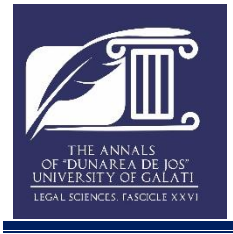

The Person as a Legal Entity

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Abstract: The article aims at examining those essential aspects of the person who, as a social being, can also be expressed in the field of law, where he presents himself as a legal being (homo juridicus). Without the operative clarifications in this direction, the active role of the person in the field of jurisprudence, of the legal world, cannot be understood. The person appears here both as a creator of law through legal institutions with a normative role, and as a legal subject who assumes legal obligations in relation to the rights and freedoms he enjoys as a legal subject.

Keywords: legal norm; *homo juridicus*; natural person; legal act; capacity

1. Introduction

The fulfillment of the person as a subject of law is not a spontaneous manifestation, but the result of a necessary process of evolution of subjectivity, culminating in the formation of the legal consciousness. Through this process, one only obtains the free manifestation of the self in the legal plane, in which its freedom inevitably has, through the norms according to which a person regulates his behavior, an essentially imperative character.

In order to achieve this demonstrative route, we will aim to place the human individual in the context of the legal reality, with the aim of identifying the defining features of the legal reality itself, in order to separate, then, the characteristics of what philosophy, but also the theory of law, call to be *homo juridicus*, i.e. the posture of the specific manifestation of the rational being in the field of norms, but also of concrete legal relationships in the social reality.

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But this posture of the human being can only be approached in an abstract, speculative way if it is not correlated with the concept of personality in law. That is why we will continue to dwell on this significant aspect, without which we cannot understand the formation of the subject of law and its manifestation as a responsible being.

Along the lines of the idea of personality in law, we will then examine those values, which also have legal significance, on which the active-constructive manifestation of the subject of law is supported, namely the values of dignity and freedom. They are to be regarded as fundamental purposes of law.

2. The Person and the Legal Reality

The domain of legal reality belongs par excellence to subjective reality, because law essentially refers to the will. Unlike events (which, mentioned before, are circumstances that do not depend on the will of the person, but the result of which produce legal consequences only if the rule of law stipulates this), actions (both legal - legal acts - and illegal) they are manifestations of people's will, which produce legal effects as a result of their regulation by the legal norms. This category of legal norms is characterized above all, by the fact that they are committed by the person, with his will, with discernment, in accordance with the principle that naturally having a capacity to will, every being is a subject of law, as an individual (taken individually) he is a natural person, in the hypothesis of a collective being (taken in common with others) he is a legal person. There are legal relations between them. The defining characteristic of the legal relationship consists in the fact that this social relationship is regulated by a specific norm, the rule of law - and it is susceptible to be defended through the state coercion.

We note that, the connection between persons, by virtue of which one of them can claim something to which the other is obliged, the legal relationship always has a real substrate in things and persons. The law does not create the elements or the terms of the relationship, but finds them naturally constituted and does nothing but determine them. Only human actions constitute the proper object of the legal assessment. The purely physical phenomena, i.e. those that do not emanate from the subject, are not in themselves elements of the legal relationship, being, thus, foreign or indifferent to the law.

It is true, in order for a legal relationship to appear and take place, the existence of the three premises is needed: the legal norm, the legal subjects and the legal facts. But the essential premise of the emergence or extinction of a legal relationship is formed by the legal fact. By way of consequence, we can also say that the defining,

constitutive, fundamental element of the legal reality is represented by the legal fact (Popa, 2012, pp. 315-317).

In this perspective, the legal reality has the specific fact, that it is not derived (inferred) from any natural and social phenomena, but only from those that suffer the impact and are subject to the legal norms organized in the legal system of the given society. These circumstances (natural or social) to the existence of which the rules of law link legal consequences, are called legal facts. Not every circumstance in nature and society is a legal fact, because none produces legal effects. From the multitude of natural and social phenomena and processes, the law selects only a limited number of circumstances, namely, those that, by the magnitude of the consequences, are related to the legal order.

Although law, as a system of regulations and institutions, constitutes the core of legal reality, its essential content, its substantial frame of reference, from the multitude of factors that shape legal reality, legal consciousness and the legal order are also part (Popa, 2012, pp. 60-61).

As far as legal consciousness is concerned, we show that before being a normative reality, law is a state of consciousness, in the sense that the changing needs of society that claim to be reflected in a system of norms are not transposed equally in language and in the content of the right; they pass through the conscience of the legislator (or of the people, if it is a matter of custom), following a process of evaluation, valorization and final valorization through legal norms.

Noticing the chaining of the elements that configure the legal reality, Gheorghe C. Mihai and Radu I. Motica argue "that we are dealing with an ideal reality of the legal norms in force, constituting the system of the positive law, then a reality of the concrete conduct of conformity with this ideality; the transition from the ideal reality to the effective one takes place by means of the legal conscience, of course, which thus gives rise to the legal order through the subjective behaviors, manifested in the legal reports" (Mihai & Motica, 2003, p. 76). That is why the last level of the legal reality is constituted by the legal situations, which concern the finality and efficiency of law, because any society is administered with the help of rules that emanate from the rulers, from their agents or from the collective, from the courts in the form of the jurisprudence. This order constitutes a specific level of social reality - the positive legal order.

3. *Homo Juridicus*

Only man as a social being is also a legal being, which implies rights and obligations assigned by legal norms.

On a macro-social level, the genesis and establishment of the legal norms in society are inextricably linked to the conscience and will of the individuals and human collectives, as an integral part of a complex process of achieving a social order - relative of course and always evolving - inherent in the self-regulation and development of society human (Rădulescu, 1994, p. 79). People in their social action realize more or less the Law, capitalize on its prescriptions, satisfy their needs or interests, building social relationships or violate legal norms, triggering legal liability. At the same time, the purposes of the law aim to the highest degree at the human condition. The human dignity is able to provide the guiding principle, the structural axis of the value system that guides law. Therefore, M. Djuvara stated that "the fundamental idea that is the basis of law is (...) the respect for human dignity, the respect of the person to another person, with sympathy for his fellows, therefore respect for all his legitimate rights, i.e. those that it does not represent a violation of the freedom of the others" (Djuvara, 1930, p. 184).

From the ontogenetic perspective - of the existence of the individual from birth to death - *homo juridicus* is par excellence the being endowed with conscience, reason, will, free to act to satisfy his needs, interests and aspirations, in accordance with the values defended by Law or violating its norms.

The defining concepts of law embody the being and deed of the person in a legal sense. Thus, by subject of law (legal subject), we mean a natural person individually speaking, or a group of people regarded as holders of the subjective rights and legal obligations. In the first case we are in the presence of the individual subject of law and in the second one, in the presence of a collective subject of law.

The person as an individual subject of law must have legal capacity, this denoting the general and abstract ability of the person to have legal rights and obligations. It is inherent to the human being, as a bio-psycho-social being that is born and lives in a society in which, since the archaic period, Law is an imperatively necessary presence - *ubi societas ibi jus*. As a rule, the legal capacity is unique. Thus, the possibility of a right and its exercise are generally indissoluble. In principle, the legal capacity is granted to all people from birth to death.

The legal capacity knows particular expressions, on the ground of each branch of law, which means that there are some branch capacities and implicitly, numerous differences regarding its beginning, content and termination.

Thus, in the matter of the civil law, a distinction is made between the capacity to use and the capacity to exercise. The physical person's capacity to use has been defined

as "that part of the civil capacity that consists in the ability of the person to have civil rights and obligations" (Beleiu, 2012, p. 250). As a rule, the date of birth is the date of the beginning of the capacity to use from the date of conception, but only if the child is born alive. The exercise capacity of the natural person is that part of the human civil capacity that consists in his ability to acquire and exercise civil rights and to assume and execute civil obligations by concluding civil legal acts.

In the matter of criminal law, we mention that minors who have not reached the age of 14 have the capacity not to be held criminally liable. The minor who is between 14 and 16 years old is criminally liable, only if it is proven that he committed the act with discretion. The minor who has reached the age of 16, is criminally liable.

As for the collective subjects of law, we mention that, in civil law, they are legal entities. In order to have the quality of a legal person, the Romanian civil law requires that a group of people cumulatively meet three conditions: to have its own organization; to have a distinct heritage, to have a determined purpose, in accordance with public interests.

In other branches of law, the legal entities that are legal persons for civil law are designated by specific words or expressions such as: state bodies, political parties, other public or mass organizations, economic agents, commercial companies (traders).

Human actions in relation to legal norms can be located in the licit area where the prescriptions of the legal norms are respected or in the illicit area in case of their violation.

Nonconformity, deviation or violation of social norms are generally designated by the notion of social deviance. The opinions of the majority of authors converge towards the recognition of the universal character of the phenomenon of social deviance because "there cannot be a society in which individuals do not deviate more or less from the collective type; it is inevitable that among the deviations there are some that present a criminal character" (Durkheim, 1974, p. 116).

The social deviance includes the set of behaviors that violate the norms and values recognized as legitimate in a society, which causes a social reaction from institutions, courts and social control agencies, requiring the adoption of social sanctions against deviant individuals.

We mentioned at the beginning that the expression "civil legal act" is used in two meanings. In a first sense, it denotes the manifestation of will with the intention of producing civil legal effects (*negotium juris* – legal operation). In the second meaning, it designates the document verifying the manifestation of will (*instrumentum probationis*). There are many classifications of civil legal acts. Thus, according to the number of parties, there are unilateral, bilateral and multilateral civil legal

documents; according to the intended purpose: for a fee and free of charge, according to their content: patrimonial documents and non-patrimonial documents, etc.

The substantive conditions of the civil legal act are: capacity, consent, object and cause.

Through the ability to conclude the civil legal act, the ability of the subject of civil law to become the holder of the civil rights and obligations is completed by concluding the civil law acts. Consent consists in the decision to conclude a civil legal act manifested from the outside. The object of the civil legal act is precisely the conduct of the parties established by that civil legal act, respectively the actions or inactions to which the parties are directed or by which they are held, the cause or purpose is that element of the civil legal act that consists in the objective pursued at the conclusion of such an act. However, their complex analysis involves numerous distinctions.

In a broader plan, of legal acts in the field of various branches of law, we point out only a few specific elements and comparative aspects. Thus, the administrative act is a unilateral manifestation of the legal will based on and in the execution of the law of an administrative authority, through which a new legal situation is formed or a legal claim is refused regarding a right recognized by the law, the legal will that is subject to the regime of the legal administrative.

It is noted that the administrative act consists of a unilateral manifestation of the legal will based on the organization of the execution of the law, unlike the contract which is the agreement of two or more wills in order to produce legal effects, to have, transmit or extinguish rights and obligations. As for the applicable legal regime, contracts are subject to the private law regime, while administrative acts are subject to the public law legal regime in which the administrative legal regime falls.

The law as a unilateral legal act is based on the sovereignty of the state, while the authority of the administrative act is based on the organization of the execution of the law, therefore the administrative act is always subordinated to the provisions of the law.

The court decision is also a unilateral legal act based on the law through which the judicial power is realized, unlike the administrative act through which the executive power is realized which organizes the execution of the law. The legal regime of the two categories of legal acts is completely different, the administrative act organizing the execution of the law and the court ruling sanctioning the violation of the law and resolving a legal dispute.

Homo juridicus in its diversity of poses tends to use law more and more effectively as a specific normative system for the human person in the diversity of its needs and manifestations.

4. Conclusions

Thus, the article allowed us to reach the conclusion that the person is not only a maker of tools, only a moral, political, etc. being, but also a legal being, that is, an active factor in the creation and realization of the law.

This conclusion emerged by placing the thinking being in the field of legal reality, whose components were described from the perspective of their role in the legal modeling of the human being.

Thus, we were able to separate the configuration of personality in law, an indispensable notion for understanding the subject of law and the requirements that dictate his behavior in the normative field of the legal order.

Based on these developments, there were presented those values without which a person cannot realize himself as a full legal being, namely human dignity and freedom. In their order, these values in question led us to the necessary presentation of the issue of human rights, viewed, however, in the context, not as an end in itself, but from the perspective of the requirement of responsibility and legal liability in a position to decisively define the person as a legal being.

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