THE RESPONSIBILITY PRINCIPLE

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Abstract

"I'm wishing Law this: all legal obligations sholud be executed with the scrupulosity with which moral obligations are being performed by those people who feel bound by them ...", so beautifully portraited by Nicolae Titulescu`s words[1].

Life in the society means more than a simple coexistence of human beings, it actually means living together, collaborating and cooperating; that is why I always have to relate to other people and to be aware that only by limiting my freedom of action, the others freedom is feasible. Neminem laedere should be a principle of life for each of us.

The individual is a responsible being. But responsibility exceeds legal prescriptions. Romanian Constitution underlines that I have to exercise my rights and freedoms in good faith, without infringing the rights and freedoms of others. The legal norm, developer of the constitutional principles, is endowed with sanction, which grants it exigibility.

But I wonder: If I choose to obey the law, is my decision essentially determined only due of the fear of punishment? Is it not because I am a rational being, who developed during its life a conscience towards values, and thus I understand that I have to respect the law and I choose to comply with it?

Keywords: *responsibility, freedom, juridical liability, values, principles.*

INTRODUCTION

The International Bill of Human Rights, by claiming that freedom and equality of dignity and rights are inborn, shows that human beings are "endowed with sense and consciousness and should behave fraternally towards each other". Therefore, freedom, dignity and equality emerge from the human sense and consciousness and not from the objective right. Similarly, this study aims to show that the need to comply with these core values of the human quality has the same justification, being based on the human sense and consciousness which represent the premises of the responsibility.

According to Gh. Mihai, the responsibility is a concept of justice as value, together with freedom and equality as values. As far as we are concerned, we believe that the major difference consists in the fact that while freedom and equality are inborn, the responsibility is to be cultivated in time due to the fact that it is not innate. „The human being is not born with a formed responsible personality (…), but with the ability of being responsible for what happens throughout its psychosocial formation as a subject able to know itself and the others"[2].

Therefore, the responsibility is an attribute of the human personality, a synthesis of the responsibility feeling and the responsibility knowledge. The extent of the responsibility is given by the level of the self-awareness. The society has an important role in this respect. The individual lives and evolves within a social environment; it expresses itself within the social life, interacts and permanently relates to values. And the values are those which proclaim and defend the society at one point in time: it sets up a model to be followed up and requires its members to comply with it. In this regard, the assumption of the values and the compliance of the individual behavior with the social regulations shall be performed voluntarily, without involving any compulsory social forces, which are outside of the individual's environment, but only a high level of civic consciousness.

If the individual does not meet the standards of conduct and violates the social relation, its behavior also reflects the extent to which the society managed (or did not manage) to valorize the actions of the individual and to implement the sense of responsibility on it. „The antisocial behaviors should be viewed not only as punishable actions, but as diseases of the individual of which remedy must be sought if it has not been found or as diseases of the society itself due to the fact that it is not exempt from any sort of psychosis. The disease is often due to the environment and therefore it is necessary to treat the environment, although this should not be generalized"[3].

Therefore, we can discuss the educational role of the law on the completion of the individual's personality and we will detail it in the following lines.

CONTENT

By focusing on the coercion at the expense of the education, the law succeeds in restore the social order for the moment. But this is only an apparent success due to the fact that „the effect is the one focused and

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[1] Nicolae Titulescu, *Reflecţii*, Albatros Publishing House, Bucharest, 1985, page 2.

[2] Gheorghe Mihai, *Fundamentele dreptului, Teoria răspunderii juridice*, (The Basis of Law. The Theory of the Legal Responsibility) vol. V, C. H. Beck Publishing House, Bucharest, 2006, page 34.

[3] Dan Claudiu Dănişor, Ion Dogaru, Gheorghe Dănişor, *op. cit.*, page 55.

the cause is ignored. The appearance and the violation of the rules that regulates the social report are removed and the substance is kept: namely the lack of socialization of the individual". The law should implement in the consciousness of the individual not only the fear of coercion and punishment, but should act for the improvement of the individual by means of education, under the consequence of the improvement of the entire social order. It is argued that the law „should have as a final purpose the re-modeling of the individual's self-awareness", due to the fact that „what is missing is the faith in the human being's perfection"[4].

This is the moral dimension of the responsibility. in what concerns the legal dimension of the responsibility, this takes the shape of a general law principle which involves on the one hand the promotion of the social and human values by means of the rules of law and on the other hand the defense of these values within the process of the law.

Therefore, the value is a mark of the responsibility. The responsible human being develops throughout its life, the ability to distinguish between values, pseudo-values and non-values. Despite this, the criterion of the values varies from one legal system to another and even within the same system, depending on the periods of time. For example, the homosexuality is an offense which violates the social values of Colombia but which is not sanctioned in Spain where it is not deemed to violate a social value. Therefore, the legal responsibility is related to the relative law system and it is impregnated by its precariousness"[5].

The perspective distinction between the law and the moral in terms of value is that „the moral admission of the human life is universal and absolute and no speculative derogation of it can affect its substance, while the legal admission of the same value is suddenly neither universal, nor absolute, as long as the same lawmaker falls in contradiction in the same respect"[6]. Therefore, we understand that what is important is the admission of the values, not the way they emerge within a positive law system which changes from an era to another, but within their logical anteriority, the everlasting values of the founding principles of the positive law being the ones that really matter. We can say that the difference between law and morality consists, on the one hand, in the purpose (law envisages general interest - social welfare, public utility, while morality is related to moral elements, other factors than economic order, opportunity) and, on the other hand, in the effectiveness of the two (law imposes coercive sanctions, morality does not)[7].

The criteria of the legal responsibilities is represented by the legal values expressed by the regulatory system by means of the rules of law, as well as by the other social values which, without falling in *abinitio* under the scope of the regulation, are then legalized and valorized by means of the rule of law.

The principle of the responsibility concerns both the process of drawing up the laws (targeting both the responsibility and the liability of those who perform the respective duty, reflected in the selection of the values that correspond the best to the interest of the society), and the fulfillment of the law, by emphasizing that the law should not be understood only as a tool used in the field of the damage already occurred but also as a tool used to develop the feeling and awareness of the responsibility. Recent doctrine stated that "responsibility principle can be inferred even from his interpretation of the Romanian Constitution which provides the principle of responsibility of state powers and civil servants[8]. According to Hayek, the most important role of the law lies in its ability to predict the individual's actions, so that by being established on prevention and on the coordination of the individual behaviors in the desired direction, the social order is ensured[9].

From the etymological point of view, the term ("responsabilitate") „responsibility" comes from the Latin s*pondeo*, which in Romanian law means the official obligation of the debtor to the creditor to fulfill the performance undertaken under the agreement. The distinction between responsibility-liability (responsabilitate – răspundere) is reflected in the legal language by using different words, as the case of the Romanian language, or of the English language: „liability" (răspunderea), and „responsibility" (responsabilitatea).

By analyzing the content of the two terms, Gh. Mihai shows that the responsibility belongs to the personality as a whole, while the liability „is divided in as many forms as the number of persons expressing this personality; I am personality, but I disclose my moral person in moral relations, the legal person in legal relations and the political person in political relations"[10]. Furthermore, in practice, the author shows that the specific of the personality is revealed by means of the natural person in civil legal relations, by an offender in criminal relations and by a citizen in constitutional relations. The positive law holds liable a

[4] *Idem*, page 54.

[5] Gheorghe Mihai, *Fundamentele dreptului, Teoria răspunderii juridice*, (The Basis of Law. The Theory of the Legal Responsibility) vol. V, C. H. Beck Publishing House, Bucharest, 2006, page 55.

[6] *Ibidem.*

[7] Roxana-Mariana Popescu, *Introducere în dreptul Uniunii Europene, (*Introduction to European Union Law), Editura Universul Juridic, Bucureşti, 2011, pag. 12.

[8] Elena Emilia Ștefan, *Răspunderea juridică. Privire specială asupra răspunderii în dreptul administrativ,* (Legal Liability. Special focus on liability in administrative law), Editura Pro Universitaria, Bucureşti, 2013, p. 22.

[9] *Apud* Sever Voinescu, *Drept şi logos*, in Studii de Drept Românesc, (Law and Logos in Studies on the Romanian Law) year 11(44), no. 1-2/1999, page 27.

[10] Gheorghe Mihai, *Fundamentele dreptului. Teoria răspunderii juridice,* (The Basis of Law. The Theory of the Legal Responsibility) vol. V, C. H. Beck Publishing House, Bucharest, 2006, page 28-29.

certain person as a natural person in civil relations, as an offender in criminal relations and as a taxpayer in fiscal relations. However, the author outlines that „not all the persons of the same individual take part in the creation of the legal values, but its personality due to the fact the personality is the value which valorize, while its persons valorizee, wear and express the values by means of different social relations, including legal relations".

Starting from the above mentioned, Gh. Mihai points out that each human being is a person, a subject endowed with judgment, feelings, will, emotions, attitudes, it is able to distinguish the right from the wrong, the truth from the lie, the justice from the injustice, it can be hold liable for its own choices which are revealed by means of its behavior; furthermore, each human being is a personality, thanks to these features which distinguish it from any other human being. Therefore, the author concludes that, „I am a person as any other human being but I am judged based on evidence as a personality"[11].

The responsibility is the „sine qua non existential quality of the human being who knows itself and the others and who performs the action no matter in how many forms it is divided (moral, legal, political)"[12]. By representing a value, the responsibility is an indestructible merger between the feeling and the knowledge, so that we can speak about the feeling and the knowledge of the responsibility.

According to Dumitru Mazilu, the responsibility is „an intrinsic coordinate of the human behavior which plays a decisive role in the freely consented performance of the provisions of the rules of law and in preventing the violations of the law"[13].

The process of the self-awareness involves two dimensions: the responsibility represents the positive side, by meaning the extent to which the society managed to implement its system of values on the individual, and the legal liability which represents the negative side by emerging in cases where the law failed to fulfill its educational, preventive function. The legal responsibility is an institution by means of which the lawmaker expresses the vocation of legal liability of certain persons due to the potential acts and legal actions committed. The legal responsibility is prior to the committed offense, unlike the liability which emerges only after the occurrence of the act or legal actions which caused damages and only under the terms provided by the law.

On the field of the damage already occurred, the legal liability contributes in order to ensure the legality, as the simple approval of several penalty measures would not be enough if by their application the restoration of the rights established by the law and violated by the individual was not pursued. On the other hand, the prevention and education of the law pursue to highlight „its ability to engage collective response binding upon the person who violates the rule of law which anticipation is able to lead to the respect and compliance of the members of the society who do not want the legal penalties to be applied on them"[14]. Legislative changes that occur at a time raise serious issues to different areas of law in terms of interpretation and application of legislation[15].

By being endowed with sense and consciousness, the human being is free to choose, to decide and to act. Only the independent human being is responsible and therefore liable. It is aware of the values, understands and internalizes them, then chooses between them and translates them into its actions. Given this, we outline that the discussion on responsibility becomes meaningless if we do not have the free will as a prerequisite. „In order to question whether an act of some persons is right or wrong, we firstly must take into account that the respective person was free when it committed the act. If the person was not free, then all the problems disappear and only the scientific problem, which has nothing to do with the law, emerges"[16].

The existence of the responsibility requires the fulfillment of two conditions: the freedom of the personality and its ability to decide, in other words the ability to act freely and consciously. Therefore, the freedom is the *sine qua non* condition of the responsibility. We cannot speak about responsibility if the will of the individual was determined by external means, was forced or directed. The responsible involvement within the social life means the free admission of the values, the knowingly assessment of the causal consequences and the uncontrolled decision to act according to own will.

In this respect, Gh. Mihai noted that the responsible person is the individual who makes the choices, decides and carries out its spiritual and material actions[17]. Therefore, by being self-aware, the individual, the recipient of the law, chooses between the legal and the illegal actions, the licit and the illicit facts, decides on those to be carried out by it and undertakes to commit them, which means that it is

[11] Gheorghe Mihai, *Fundamentele dreptului. Teoria răspunderii juridice,* (The Basis of Law. The Theory of the Legal Responsibility) vol. V, C. H. Beck Publishing House, Bucharest, 2006, page 25.

[12] *Idem*, page 33.

[13] Dumitru Mazilu, *op. cit.*, page 144.

[14] Ion Craiovan, *Teoria generală a dreptului*, (General Theory of Law), Militară Publishing House, Bucharest, 1997, page 49.

[15] Elena Emilia Ștefan, *Contribuția practicii Curții Constituționale la posibila definire a aplicabilității revizuirii în contenciosul administrativ,* (The contribution of the Constitutional Court`s practice in possible defining of revision applicability in administrative law), in Revista de Drept Public nr. 3/2013, Universul Juridic Publishing House, Bucharest, pages 82-83.

[16] Mircea Djuvara, *op. cit.*, page 160.

[17] Gheorghe Mihai, *Fundamentele dreptului. Teoria răspunderii juridice,* (The Basis of Law. The Theory of the Legal Responsibility) vol. V, C. H. Beck Publishing House, Bucharest, 2006, page 50.

responsible. Therefore, we can say that the independent individual who is aware the values of the rules of law, internalizes and adopts them, is the individual legally responsible; if it does not adopt them and chooses other values, which it undertakes to translate in actions and deeds, it is also legally responsible. „The human being is legally and morally responsible for the scopes knowingly assumed, meaning the scopes that it evaluated, assessed, thought and chose and for the actions controlled by its judgment and deliberately wanted"[18].

As a basic principle, the principle of the responsibility is directly linked to the principle of freedom due to the fact that it is based on the free will: „all the determinations of the law are determinations of the will, starting from property, exchange, illicit actions and ending with the civil society and the state"[19].

In terms of knowledge and will, the human being is responsible for its actions and it can be hold liable only up to this extent. Its will should not be constrained by internal or external factors, so that the individual, in order to be liable, has to be aware of and to agree with its actions. The connection between freedom and responsibility was also discussed by Hayek: „The freedom does not mean only the fact that the individual has both the opportunity and the burden of the option; it also means that it is bound to bear the consequences of its actions and the fact that he will be praised or blamed"[20].

The social liability emerges as a consequence of placing the individual into a regulated social environment; the latter always relates to the values; the violation of the regulations bearing values (meaning the shortage of their assimilation, introspection and self-awareness fulfillment) leads to the liability of the person in question.

Basically, each and every violation of the existing social regulations leads to the moral, religious, political or legal liability, meaning the obligation to bear the consequences of the failure to comply with the rules of behavior, an obligation incumbent on the offender who violated the rule. The legal liability is one of the expressions of the idea of social responsibility.

The social liability existed since the primitive times under archaic forms such as private vengeance or private compensation. We should recall that the subject of the legal liability was also discussed in the works of the great ancient thinkers. According to Platon, nobody should remain unpunished for disregarding the law, no matter the damage it causes by means of the respective committed offense. The beginnings of the theory of the prevention are found in Platon's works, the philosopher considering that the liability must emerge "not in order to pay for the committed mistake, because once the damage has been done, it cannot be repaired, but in order for the guilty and for the persons who see it being punished to sincerely hate injustice and to release themselves of this weakness in the future".

In what concerns the Romans, *The Law of the Twelve Table* established, beyond the rule of the private vengeance, the system of the legal structure whereby the pecuniary compensation right for the damage incurred of the victim of an offense was recognized. G. delVecchio noted that this was the reason why „the less harsh trends of replacing the vengeance with the compensation did not fail to occur. Instead of being avenged, the offense was compensated, either according to the award of an arbitrator chosen by the parties among the elder persons or according to an established rate"[21].

Later on, Grotius established the four principles guiding the whole law, the principles which are nowadays the pillars of the field of the legal liability: *alieni abstinentia* (the respect for the other's assets); *promissorum implemendorum obligation* (the fulfillment of the commitments); damni culpa dati reparation (the compensation of the damages caused to other persons); poene inter hominess meritum (the fair punishment of those who violate these principles).

Mihail Eliescu believes that the liability, by being a social fact which „is limited to the reaction caused by an action that the society of the place and time of the committing considers it punishable[22]. Nicolae Popa added that in case the legal liability is dispersed, the social reaction has different distinctive features, being an institutionalized reaction triggered by an offense and being organized within the limits set by the law[23].

In the accepted legal principle, the legal liability institution is defined as the unit of the rules of law concerning the relations that arise in the field of the activities carried out by the public authorities under the law, against those who violate or ignore the rule of law, in order to ensure the compliance with and the promotion of the rule of law and public good[24].

According to another opinion, the legal liability is analyzed as a „special legal relation, consisting in the obligation to bear the penalty provided by the law, as a result of committing an attributable legal act. However, this obligation falls into a complex content

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[18]Gheorghe Mihai, *Fundamentele dreptului*, (The Basis of Law) vol. I - II, All Beck Publishing House, Bucharest, 2003, page 188.

[19]Dan Claudiu Dănişor, Ion Dogaru, Gheorghe Dănişor, *op. cit.*, page 66.

[20]*Apud* Nicolae Popa, Ion Dogaru, Gheorghe Dănişor, Dan Claudiu Dănişor, *op. cit.*, page 532.

[21]Giorgio delVecchio, *Lecţii de filosofie juridică*, (Legal Philosophy Courses) of the 4th edition of the Italian text, Europa Nova Publishing House, Bucharest, *sine anno*, page 192.

[22]Mihail Eliescu, *Răspunderea civilă delictuală*, (The offensive legal liability), Academiei Publishing House, Bucharest, 1972, page 5.

[23] Nicolae Popa, *Teoria generală a dreptului*, (General Theory of Law), Actami Publishing House, Bucharest, 1998, page 202.

[24]Lidia Barac, *Câteva consideraţii cu privire la definirea răspunderii juridice*, (Several considerations on the defining of the legal liability) in Law no. 4/1994, p. 29.

which is supplemented by its relevant and related rights"[25].

We hereby outline that the legal liability is not the only type of liability which sanctions the violations of the rules of conduct. The legal liability is related and complementary to other forms of social liability. Therefore, the individual may be hold liable by the society by means of disapproval or even by the individual itself by means of its inner feelings and its consciousness of being a responsible person. In this case, the authority competent to perform the judgment is the individual itself: „a responsible person judges itself and therefore assumes the result of the judgment; it is demanding with its own person as a result of the self-judgment and assumption of the strictness against itself"[26].

According to Gh. Mihai the liability emerges from the responsibility, the legal liability is the awareness of an illegally committed act, the fact of holding someone legally liable is the consequence of committing an illegal act, namely the violation of the legal provision by means of a knowingly material behavior, while the fact of holding someone religiously liable for example, is the consequence of the violation of a divine rule „by means of the words, facts and thoughts"[27]. In what concerns the area of the law the responsibility is an existential quality of the individual by means of which it expresses its personality within social relationships, while the irresponsibility emerges *per accidens*. The irresponsible person manifests, binds and looses the relationships with other persons, but the social liability is not assigned to it, so that it is not hold liable for illegal acts. Unlike but not opposed to the rule of law, the moral regulation expressly establishes the irresponsibility cases also called "causes that remove the legal liability", outside of which we are legally responsible and able to be held liable.

Therefore, the mandatory character of the rule of law is different from that of the moral regulation; however, it is essentially to outline that the field of the responsibility is set between the two categories, the ethics and the law: being enhanced by the moral, the law is implemented by the individual as the awareness of the need for the rule of law, and not as being essentially binding. If the legal order gathers the social harmony and the coercion, in this order and not vice versa, the legal penalty emerges only as a potential element, „if needed". Therefore, this is the purpose of the law: to educate, to valorize, to prevent (this is why the majority of individuals comply with the normative prescription) and only to the extent that the social harmony is disturbed by antisocial actions, to re-establish the rule of law by applying penalties. Therefore, an increased responsibility is translated by the installation of the legal liability on the theoretic level; the deeper the responsibility is implemented in the individual's inner the less the individual is held liable on the field of the law, by incurring penalties.

Essentially, both the moral regulation and the rule of law addresses to the individual's consciousness, the perfectibility of the individual representing the scope to be reached. In the field of the law, the consequences are more generous, meaning that the perfection of the individuals reached by the valorization function of the moral law, leads to the perfection of the legal order, the final scope of any society.

We note that in the accepted legal principle, the order of fulfilling the functions of the law is sometimes reversed. Therefore, one opinion[28] shows that, by establishing the conduct to be followed, the law creates automatic behaviors: the subject complies with the rules of law without the creation of new behaviors being necessary; the law is the one that has to fulfill the creative task. If the individual complies with the rules of law, means that it assimilated the prescribed behavior, the assimilation being explained by the author by means of two reasons: „firstly, because the law has the sanctioning power", then due to the fact that the "law has a creative ability and it is persuasive". Therefore the penalty is not a potential and alternative element which is perceived only when needed, but the decisive element of the individual for the purpose of assuming the imposed conduct. Furthermore, the persuasive value of the law is not imagined as being due to the valorization ability of the law with the consequence of making the individual to be responsible, but to the idea that „the will of the authority means a lot for the individual, de facto it means an order".

All the above mentioned are also supported by logical and legal considerations: the penalty is only one of the three elements that make up the structure of the rule of law. No doubt that the legal penalty is the one that confers specificity (chargeability) to the rule of law, unlike the other types of social regulations. This must not lead however, to the equivalence between the legal liability and the legal penalty. We are liable, due to the fact that, above all we are responsible and only to this extent we can be held liable. The liability is a stage prior to the application of the penalty. The legal frame of awarding the legal liability is broader and cannot be limited to the penalty. The content of the legal liability is complex, consisting of the right of the state to hold liable the individual who violated the rule of law and to apply the penalty provided by the law, on the one hand, and on the other

[25]Gh. Lupu, Gh. Avornic, *Teoria generală a dreptului*, (General Theory of Law), Lumina Publishing House, Chişinău, 1997, page 210.

[26]Gheorghe Mihai, *Fundamentele dreptului, Teoria răspunderii juridice*, (The Basis of Law. The Theory of the Legal Responsibility) vol. V, C. H. Beck Publishing House, Bucharest, 2006, page vol. V, Edit. C. H. Beck, Bucureşti, 2006, page 51.

[27]*Idem*, page 34.

[28]Sever Voinescu, *Drept şi logos*, în Studii de Drept Românesc, (Law and Logos in Studies on the Romanian Law) year 11 (44), no. 1-2/1999, page 35-36.

hand, of the correlative obligation of the individual who committed an offense to bear the respective penalty. The basis of the legal liability is the illicit action and its consequence is the application of the penalty. The penalty is only one aspect of the relationship of the legal coercion, namely the reaction of the society to the committed offense. However, the liability should not be based on the coercion; beyond the repressive function (the application of the penalty), the legal liability has also an educational function, or it would be more appropriately to say that it has the role to reeducate the individual, and is embodied in the social responsibility of those who proved the lack of admission of the values by means of violating the rule of law.

CONCLUSIONS

„The law shall exist as long as the individuals are incapable of morality, in its sense of virtue"[29]. D. C. Dănişor, I. Dogaru, Gh. Dănişor outlined that the basis of the law is the education and not the coercion, regardless if it is based on the will of the majority or on the state or most of the time on the arbitrary penalty. The law should belong to the sense so that the "idea of scope which is not imposed by force, regardless if this force is led by the majority, should take priority in the field of the law. The things that really happen fade in front of the things that should happen, but what should happen is not outside the law, but this is the law itself"[30].

Therefore, if the legal liability lays within the area of the law, is related to the public authority and aims de facto the compliance or the non-compliance with several prescriptions contained in the rules of law, is indifferent to the position of the individual in relation to these prescriptions since it does not imply any option, interest, conviction or initiative of the individual, the legal responsibility has a value content due to the fact that the individual relates to the values expressed and included by the legal normative system of the society by means of its own options, interest, by creating an own value system in relation to which it manifests its attitude within the social area[31].

According to Gheorghe Mihai, the value „is not natural, as the properties of the things, it is not based on the real world, but on the ideal world, of the pure validity"[32]. However, although the individuals are similar by means of the values they receive, they are still different by means of their valorization, due to the fact that „each and every value is valorized by means of the actions". Therefore, the human being is endowed with responsibility, is aware of the values that the rules of law engage, adopts them and decides to adopt a certain legal conduct and commits to translate the values admitted by it. Sever Voinescu noted that the law is a criterion by means of its ideality, due to the fact that by means of the valorization of the human's actions the law contains the project of the ideal social relations[33].

Within the society, the individuals acquire different levels of freedom that they tend to exercise in strict consideration of their personal interest. This is why the law appears as the limitation of the individualism, acting in order for the freedom of all members of the society to be possible. The individual freedom should be accompanied by the feeling of the responsibility, this is why, regardless of all the theories on this subject, we consider that the law cannot accomplish its mission without being supported by the moral. In this respect, François Terré noted the ambivalence of the law: the law is a mediator between the right thing and the wise thing, being the articulation of the individual and the social actions[34].

The law is built in consideration of its social effectiveness, consisting in the adherence of the society members to the rules of law. By being addressed to free subjects, endowed with will and consciousness, the law should be accepted by the society members as value and as regulation. Therefore, the implementation of the law should be based on the coercion only as an auxiliary element: „the implementation of the law by means of the enforcement and compliance with the regulations depends on the way a certain hierarchy of values and interests is required by the consciousness. This public consciousness is the real basis of the law, and not the coercion which is only a corrective measure"[35].

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[29] Dan Claudiu Dănişor, Ion Dogaru, Gheorghe Dănişor, *op. cit.*, page 33.
[30] *Idem*, page 26.
[31] Lidia Barac, *Elemente de teoria dreptului*, (Theory of law concepts), All Beck Publishing House, Bucharest, 2001, page 155.
[32] Gheorghe Mihai, *Fundamentele dreptului. Teoria răspunderii juridice,* (The Basis of Law. The Theory of the Legal Responsibility) vol. V, C. H. Beck Publishing House, Bucharest, 2006, page vol. V, Edit. C. H. Beck, București, 2006, page 42 and the following ones.
[33] Sever Voinescu, *Drept şi logos*, în Studii de Drept Românesc, (Law and Logos in Studies on the Romanian Law) year 11 (44), no. 1-2/1999, page 36.
[34] François Terré, *op. cit.*, page 46.
[35] *Idem*, page 317.

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