, *op. cit.,* p. 480.
[108] Ibid, p. 32.
[109] Ibid, p 44.
[110] Andrei Sida, *Teoria generală a dreptului,* "Dimitrie Cantemir" Christian University Publishing House, Cluj-Napoca, 2003, p. 237.
[111] Tudor Avrigeanu, *op. cit.,* p. 195.
[112] Laura Maria Stănilă, *Răspunderea penală a persoanei fizice,* Ed. Hamangiu, Bucharest, 2012, p. 1.

public consciousness, which has become a mirror of reflection on human behavior, will qualify human facts as convenient, if they are integrated into the pattern of socially desirable behavior, and if they violate this pattern, they will be classified as inappropriate and will be sanctioned accordingly.[113]

The human deed done towards another fellow or towards others or towards society represents "a virtual authorization for an analogous act between the same subjects, who by hypothesis have reversed their roles"[114] because "society is composed of people in direct contact", according to M. Djuvara[115]. This relational solidarity and "reversal of roles", as the theorist T. Avrigeanu calls it, is also confirmed by professor Gheorghe Mihai's assertion about the correspondence between a person's ability to answer legally for the wrongdoing committed and another person's ability to hold him accountable, action allowed only in the competent courts.

As far as we are concerned, we believe that, when expressed and realized in society, human behaviors open a permanent valorizing dialogue with the community to which they belong and to which their holders and those of subjective rights or legitimate interests are inextricably linked, as can be seen from the relationship identified by professor Gheorghe Mihai: "The protected legal interest is effective only if we take into account its two natures - the generality of coexistence and individuality in coexistence - which only being in the balance of order to the satisfaction of their bearers, would have this basis."[116]

The social community is the one that judges people's deeds and appreciates them positively or negatively, so that whenever a sanction emanates from spontaneous social opinion (from the "world"), it has the character of a diffuse sanction[117]. If the deeds of the people are legal, then the judicial organs of the state are competent to evaluate and judge: whenever a sanction emanates from an organized public opinion and is applied through a defined body, going beyond the simple opinion to external measures, material, objectified, it has the character of organized sanction, the typical case of legal, legal sanctions. [118]

From this point of view, legal liability is based on the requirements that society imposes for its preservation, requirements that are transposed into legal norms, which are guaranteed in terms of their applicability, by the coercive force of the state. In other words, the liability does not imply on the part of the agent of the action, no choice, no conviction, no initiative, no interest in relation to the sanction to be borne, not even an understanding of its content, but only submission to the legal provisions, in relation with which the individual has more of a passive role.[119] Indeed, the simple agreement or disagreement of an action with the law, without taking into account its impulses, is called legality, - as I. Kant states -, and that in which the idea of debt resulting from the law is also the impulse to action , is called morality.[120] Consequently, if in the case of ethical laws, the fulfillment of which concerns the internal impulse by which the subject determines his actions, the legal laws are fulfilled by the simple external conformation of the actions to their prescriptions, conformation which - this is one of the essential differences of the right to ethics -, can also be obtained through a constraint imposed on the subject of external action.

Therefore, the central problem of the theory of law, as it appears in I. Kant and as it must be solved until today, as the author T. Avrigeanu shows, taking over an idea of M. Pawlik, is not reduced to the simple regulation of the exercise of coercion, but "it is represented by the definition of the normative conditions in which this constraint is legitimate"[121]. To this end, each social community develops a series of measures, suggestions, ways of coercion, prohibitions and constraints, systems

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[113] Ibid.
[114] Tudor Avrigeanu, *op. cit.,* p. 196.
[115] Mircea Djuvara, *op. cit.,* p. 480.
[116] Ibid, p. 219.
[117] Dan Banciu, *op. cit.*, p. 17.
[118] Ibid.
[119] Gheorghe Boboș, Gheorghe Vlădica Rațiu, *op. cit.,* p. 30.
[120] Immanuel Kant, *Întemeierea metafizicii moravurilor*, Ed. Humanitas, Bucharest, 2006, p. 218.
[121] Tudor Avrigeanu, *op. cit.,* p. 112.

of persuasion and pressure, sanctions, going to physical coercion, including systems and ways of expressing gratitude, awards and distinctions, due to which the behaviors of individuals and subgroups are led to the concordance with the accepted models of action, of observance of the value criteria, with the help of which the conformity of the members of the society is formed.[122]

Therefore, non-compliance with social norms and values leads to a reaction of the social environment in which they are valid, a reaction that is embodied in a series of diffuse or precise sanctions, organized or unorganized and based on social constraint and pressure it exercises it against nonconformist or deviant conduct.[123]

As "what characterizes and defines a group of individuals is neither its religion nor its techniques, nothing but its right", the existence and normal functioning of human groups cannot be conceived in the absence of a minimum of legal norms and prescriptions.[124] Social relations and legal relations cannot be understood directly as relations between people seen as individuals, but they are relations between persons (recognized in law)[125], and precisely the fact that the rights and obligations of these persons, as enshrined in law or convention of the parties, do not constitute sanctions[126], but are in fact expectations[127], which are based on the property of reversing the social roles, their transposition in the plan of the concrete legislation is realized in the conditions of the state existence, therefore in the plan of the public law[128]. At this point we consider, together with M. Djuvara, that the rational idea of equality returns and "imposing the equalization of situations, explains the sanction"[129].

From the above, we can conclude that at the epistemological level legal responsibility is a structural concept, because through its etiological connections with other fundamental legal concepts, on the basis of which it is built and legitimized from a social and legal point of view, as a person, personality, obligation, legal relationship, legal act, prejudice, sanction, rehabilitation, this inter-relational state or legal situation structures the whole right.

As a social phenomenon, states professor I. Craiovan, the law has complex purposes at macro and micro-social level to ensure the coherence, functionality and self-regulation of the social system in resolving conflicts that arise in inter-human relations, in defending and promoting social values, of fundamental human rights and freedoms[130]. From this perspective, concludes the same author, the concept of finality traditionally defined as "orientation towards a certain goal" has unifying valences, connecting the purpose with the necessary process, designating, among others, in the sphere of normativity and the oriented action of the legal mechanism at macrosocial level.[131]

Although so far, we note that legal liability has not been nominated *expressis verbis* as the end of the law, the resumption of its above-mentioned functions configures the articulations of the system of legal liability itself as a meta-legal category[132], as characterized epistemologically to the highest degree of abstraction so far.

From this point of view, professor D. Baltag shows that the functions of legal responsibility represent a concrete manifestation of the very functions of law, being in turn constituted in a complex system, their features being oriented by the achievement of its purpose.[133] In this way, to a certain extent, legal liability is presented as a *ultima ratio* of law, because, as professor Sofia Popescu

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[122] Dan Banciu, *op. cit.,* p. 9.
[123] Ibid, p. 17.
[124] Ibid, p. 31.
[125] Tudor Avrigeanu, *op. cit.,* p. 112.
[126] Mircea Djuvara, *op. cit.,* p. 358.
[127] Dan Banciu, *op. cit.,* p. 31.
[128] Tudor Avrigeanu, *op. cit.,* p. 113.
[129] Mircea Djuvara, *op. cit.,* p. 360.
[130] Ion Craiovan, *Tratat..., op. cit.,* p. 432.
[131] Ion Craiovan, *Filosofia dreptului sau dreptul ca filosofie,* Ed. Universul Juridic, Bucharest, 2010, p. 266.
[132] Gheorghe Mihai, *Fundamentele..., op. cit.,* Vol. V, p. 78.
[133] Dumitru Baltag, *op. cit.,* p. 204-206. Reviewing some major opinions from the Russian legal literature, the author considers that the functions of legal liability (preventive, repressive, reparative, regulatory and educational) indicate the basic directions of the influence of legal liability on social relations, human conduct, morality, legal conscience, culture, in which the essence of responsibility, its social destination is revealed and through which the goals of legal responsibility are achieved.

teleologically remarks, establishing liability restores or compensates the equality of pre-existing legal situations, and the social balance is restored.

4. Conclusions

Therefore, there is no approach to legal liability from the perspective of the general theory of law or the branch sciences without finding that this complex category of law cannot be defined and, above all, known and understood, apart from etiological or categorical relations, with other concepts and categories from other epistemic areas, on which it is based or to which it is obligatorily related. Regarding the complexity attribute of the category in question, the recent legal literature shows that modern law must always provide in-depth means of analysis in order to detect society's emerging expectations as early as possible.[134]

As such, legal liability is usually defined in relation to social and legal responsibility, to social responsibility, of which species it is; in relation to the values and human action in society, with which he develops an axiological relationship, with man, as a personality and person-in-law and his freedom, so, therefore, with psychology, anthropology and sociology; in relation to the positive law which reveals its normative construction, its fixed or rigid structure, the taxonomic plurality and the articulations with the other legal institutions within the system of positive law, without this enumeration being limiting.

From an epistemological point of view, they can be called correlative categories of legal liability or its significant or determinants. Also, from a conceptual point of view, we consider that legal liability can and must be analyzed in terms of constants and purposes of law, as one of its ways of realization and application[135], in terms of pursuing the efficiency of its functions derived from the latter. In relation to these considerations, we appreciate that, from an epistemological point of view, at present, legal responsibility has the meaning of a structural concept, which by its complexity, really belongs to another type of discourse - epistemological or metatheoretical[136], which corresponds so far through the maximum level of abstraction, the conception of professor Gheorghe Mihai.

Starting from the premise that "the challenge of managing complexity lies in the ability to integrate emerging links"[137] we believe that the epistemological perspective on legal responsibility must be extended by analyzing the epistemological sources through which this concept, whose ubiquity and transitivity properties structure the whole law, it could be known more deeply in all its springs, meanings and social and legal functions, namely: freedom, social action, individual and collective responsibility, the theory of public elections, the common good, theories of justice.

Consequently, as a corollary of the remarks we have made on the "discrete" mechanisms or links underlying several notions or concepts[138], which underlie the various ways of defining legal liability, we allow ourselves to advance our own proposal for definition of the structural concept of legal liability as follows: this is a purpose of 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, causing an injury 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, fair and proportionate sanction, which restores or compensates for a given legal situation so that the legal order of the company is protected, or respected and reaffirmed.

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