MORALITY, AT THE CONFLUENCE BETWEEN THE LEGAL AND THE NON-LEGAL NORM

PhD. **Raluca Antoanetta TOMESCU**[1]

Abstract

Morality is probably one of the oldest rules of conduct that have been imposed on members of a community, in order to establish and ensure a good coexistence. Prior to the emergence of the legal norm, it evolved with human society, being subject to continuous paradigm shifts, in a permanent attempt to reflect as accurately as possible the evolutionary trends of human communities. Although it does not yet benefit from a concrete definition or a precise limitation, morality is, first of all, the object of study of ethics, as a philosophical discipline, but when it interferes with the legal norm, inevitably a theorizing from its legal perspective becomes imminent. Plurivalent subject, but also constant of our social life, morality remains one of the most complex and controversial topics, not only in legal doctrine, but also in philosophy.

Keywords: *morality; ethics; society; legal norm, non-legal norm.*

JEL Classification: K10, K12

1. Introductory considerations

Man, as a superior being, cannot live alone, isolated, as they must relate to them fellows, in order to survive, but also to evolve. Human nature is a social one, each of us having primary instincts for the formation of communities, since the oldest need of man is probably the need to integrate into the society[2]. By interacting with his peers, man assimilates and adapts to the values and rules of living together, thus becoming an integral part of the community.

In the society, man's actions are determined by his needs. However, these actions, individual or joint, must sometimes be limited, because, inherently, the personal interests of one often conflict with those of the other, which could harm the very existence of society. The diversity and complexity of these social relations made the organization and regulation of the relations between people or groups of people necessary, in order to enable the intra-community coexistence. Thus, between society and the individual, a special relationship was established, imposed as a fundamental condition of coexistence in the community. This *sui generis* relationship has permanently involved both the condescension and sanctioning of the individual, relating his attitude to the expectations of the community, but especially to the social norms imposed by it, because "*social norms are the institutionalized form by which human behaviour is appreciated, the breach thereof always implying a social responsibility*"[3].

From ancient times, no human community could exist and develop without respecting certain rules and norms of mutual behaviour, which aimed to impose obligations or various limitations on its members. This need to coordinate people's interests has established itself as an essential condition for the survival and preservation of social structures. These mutual obligations, perpetuated from generation to generation, have gradually become, over time, the property of the moral consciousness of the community, as a whole, but also of its members, taken individually. By acquiring, therefore, a perpetual and permanent character, part of these rules of coexistence, over time, have become stable norms of moral behaviour, habits, traditions, manners or superstitions of people.

The evolution of the development of these forms of social organization had later led to the emergence of a well-organized structural form of society, namely their legal systems. The totality of legal rules and norms, which regulate the conduct of people in social relations, in a certain community, likely to be imposed by the coercive force of the state represents the legal system of that community, and when one of the members of society disregards them, he will be sanctioned for the unlawful

[1] Tomescu Raluca Antoanetta – „Andrei Șaguna" University of Constanța, Romania, ratomescu@gmail.com.

[2] The word society derives from the French word *société,* the origin of which is in the Latin *societas,* meaning a friendly association with others and coming from *socius* which means partner, comrade or business partner.

[3] L. R. Boilă, *Răspunderea civilă delictuală obiectivă*, Ed. CH Beck, Bucharest, 2008, p. 21.

nature of his conduct.

However, as previously mentioned, until the appearance of the first legal systems, the rules of coexistence that were imposed and accepted by members of a community, appeared as a result of customs, traditions or superstitions, most often their source being religious[4]. These perceptions have been generically called rules of moral conduct, so that a moral code represents a system of moral rules, based in principle, on a certain philosophy, religion or culture. Morality is thus manifested, through a set of rules that appeared as a synthesis of the common or disjoint interests of the members of a community and had the role of ensuring a good coexistence thereof.

Although it has been shown chronologically that the rules of morality existed before the emergence of any system of law, being constantly present in the evolution of the organization of human communities, their definition and limitation is still awaited, the interpretation of the meaning of the notion of moral rule being assimilated, in general, to a system of rules of good coexistence of people, in individual relations or in inter-community relations.

Precisely due to the lack of a clear definition of the notion of morality, a moral conduct was considered, from a semantic point of view, the same as an ethical conduct, but between the two notions there is a part-whole relationship, since morality is only one of the branches of ethics, as subject of philosophy, along with gnoseology, logic, axiology, aesthetics, philosophy of culture, social philosophy or anthropology. Although related, the two concepts, ethics and morality, respectively, have different origins and content, ethics representing the science that deals with the study of morality, so theory, while morality is one of the objects of study of ethics.

From an etymological point of view, the name ethics is of Greek origin, coming from the Greek "ethos"[5], while morality has its origin in the Latin ”mos-moris” (morals), whence the term "moralis", the modern etymology of the term morality[6].

In practice, the two terms, ethics and morality, are still often mistaken for one another, because initially both words meant the same thing, namely good morals or good conduct. Over time, however, their meaning has differentiated, ethics being defined as “*the science that deals with the study of moral principles, with their links of historical development, with their class content and their role in social life; the totality of the norms of moral conduct corresponding to the ideology of a class or society*”[7], while morality belongs to the sphere of realities, having lived and observed deeds as source of inspiration, on the basis of which rules and principles of good conduct would be established subsequently.

While the purpose of ethics, according to Aristotle, is not knowledge in general, but the content and evaluation of actions, as he calls ethics "*practical philosophy*", the purpose of morality is to impose positive values, guiding the choices and decisions of the individual in the society.

In conclusion, ethics remains a philosophical discipline, respectively the science that deals with the theoretical and practical study of human values and condition from the perspective of moral principles and their role in the social life of the community and which underlie social behaviour. Thus, ethics will analyse the "*moral culture of the society*", trying to theoretically elucidate the moral issues of the society, through a cognitive approach, but also to establish a philosophy on concepts such as moral or immoral, good or bad, right or wrong.

Morals, on the other hand, represents the object of study of ethics and at the same time, as previously mentioned, only one of the branches of ethics. Morality will include, in principle, a set of rules, which will be imposed on the behaviour of members of a society, from their own moral conscience.

---

[4] Émile Durkheim, argued in his paper *Elementary Forms of Religious Life,* Ed. John Wiley & Sons, Inc. published in 1912 that the function of religion is to assert the moral superiority of society over its members, thus maintaining its solidarity.

[5] "Ethos” derived from the word “Ethicos”, which meant “from/for morality”, a word that was used by the Greeks when discussing the principles of human behaviour.

[6] Ioan Grigoras, *Probleme de etică*, Ed. Al. I. Cuza, Iasi, 1999, p. 3.

[7] *Dicționarul explicativ al limbii române* (Explanatory Dictionary of the Romanian Language), Ed. Academiei RSR, Bucharest, 1984, p. 308.

2. Morality, at the confluence between the legal and the non-legal norm

Morals will have as its main goal the achievement of the collective good and, implicitly, of the individual, and it can be stated, therefore, that the moral man will constantly seek to have a behaviour aimed at doing good, while the immoral man will direct his conduct in doing harm.

Morals, therefore, does not refer to what has been, is or will be, but comes to establish, on the basis of a generalization of the practice of human behaviour, about what it should be.

Unlike morals, morality will reveal the character of what is moral, related to the behaviour of the individual in society, representing an attribute of its existence, an indicator of its sociality.[8]

Morality, as the etymology of the word shows, is related to a person's character, to his temperament. It is a qualitative characteristic of the self, of the individual's consciousness in relation to his fellows, but also to the environment, the value of morality as a qualitative certainty of the human soul being demonstrated for the first time by Aristotle. Morality will therefore have a purely subjective nature, because it is certain that each of us will appreciate, judge or be impressed by what represents us, without being able to say about a deed objectively whether or not it is moral, but only subjectively, as it is analysed in terms of the values we have, of the culture, degree of civilization, tolerance or other factors that characterize us.

Morality should not be, however, mistaken for the notion of morals, respectively with the "good morals" in legal acts, because they represent a distinct category, representing all customs and habits that have a moral significance, which contributes to the correction of the behaviour of the individual in the community. According to the explanation found in one of the legal dictionaries[9], good morals represent "*the totality of the rules of conduct, which have been outlined in the consciousness of the society and the observance of which has been imposed by necessity, through a long experience and practice. The courts are called upon to determine and apply them on a case-by-case basis",* the same source later adding that, "*they represent the set of moral norms of conduct, to which civil law sometimes refers to in order to be taken into account by the court, as a criterion for assessing the imperative nature of certain legal texts, the unlawful nature of a case or the contractual conditions*"[10]. The whole wording obviously does not represent a scientific concept, in the academic sense, but only an opinion supported only by subjectivism, because the notion of "*good morals*" was not explicitly defined and limited. From the legal doctrine, we can deduce that "*good morals*" represent a set of norms of conduct, non-legal, which have been shaped in the consciousness of society through a long experience and practice.

In the absence of a strict juridical definition, which would concretely clarify what is meant by the phrase "*social consciousness*" it will remain to be justified, by concepts belonging to psychology.

In one of his theories, referring to the "*collective unconscious*", respectively to the "*collective mind*", Carl Gustav Jung refers to certain psychological traits of an individual, traits that were transmitted to him, more or less consciously, from one generation to another[11]. C.G. Jung speaks of archetypes, also called "*primordial images*", as well as of the innate behavioural traits of the individual (*patterns of behaviour*) that come to shape his behaviour and that transform the consciousness of the individual. Therefore, a matrix that will contribute and determine at the same time both the conduct of the individual in society and the completion of his ideas and concepts ethically, morally, religiously or culturally.

---

[8] See https://dexonline.ro/definitie/moralitate, accessed on 28.03.2021.

[9] See http://www.avocatura.com, accessed on 28.03.2021.

[10] The totality of the rules of conduct, which were outlined in the consciousness of the society and the observance of which was imposed by necessity, through a long experience and practice. The courts are called upon to determine and apply them on a case-by-case basis. (https://www.rubinian.com/dictionar, consulted on 1.10.2020).

[11] CG Jung, in his volume *Archetypes and the Collective Unconscious*, promotes for the first time in 1919, the notion of the "collective unconscious", which represents the second psychic system of man and which, unlike consciousness, which presents itself as an element with a character of individuality of the person, it has a collective, impersonal character, which has an inherited basis of the psyche, which is made up of pre-existing forms - archetypes.

Also Wilfred Trotter[12]explained the social behaviour of people based on the herd instinct, which is activated in their consciousness, respectively in the mental system of the individual, once he accepts the rules imposed and accepts subordination within the group. Once he wants to be part of a group, the man will be willing to accept any rules imposed on him, in order to integrate and not to be disliked by the community.[13]

Emile Durkheim[14], also aimed to theorize group behaviour, using the terms of collective consciousness. According to her, social facts are defining for collective psychology, such as the behaviour manifested by the individual as a result of rules imposed by obligations to family members, customs or religious practices of the community, making a clear distinction between collective and individual consciousness, as they operate according to different rules. In her opinion, when people gather in a group, a collective consciousness appears, through an intra-community exchange of notions or ideas, the group's mind becoming a flow of consciousnesses, and along with it a social consciousness is formed, which cannot be regarded as an accumulation of individual consciousnesses[15].

From this perspective, positive law retains the importance of established practices or of habits and recognizes as a source of law the customs, making express reference to them, in some normative acts. In this regard, J. Carbonnier, who stated that "*through its ubiquity, guilt makes the irreducible force of custom explode in all parts of positive law*"[16]. By custom we mean "*an immemorial practice, regarded as the law of the ancestors.*"[17], that social custom, which has become a constant over time through its uniform application, it being aware by members of society, as mandatory at the level of that social group, thus gaining a status of "*legal value*" and will be reflected in the behavior of the individual, respectively in and from the consciousness of the society, similar to the archetypes supported by C.G.Jung or at community level analogous to the ideas supported by Trotter and Durkheim. Therefore, in interpreting notions used by the legislator, such as "*good owner*"[18], or the one of "*good morals*"[19] appraisals will be used according to custom[20].

The rules of social coexistence were, however, in close and permanent correlation with the evolution of human society. History, not only of the legal sciences, bears witness to us and comes to confirm our hypothesis that the current form of legal norms has taken over rules of moral conduct, established prior to their enactment, to ensure the welfare in society.

Undoubtedly, the laws of justice coexisted and evolved along with the rules of morality,[21] constantly pursuing a harmonization of the legal system with the moral one.

The insertion of some principles of morality in the legal norms, aimed, on the one hand, to increase with added value harmonization of the individual interest with the general one, and on the other hand, to guarantee its members a stable social balance, the very purpose of enacting the legal norm being to ensure a "*way of coordinating human actions and imposing the general interests of the community on each of the participants* "[22].

Emile Durkheim stated in one of his works that "*objective moral reality exists, because*

---

[12] Wilfred Batten Lewis Trotter was a renowned English surgeon, but he was also noted for his studies of social psychology, especially for his concept of herd instinct, which he first presented in two papers published in 1908, and later in his famous work Instincts of the Herd in Peace and War, an avant-garde beginning of the concept of crowd psychology.

[13] W. Trotter, *Instincts of the Herd in Peace and War, New York*, Ed. Macmillian, 1916, pp. 11-23.

[14] French philosopher and sociologist Emile Durkheim, who is considered the founder of the French school of sociology, having the most important contribution in the academic establishment of sociology as a science and its acceptance in the humanities.

[15] Gafița D. Vlad, *The ideational origins of right-wing totalitarianism. Landmarks of the viral-metamorphic theory*, Ed. Cetatea de scaun, Târgoviște, 2018, p. 327.

[16] J. Carbonnier, *Sociologie juridique*, Quadrige, PUF, Paris, 1994, pp. 230.

[17] Mircea Djuvara, *Teoria generală a dreptului*, Edit. Librarie Socec & Co. SA, Bucharest, 1930, pp. 422.

[18] See art. 213, S.713 (1) and (3), S.803 (1), S.1334 (1), S.1480 (1), S.2018 (1) of the current Civil Code.

[19] For example, in S.196 (1) (c), S.526 (1), S.1009 (2), S.1225 (3), S.1236 (3), S.1255 (1), S1402 Civil Code.

[20] Ernest Lupan, Szilárd Sztranyiczki, Emõd Veress, Rikhárd-Árpád Pantilimon, *Drept civil. Partea generală conform noului Cod civil,* Vol 1, edition 1, C.H. Beck Publishing House, Bucharest, 2012, p. 78.

[21]K. Mbaye stating: "The history of justice and equity is mistaken for the history of the people". Kéba Mbaye, it was a Senegalese judge and member of both the International Olympic Committee and the International Court of Justice.

[22] C. Popa, *Praxiology and the general theory of norms in Philosophy. Dialectical and historical materialism*, Didactic and Pedagogical Publishing House, Bucharest, 1975, p. 421.

wherever there is a society, there is a concretization of its aspirations, and therefore of moral obligations."[23] In the same work, the author states: "*nothing prevents us from incorporating moral reality into nature, turning it into a science like any other; and this consideration of moral reality as something given in experience is not impossible, the most superficial observation clearly showing us that everywhere it depends on objective causes*".

Therefore, although moral norms are considered to be only recommendations, unlike legal norms that have a stated purpose, namely the organization and correction of human behaviour in the main relationships in society, we can appreciate that both have the same common purpose, namely, to establish, through a set of rules, the way in which the members of a society will have to behave, under certain determined conditions, in order for their action to be efficient and to be positively appreciated[24].

However, unlike the legal norm, the application and observance of which is mandatory, and its non-observance will be sanctioned by the coercive force of the state, the non-legal norm will be applied from the conscience of the individual and will be sanctioned by public opinion, the disgrace starting from the collective consciousness of society. In fact, I. Kant, delimited in his work "*Critique of pure reason*", the boundary between legality and morality, stating that only: "*the concept of duty demands to the action in an objective way the agreement with the law, and to its maximum it claims subjectively for the law, as the only way to determine the will by law. These are the bases of the consciousness of having acted according to the duty or of having acted out of duty, that is, out of respect for the law; the first way of acting (legality) is possible even when only the inclinations were the determining principles of the will, but the second (morality), the moral value, must be located exclusively in that the action takes place out of duty, that is, only for the sake of the law*;[25]. In fact, it is worth noting that nowhere in Kant's mature moral philosophy is there any theory to suggest, at least, that "*emotions of goodwill can have a moral value as such, but however, only the duty started from consciousness, only through the power of the will is relevant, in which case the individual will be able to remain a moral person*"[26].

In modern times the notion of law has been defined as what is regulated in law (positive law), but by reducing the concept of "law" to only one of its meanings, such as its positivist definition, it is obviously impoverished.[27]. Within the ancient Eastern philosophical traditions and in the age of Antiquity, the idea of *"right*" or "*just*" simultaneously referred to that of "*right consciousness*", so to a concept that was associated with the ideas of justice, ethics, morality, good.

Initially, there was no clear distinction between the notion of law and equity, with Aristotle stating that "*Law and equity are therefore the same thing, and although both are excellent and good, however equity is a better thing*."[28]. Therefore, fairness was to be applied only in those concrete situations, in which the application of the law would have led to unfair solutions. According to these concepts, the application of the legal norm was recognized to be a priority, but when it proved insufficient, as the legal regulation did not cover all concrete situations, equity came to correct this situation, thus avoiding unfair solutions: "*If, therefore, the law speaks in general, but concretely the case that is contained in the general provision arises, then considering that the legislator neglects this case, and generally speaking, he erred, it is done accordingly to when what was neglected is corrected, as the legislator himself, if he had the case before him would do it, and if it had known him, he would have decided in law what was necessary. That is why the equity is a law better than a certain law, but not better than the absolute right, but better than that law which, because it knows*

[23] Emile Durkheim, *Education and Sociology*, translated from French by Iorgu Iordan, Bucharest, Didactic and Pedagogical Publishing House, 1980, p. 20.
[24] Gh. Boboș, *General Theory of Law*, Argonaut Publishing House, Cluj-Napoca, 1999, p. 247.
[25] Kant, *Critique of pure reason* [1781/1787], trans. of N. Bagdasar, E. Moisuc, ed. III, Ed. Univers Enciclopedic, Bucharest, 2014.
[26] Jens Timmermann, St. Andrew's University, UK, *Kant on Consciousness, Indirect Duty, and Moral Error*, „Journal of Analytical Philosophy", Volume IV, 2010, pp. 52-73.
[27] Jean-Jacqes Sarfati, *L'étude du droit positif chez les post-socratiques et les raisons être d'un possible "déclin" contemporain de la pensée sur le droit,* in *Etică și cultură profesională*, by I. Copoeru, N. Szabo (coordinators), Casa Cărții de Știință, Cluj-Napoca, 2008, p. 37.
[28] Aristotle, *Nicomachean Ethics*, Translated by Traian Brăileanu, Antet Revolution Publishing House, 2003, p. 115.

no difference, is defective. And this is the nature of equity: it is a correction of the law, where it remains defective because of its general wording."[29].

Equity, however, as a moral foundation of legal rules, will undoubtedly enjoy its own identity, the topic of "equity" in law being one of the most complex and controversial topics. Equity as a moral and legal principle has always been considered of fundamental importance, because it comes to impose equality in terms of the rights and duties of members of a human community, equality of all before justice and the impartial settlement of disputes between them.[30]

Among the first documents of antiquity to attempt a codification of human conduct was the Code of Hammurabi, which in its 282 articles regulated legal, religious, and moral issues, the Babylonian legislator arguing that "*the law must bring the wellbeing of the people, it must stop the strong from harming the weak*"[31].

Later, for the ancient Greeks, law was never delimited by morality, being considered part of morals, and morality was perceived as a unit of evaluation of a person's attempt to temper and master his primary instincts, a person's morality indicating how much that person is responsible for his/her actions, for what he/she does.

Even in Roman law, initially there was no clear delimitation, between the notions of law, religion and morality, which are mistaken for one another. As a proof we have the legislative work of Emperor Justinian, the text that sent us the definition of case law as the science of law being of notoriety.

According to this text, "*iurisprudentia est divinarum atque humanarum rerum notitia, justi atque injusti scientia"* ("the science of law is the knowledge of divine and human things, the science of what is right and wrong"), it can be seen that law is mistaken for religion, in the first part, while in the second part of the text, the law is mistaken for morality.

The same confusion can be noticed in the texts of the great jurist consult Celsus, who defined law as "*Ius est ars boni et aequi*" which translates as "*Law is the art of the good and the fair*", the law being mistaken for morality, good being obviously a concept of morality, and equity having both a moral and a legal meaning, previously demonstrated by the Aristotelian theory.

Subsequently, this confusion was overcome, with clear delimitations appearing between the norms of law and the other social norms. The Romans designated the norms of law by the word IUS (rules of law issued by a secular authority and interpreted by Roman jurisconsults), and the religious ones by the word FAS (divine law imposed by the divinity in order to regulate relations between people[32]).

Thanks to its exceptional vitality, the old Roman Law, not only survived the society that created it, but also later contributed, fundamentally, to the tracing of the principles of modern law, continuing to apply successfully, both in feudal society and in the modern one.

In the Phanariot Era, respectively in 1818, in Wallachia, the Phanariot ruler Gheorghe Caragea with "*Princely and parental love and goodwill judging as a holy law the public benefit of the subjects and always taking care that it is stable and unwavering, accepted in the end to calm down above the justice the most disturbing war"* specifying for example, in art. 4, part III, chap. 1 - "*De obste pentru tocmeli*" that "*Bargaining against good rules and habits cannot be haggled*", a rule that has survived to the present day, being transposed in the text of S.5 of the Civil Code of 1864 and then taken over, further, in S.11 of the current Civil Code, which regulates in the chapter on "Respect for public order and morals" imperatively that: "*It is not possible to derogate by conventions or unilateral legal acts from the laws that concern the public order or from the good morals".*

In the same historical period, in Moldova, at the initiative of the ruler Scarlat Callimachi, the Civil Code of Moldova was promulgated, which explained to us, initially in Greek, at S.879, that "*by*

[29] Ibid.

[30] See Codruța-Ştefania Jucan*, Trial in equity in Romanian Civil Law*, 2012, Civil Law, Lawyer Coordinator Marius-Catalin Predut, "Equity - in the normative constructions of the New Code of Civil Procedure", Ion Deleanu, „Romanian Journal of Private Law" no. 2/2014, Ed. Universul Juridic.

[31] Nicolae Popa, *General Theory of Law,* Ed. Actami, Bucharest, 1996, p. 58.

[32] Emil Molcuț, *Drept roman*, Ed. Universul Juridic, Bucharest, 2011, p.10.

morals or habits we must understand the natural habits or those gained as a result of good or bad". Therefore, the legislator of those times, evaluates the behaviour of the individual in society by relating his "*morals or habits*", to do good or to do bad, because the good and the bad had permanently been the most common forms of moral evaluation, distinguishing between moral and immoral.[33].

The historical reality of human life, therefore, confirms that morality has represented and still represents a permanent and perpetual presence in the organization and regulation of relations between members of a community, in order to ensure optimal coexistence in the society.

Therefore, as an integral part of the legal systems, morality has been found for more than 2000 years, but unfortunately, we still cannot say that it enjoys a clear and precise definition, as it is still to be expected. Even in our current Civil Code, although present as before, in the previous codifications, morality remains a notion without a concrete definition.

The old Civil Code stated that: "*the obligation without cause or based on a false or illicit cause, cannot have any effect*" (S.966), the legislator of those times continuing in the following article, to detail, in order to be as clearly as possible, that a "*cause is unlawful when it is prohibited by law, when it is contrary to good morals and public order"* (S.968). Therefore, what was contrary to good morals was considered to be illegal, which we perceive today to be illicit. But the term illicit, both from a purely literary semantic perspective (as an adjective) and in a legal sense (as a deed), defines something that goes against the law, that goes against certain imperative rules issued by a public authority vested with normative powers. Obviously, from this perspective, the good morals, to which the legislator refers in the content of S.968 of the old Civil Code, acquire the status of law, even if it was not written or officially promulgated, of the social order.

We can note, however, as a novelty, that through the regulations brought by the new codification, in order to be valid "*The cause must exist, be lawful and moral*" (S.1236, (1)). This condition is not fulfilled, the cause being immoral, when the cause "*is contrary to good morals*" (S.1236, (3)). Therefore, when the reason that determined each party to conclude the contract (S.1235, (1)), contradicts the set of rules of conduct that have emerged in the consciousness of the society through a long experience and practice (respectively good morals), then the moral condition is not fulfilled, the cause being considered immoral.

Although between the notion of morality and that of good morals, as we have shown before, there is a difference of substance, as morality talks about what it should be, while good morals are already implemented in the consciousness of the society, we appreciate the initiative of the legislator, who in the current Civil Code, brings in this matter, some novelties as compared to the previous regulation, which did not distinctly provide for the morality of the case, subsuming it to the condition of being lawful.

3. Conclusions

Morality, as outlined in the present study, is one of the branches of study of ethics, as a philosophical discipline, which will try to answer the question "*Was soll ich tun*?" (what should I do?), a question around which, according to Immanuel Kant, the whole ethical philosophy would be based.

The moral will therefore include a set of recommendations, which will be addressed to members of a community, in order to shape their behavior, both individually and collectively, to achieve and ensure a good coexistence in intra-community social relations. These recommendations once accepted and adopted, through a long experience and practice, will be implemented in the consciousness of society acquiring the status of "*good morals*". Respect for "*good morals*" should, in principle, come only from the moral conscience of the individual, and in order to be put into practice, only a stimulator is needed, a general stimulating climate. The Romanian philosopher Constantin Noica stated that "*in order to return to norms, we do not need a decalogue to impose them, but a spirit*

[33] Good is a category of ethics that unites everything that has a positive moral value, meets the requirements of morality, serves to distinguish between moral and immoral, opposing evil.

to awaken them". At the level of the individual, the way in which he will respect and apply at the community level the "*good morals*", will be evaluated by his degree of morality.

Undoubtedly, the principles of morality preceded knowledge, but realized for a long time they required, sooner or later, a rational justification, a theoretical understanding, so that with the advent of law we witnessed a transposition of the principles of *morality* and the rules imposed by the standards of *good morals*, within the *legal norms*. As an integral condition of life in the community, it is obvious that social organization has imposed itself and evolved with it, and these rules, which were initially assimilated by the community only as unwritten rules of conduct, respectively as "*good morals*", which they were reflected in the behavior of the individual and in the consciousness of the society as "*habits with legal value*", they became with the evolution of the society, real legal values.

Therefore, the sanction applied to the individual, who will disregard these rules, has undergone a series of transformations. Initially, the sanction applied came only from other members of the community, in the form of public disgrace. However, with the insertion in the legal norm of these non-legal norms, such as morals or good morals, they have acquired a certain legal value, and their disregard is no longer sanctioned only by the disapproval by which the company condemns those actions, but more much, will be sanctioned by the coercive force of the state.

From this perspective, it is obvious that the moral norm represents a constant of social life, which has been permanently subjected to continuous paradigm shifts. People's relationships in society are infinite, and morality as a form of social organization of intra-community relations, will never intend to diminish or level in any way the diversity of these concrete relationships, but will only try, permanently, to reflect, as faithfully as possible, trends evolution of human communities, trying to shape the behavior of society in order to live better. But beyond the recommendations of the moral norm, the rule accepted, applied, recognized and sanctioned by public disgrace, as well as by the coercive force of the state, remains to refer to "good morals".

Bibliography

1. Aristotel, *Etica nicomahică*, translation by Traian Brăileanu, Ed. Antet Revolution, 2003.
2. C. Popa, *Praxiologia şi teoria generală a normelor în Filozofie. Materialism dialectic şi istoric*, Ed. Didactică şi Pedagogică, Bucharest, 1975.
3. C.G. Jung, *Arhetipurile si inconstientul colectiv*, Ed. Trei, 2014.
4. Emil Molcuț, *Drept roman*, Ed. Universul Juridic, Bucharest, 2011.
5. Emile Durkheim, *Educaţie şi sociologie*, translated from French by Iorgu Iordan, Ed. Didactică şi Pedagogică, Bucharest, 1980.
6. Ernest Lupan, Szilárd Sztranyiczki, Emõd Veress, Rikhárd-Árpád Pantilimon, *Drept civil. Partea generală conform noului Cod civil*, Vol 1, Ed. C. H. Beck, 2012.
7. Gafița D. Vlad, *Originile ideatice ale totalitarismului de dreapta. Repere ale teoriei viral-metamorfice*, Ed. Cetatea de scaun, Târgoviște, 2018.
8. Gh. Boboş, *Teoria generală a dreptului*, Ed. Argonaut, Cluj-Napoca, 1999.
9. I. Copoeru, N. Szabo (coord.), *Etică și cultură profesională*, Casa Cărții de Știință, Cluj-Napoca, 2008.
10. Immanuel Kant, *Critica raţiunii pure*, translation by N. Bagdasar, E. Moisuc, 3rd ed., Univers Enciclopedic, Bucharest, 2014.
11. Ioan Grigoras, *Probleme de etica*, Ed. Universitatii „Al. I. Cuza", Iasi, 1999.
12. J. Carbonnier, *Sociologie juridique*, Quadrige, PUF, Paris, 1994.
13. Jean-Jacqes Sarfati, *L'étude du droit positif chez les post-socratiques et les raisons d'être d'un possible "déclin" contemporain de la pensé sur le droit*, in I. Copoeru, N. Szabo (coord.), *Etică și cultură profesională*, Casa Cărții de Știință, Cluj-Napoca, 2008.
14. Jens Timmermann, *Kant despre conştiinţă, datorie "indirectă" şi eroare morală*, St. Andrew's University, Marea Britanie, „Revista de filosofie analitică", vol. IV, 2010.
15. L. R. Boilă, *Răspunderea civilă delictuală obiectivă*, Ed. C.H. Beck, Bucharest, 2008.
16. Marius-Catalin Preduț, *Echitatea – în construcțiile normative ale Noului Cod de procedură civilă*, in Ion Deleanu, „Romanian Journal of Private Law" no. 2/2014, Ed. Universul Juridic.
17. Mircea Djuvara, *Teoria generală a dreptului*, Ed. Librărie Socec & Co. S.A., Bucharest, 1930.
18. Nicolae Popa*, Teoria generală a dreptului*, Ed. Actami, Bucharest, 1996.
19. W. Trotter, *Instincts of the Herd in Peace and War*, New York, Ed. Macmillian, 1916.