CONTEMPORARY BENCHMARKS OF THE INTERFERENCE OF LAW WITH RELIGION AND ETHICS

Elena Iftime

DOI: https://doi.org/10.18662/eljpa/2016.0301.05

Covered in:
CEEOL, Ideas RePeC, EconPapers,
SocioNet

Published by:
Lumen Publishing House

On behalf of:
Stefan cel Mare University from Suceava, Faculty of Economics and Public Administration, Department of Law and Public Administration

CONTEMPORARY BENCHMARKS OF THE INTERFERENCE OF LAW WITH RELIGION AND ETHICS

Elena IFTIME

Abstract

The present article provides an opportunity for reflection and debate about the connections of juridicity with religiosity and morality, social-human components founded on social rules with the same specific. We particularly insist on how the law, as coordinator of human behaviour divides this effort and concern with religion and ethics. That is why, with all its autonomy and peculiarity, any system of law, no matter the space and time is deeply marked by the ethics and religion of the social-human environment where it works. This is because the social mission of the three component standards respond to a constant need for social and human balance, order and limit in everything, care and love for people, all translated in the social and human welfare.

Keywords:
Juridicity; morality; religiosity; social rule; justice; equity.

JEL Classification K30, K33

---

1 Professor, PhD, „Stefan cel Mare” University, Suceava, Romania, elenai@seap.usv.ro.
I. INTRODUCTION

The theme of this article is part of a broader context of social normativity, without which the social system as a whole and human life in particular would not have chances of survival. As far as human being is concerned, it is recognized and demonstrated the fact that, in her manifestations, she is subject to imposed rules, but also to some human life rules (result of human creation). That is why, there can be said, that human society finds herself in an order with rules, founded on a large system of social standards: political, economic, judicial, religious, moral. In any moment of the history of humanity we find such a system, made of social norms of different species, which are in a structural-functional unity. Even they are different, the norms with judicial or non-judicial character which coordinate human actions must be coherent and must not contradict each other, in order to ensure a social equilibrium, a state of social and human welfare.

In the light of the proposed objectives we will insist mostly on the distinctive aspects of the juridicity in connection with religiosity and morality, without neglecting the fundamental, common and connection bridges which bring them together.

We start from the fact that the finding about the essence of a phenomenon is revealed in its relation with other social phenomena and in case of law, this is being subject to the analysis of its structural-functional relation with other organizational factors of social relations.

In regard to other types of relations of the social superstructure (religious, moral, political, economic or of any other nature), the judicial relations appear and develop among people as carriers of rights and obligations, governed by judicial standards. By their nature, the judicial relations are socially conditioned, influencing at the same time the social proper functioning; as expression of this interaction there appears the impact of the relations governed judicially with relations which enter the sphere of investigation and settlement of other components of social normativity of political, moral, religious, essence, etc. Therefore, we will try a quick drawing of the main aspects which belong to each specified normative component, but also of the interferences among them.

Chronologically speaking, the first rules for human behaviour appeared in the interaction of man with natural environment and its fellow creatures in connection with this environment. Between man and
natural environment there have been established relations long before the appearance of state and of law (from immemorial times). The collaboration of man with the natural environment has become the regulatory object for the first human behaviour rules, which in ancient times didn’t have a judicial character.

The oldest rules for human behaviour have given expression to a conscience (rudimentary, obvious of religious nature, moral, political, in general). In absence of reliable information we can suppose that the first rules for social behaviour concerned the primary occupations of man, necessary for covering the needs of life: picking, fishing, fire protection, collective defence against aggression other people or of dangers presented by wild animals or by unleashed natural phenomena. So this is the way standards of human behaviour in natural environment crystallized gradually, which being repeated and transmitted from generation to generation have become old habits.

But man is a natural and social human being at the same time, so the relations among people didn’t reduce only to the interaction with the natural environment. Against the background of a natural existence there have been developed social relations (firstly within the family, then in the other forms of community life of the race, tribe, tribe union), so that, in a slow evolution, specific to the areas of humanity, the sphere of the relations about the life and occupations of people was about to extend more and more. Of course, the idea of primitive human solidarity had as reverse side a collective disapproval of the acts and deeds for infringement and invasion of the social behaviour norms. Much more later (in some areas, after millions of years), when mankind passed from primitive forms of human community to state organization, the collective disapproval began being accompanied by a collective constraint. Then appeared the state, as a form of organization of collective (social) power, which by his authority gave to the collective constraint the special character of a force organized for the elaboration of social standards and insurance of their compliance. From that moment, the social standards were given to people not as recommendations, life suggestions, but as an order, as command whose not compliance entails the state constraint.

From then and until now the law, as expression of the state will, the binder and social cohesion factor, was and has remained the most important way of coordination of man’s relationships with other people.
about the natural, social and personal environment. The other components of the social normativity (religion and ethics) didn’t lose their importance, they haven’t become inefficient, only insufficient for the insurance of the social equilibrium and the arrangement of human relationships based only on persuasion. Each of the mentioned component knew a dynamic and a power of adaptability imposed by the relations of each period of time and space.

II. RELIGION AND LAW

To Durkhei’s statement that: „The first forces by which human intelligence populated the Universe were elaborated by religion” we could add the fact that the great ancient legislators: Hamurabi, Moise, Solon, Licurg, Zoroastru, Confucius, Numa Pompilius, Justinian, Mohamed etc., considered religion as basis for laws and societies. People, said Voltaire, „have always needed a restraint and in all places where there is a society, religion is necessary: human laws represent a restraint for the public crimes and religion for the secret crimes”. History noticed that „Folks appeared together with religion and disappeared with it”. In religion there was seen their greatness, without religion, their fall (History of Babilon, Egipt, Greeece, Rome).

Religion is therefore, a force, the first and the greatest spiritual force which dominates life and leads human society because it gives itself to man with a divine power and authority.

As any act of human behaviour, the religious behaviour is governed by certain rules inspired by divine power. Mircea Eliade, in his work „Sacred and profane” said, that „as, where there is a law, there preexisted the rational which thought it, where there is religion, there first existed the gift, the divine model without which there cannot be well understood the ideas of: good, truth, beauty, sacred, nor the fight between good and evil, truth and error, beauty and ugly, divine and diabolic2.

Being that way, for the appearance and evolution of law, religion represented one of its material resources, one of the sources which supplied with the human behaviour standards which have become

2 M. Eliade, Sacre and profane, quoted by E. Iftime, T.G.D.,
judicial. Initially formulated as religious perceptions, much of the social
norms acquired in time, the form and force of some obligatory rules
brought to fulfilment by the force of state constraint. It is illustrative in
this sense, the first groupings of judicial standards in circles (for example
Hamurabi’s circle) had as source of inspiration religious perceptions
which become real material resources of the judicial norms. For example,
some human (civil) laws renew the content of God’s commandments,
imposing the fulfilment by constraint, that is by corresponding sanctions
given by the society: do not steal, do not kill, do not be lusty, do not
confess out of truth, etc. Also some Christian virtues accomplished
judicial expression protecting the human being by means specific to law.
Honesty (good faith) and innocence, as material-Christian virtues
acquired judicial values by presumption of good faith and that of
innocence.

But also the compliance with the law has a substantial support in
religion, as the accomplishment of the judicial prescriptions with
religious roots is influenced also by the fear of divine punishment.

There also must be added that, in the vision of religion, all
human laws must be in harmony with the divine laws, as the first and last
rationality is the will of the creator. That is why, in the classical Bible
(psalms book), the 126 psalm reminds us that „If Lord hadn’t watch over
the fortress, in vain would watch the one who keeps an eye on it”.

Law, is in fact, an act of human creation and as any act of this
kind has as source of inspiration, the divine will. According to Cristian
doctrine, both human laws and religious ones assure a social order which
is based on the need for harmonization of social and personal interests
with the supreme ruler of all human beings, whom by eternal law he
impels to the accomplishment of their own destiny.

According to this truth, each from those called by God to ruling
the society must consider himself as accessory to the divine leading
power of the world. More than that, every man must lead himself in his
personal space, but also in his social, according to his own endowment
and according to the principles and norms of the eternal law giver, who
gives us a large action field, with the possibility to choose between one
variant of human behaviour or another.

But, „although all things are allowed, but not all are useful” ,
„although all things are allowed, not all build up” and here interferes
human wisdom in order to distinguish the mission and order wished by the creator, for instance, to sacred from diabolic, etc.

Among the religious behaviour standards a very special place plays the canonical law (the clerkly right), a human side of God’s laws, which appeals to religious principles in order to justify itself. The purpose of the canonical standard is the protection of the religious-moral values within the Church, which represent the limit of aspirations of the believers. In the canonical standard there can be identified that principle or behaviour rule with general and impersonal character, constituted and sanctioned by the Church based on the autonomy established by state law, whose compliance is mandatory and general by the clerkly organs and by the opinion of the believers within the religious community. What differentiates the canonical standard is the fact that it has as regulatory object the behaviour of the believers within their religious-moral relations with social character. It addresses not only to the leading and execution bodies of the religious organ (the clerkly), while there cannot be applied sanctions which are independent from the will and convictions of the believers. Some clarifications and distinctions are to be made in connection with the binding character of the standard for canonical right, which must be analysed in terms different from the binding character of the judicial standard. The standards for canonical right are not imposed through the external coercion force (coercive force of the state). They carry out a constraint and a pressure only by conscience. That is why there aren’t joined by the strictly judicial sanctions known: sanctions involving lack of liberty, pecuniary sanctions, disciplinary. The ecclesiastic punishments take into account the general purpose of the canonical standard and no matter their gravity, they don’t intend the „death of the sinner”, but his correction. So, there are religious or moral sanctions.

One speaks about the ecclesiastic right, not in the sense that it was designed as a social order separated by the state, because the Church doesn’t have the ability to elaborate standards by which to standardize its relations, unless a state law recognizes this power. The state, whose will is expressed in the law standards, elaborates standards applicable to the entire social system, including the Church, which he invests with the necessary authority.

From ancient times, the factors which led to the embracement of some judicial standards in the life of the Church are social, belonging to
a certain social stratification and to division of the members of the Church into special classes and categories, imposed by spatial-temporal realities. That is why, the first representatives of the idea of law in the Church were the Christians, who strictly complied with the order of the Old Law and with those with judicial character of the New Will. We would like to remind you the fact, that the source of these standards is in the will of the governed social force, which, adopting judicial standards for the entire social body covers also the area of the ecclesiastic life incorporated in the existing judicial order.

III. THE ETHICS AND THE LAW

As I have already showed, the law, as coordinator of human behaviour, through the use of social specific standards shares this effort and preoccupation with other components and normative disciplines of social life, among which, ethics has a special place. This is why, man, as thinking human being can put his rationality to be in agreement with the will, among others, based on the idea between good and evil, correct and incorrect, fair and unfair. There is outlined the moral behaviour of man and as a component of social normativity, the ethics, defined as set of habits, opinions, attitudes, mentalities, principles, standards, values, ethical ideals lived by persons and manifested in the relations between persons and the community where they are referring to a free and happy life.”

As there can be noticed, as rational system of standards, „ethics has as support ideas, precepts, feelings, volitions which base on the intimate belief and personal conscience of each person in his/her behaviour, the reason of the moral rule being the internal debt of the person, firstly towards herself.”

In agreement with the moral rules man relates his behaviour to the moral precepts of good and evil, accomplishing this way a moral or immoral behaviour, where appropriate. Seen from this point, the moral standards concern only natural persons, other way said it, human beings in relation with themselves and their fellow creature. They aren’t as systematized and bound in a whole as the judicial rules which regulate

---

interactions between natural and judicial persons (as collective subjects of law).

Also, if the sanction of the law rules is imposed to people by an exterior coercion, by a social organized form, the sanctions which accompany the moral standards are of interior nature. There must be understood, that the moral standards aren’t excused from any sanction, as immoral behaviour appeals for specific sanctions, which send to the inner part of man or to some external factors.

This refers to the conscience of the subject, feelings of anxiety, of regrets, contritions, in case of not taking into account the moral rules. And the external factors are expressed in a certain reaction of the public opinion, of the colectivity towards the immoral behaviour.

In case of the moral standard, the physical constraint interferes only as addition to the moral sanction of the public opinion and just in cases when the immoral deed is also forbidden by the standards of law.

As model of human behaviour, the moral standard is much older than that judicial one accompanying man and humanity along his existence. With all this, among the categories of standards mentioned, there can be remembered some common notes. Both categories give to human behaviour the necessary models, interfering when needed with the specific sanctions, if the value requests of the model aren’t complied with. Then, the human behaviour being unique, the rules which guide it must be correct, they should not contradict or exclude one another.

From those brief presented we can notice some distinctive notes between law and ethics which do not separate them absolutely and much less set them into opposition. Even if the law can allow certain actions which ethics doesn’t agree with, this thing doesn’t conduct the relation law-ethics towards a contradiction. There should be created such a situation only if the law forced the subject to the commission of an action which is forbidden by ethics. The law gives to man a certain freedom of action „admits by its nature certain possibilities, agrees to several actions, from which one single will correspond to the moral duty”. That is why, any moral duty has a straight character from judicial point of view.

Comparing these two normative components we cannot neglect the institutional character of the judicial regulations, as the judicial
assertions are elaborated by certain state organs with the compliance of special, pre-set procedures. On the contrary, ethics has non-institutional character, the moral standard being created spontaneous and non-formal, in the process of social living together. That is why the area of the ethics is more comprehensive than that of the law, as it grasps man’s life in the most different domains and aspects. The idea of good and evil, the duty, the social responsibility belongs to the external aspect of ethics (as science of ethics) being presented in all areas of social life.5

A last distinctive note from those two categories of standards is coercion, which as it is known characterizes only the law. This characteristic expresses the possibility to constraint until fulfilment and it derives from the fact it traces limiting lines between the actions of the law subjects: „Transgression of these lines by one of the parties implies the possibility of the others to reject invasion!”6

Unlike the moral standard, the law standard generates in its application a double-sided report by which the obligation of a subject is correlated with the ability of the other subject to pretend the fulfilment of obligation, in other words, the disregard by a subject for its obligation gives the other the right to obtain on the path of justice the gratification of his right. On the contrary, if a moral obligation is not taken into account, this does not have the power of the coercion force.

IV. CONCLUSION

In conclusion, the concepts of law and coercion are inseparably linked between them, this characteristic separating the judicial standards from any other type of social standards, including the moral standards.

Even if we must admit that the law has progressed (sort of) in its forms of objective law, by separation and self-government from religion, than from ethics, each positive law system is deeply marked by the ethics and the religion of the social-human environment where it operates, as the bases of those three normative components are (and must remain) the love for people ➔ translated in the human and social good.

It is illustrative and appealing the fragment from the work of the great philosopher, Eugeniu Sperantia who says that „If love for people is doubled by the intense feeling of own responsibility and that of Justice, than the clemency won’t slip in the tolerant weakness which encourages breaking the law. If the feeling for the own responsibility and for the harsh Justice is retouched and finalized by a huge love for people and by a subtle understand of human soul, the judge will never be too harsh there where there is possible the correction and the healing, he will never let evil or falsity dressed in legal forms triumph”!

REFERENCES

Liana-Teodora Pascariu,