

THE SOCIAL CHARACTER OF COERCION

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Abstract:

The changes that occur in everyday life, as a natural evolution of things, concern either legal, political, bank or any other field, entail an objective change to rules and procedures of these areas specific to the social cohabitation order.

Coercion is one of the elements which aims at regulating the social behaviour of an individual, involves certain considerations that ensure the protection (provide safety) of citizens and society as a whole, against actions that break the rule of a good coexistence in society.

Key words: (5-7 words) *social environment, rule of law, power of the state, constraint, legal liability, state authority, etc.*

Taking into account that the field of regulation of social methods is different one, beginning with religion rules, rules of morality and ending with classical rules, the constraint as action exercise, is present at each stage from this domain. Thus either we speak about social, moral or legal constraint – this presupposes a reaction, a certain attitude toward a derogatory behavior.

The term of "constraint", depending of object of the analysis involves the study of administrative law, constitutional law, civil law, criminal law and of law in general.

Speaking about social constraint, its goal involves the protection of the person, of the community against the phenomenon which contravene to the rules of good cohabitation in the social environment.

The concept of constraint has as objective the security of the person, of the community from social environment, toward the acts and facts which disregard the rules of coexistence from that social

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environment. The social rules or coexistence rules, are concepts *in concreto* as a certain behavior, a certain standard of conduct formed in the social environment.

The study of the constraint's concept has its origin even from the formation of social community, as social form of existence, and as political form. The formation of social power, but especially its organization, has led to the establishment of some rules, the infringement of which lead to the liability of the person for derogatory behavior.

May be emphasized that there is competition between freedom – as form of manifestation of wishes, intentions, aspirations, while the constraint – is a form that suppresses the wishes, intentions and aspirations. This duality of freedom-constraint can be found within each individual.

Thus, if an individual from a social group aspires for something, may be the fact that from the part of community to exist an „opposition”, a contradiction with the desire of the individual, being placed at the opposite extremes.

In the same sense, we could speak about that the constraint handcuff the aspiration, the spirit, thus stifling the inspiration.

If we refer to the social constraint, then this presupposes a social demonstration of the fact, of the report between social power which is realized for the safety of the individual and of the community as a whole.

Therefore, in function of social conditions, of economical conditions of the community, as well as of the character of the individual (to which are added its mentality, own ability of analysis), each person is able to create his/her own liberty, at the same time applying to himself the own constraint. From this point of view there are individuals:

- who have a libertine behavior,
- and others are more reserved.

This difference of liberty, influences on the individual, and on those with whom the individual interacts, on those with whom the individual has any relations.

Even in the social environment the freedom doesn't presuppose to make whatever in function of wishes, with risks of commitment of a „bad thing” against any individual or community.

But at the same time, there are some barriers between freedom of some persons and freedom of others, and this highlights the indices of constraints, which through the effects of these generates some values, it

would be paradoxical, but these are: the right to live and the right to be free – based on coercion to restrain the wish; right for hopes and enthusiasm – based on coercion to experience them all, etc.

On the way of consequence, we are entitled to claim that freedom and constraint are pair notions, which coexist, reciprocally determining each other, without cancelation.

At the level of modern state, we cannot relate itself to an institutional level divided into distinct centers of political impetus and we must observe that the state aims, indifferently of which institutional level is, to regulate all, legally to qualify any legal behavior, any individual or of group behavior.¹

This tendency is opposed by the tendency of civil society to get rid of this regulation, to exercise the public power outside the regulatory actual framework. In this sense the society is politically active, it seeks to supply and dominate the state institutional level, its reaction toward the state coercions is not to run, but to attack.²

Thus, the rule of law become an order of constraint, an order that justified the police state, theory which has produced an important modifications in traditional legal thinking, capturing the attention of theoreticians of the law. The criticism comes from many directions, of which we could remember, on the one side, the criticism of identification of the state with law, the criticism of application at legal order of a formal logic of mathematical type or, on the other side, a criticism of the purity concept of the object of science of law. Thus, one that led to the development of a legal state is the identification of state with law, theory characterized by objectivism, which results from the importance of which the author attaches to legal rule and to constructivism developed in the basis of a concept of hierarchy in the legal system on constitutional rule.³

Therefore, the law - as a totality of legal rules, and the constraint by themselves presuppose a result of social activity, as we show, that are elements of rule of law which cannot be seen and analyzed in isolation from each other.

The interaction between these elements highlights two aspects:

- The coercive character of the law is indispensable to it,

¹ Mariana-Mihaela Vanghelie (Nedelcu), "Administrative coercion and state of law", (PhD Diss. - summary, Bucharest, 2015.

² Vanghelie (Nedelcu), „Administrative coercion and state of law”, 4.

³ Vanghelie (Nedelcu), Administrative coercion and state of law, 5.

- The social constraint, following „the way of law” gets another integration, becoming legal constraint.

The constraint in Law has a basic goal – is the determination to fulfill (respect) legal rules, the achievement of which is based on grounds of law and in certain procedures of different complexity.¹

Even if the legal coercion (through its methods: of prevention, of protection and legal responsibility), is the most analyzed in jurisprudence², this is developed permanently, being a living organism.

From the jurisprudence of European Court of Human Rights, we consider that to the category of legal coercion is adhered and the incompatibility. The establishing of incompatibilities for elective public functions, in accordance with European Jurisprudence, is not contrary to the provisions of the Convention for protection of human rights and of fundamental liberties. Thus, through decision from June 15, 2006, pronounced in the *case Lykourazos against Greece*, the paragraph 51, the Contentious Court of human rights ruled that, by virtue of the obligation of Contracting States to organize elections under conditions which ensure the free expression of the people's opinion, foreseen in Article 3 of Protocol No. 1 to the Convention, the States have a wide margin of appreciation in imposition of some limitations or incompatibilities of public functions and of some specific rules on the status of parliamentarians, according to historical and political factors peculiar to each State³.

Concerning the social coercion, this will have own methods of regulation⁴. Thus, among them could be:

- The motivation – manifested through influence on individual or collective conscience; influence on psychology of individual and collective personality.

¹ http://studopedia.ru/7_116312_pravonarushenie-priznaki-vidi-sostav.html

² This could be explained through triggering of state mechanisms in regulating of individual behavior, but for not allowing of abuse from the part of the authority were outlined principles and rules specific to rule of law.

³ Decision no.972 from November 21, 2012 referred to notification formulated by the president of Superior Council of Magistracy on the existence of a legal conflict of constitutional character between judicial authority, represented by High Court of Cassation and Justice, from one hand, and legislative authority, represented by the Romanian Senate, on the other hand, Published in the Official Gazette no.800 from November 28, 2012.

⁴ Anatolii Vengerov, *Theory of State and Law* (Moscow, 2009), 342.

From the moment in which the personality is considered a social product, there is an interdependence of society toward the individual. Thus, the anthropological and sociological literature distinguish, in the formation of the personality, two variables: which is the culture and society itself¹.

- The belief – being the determination to adopt a behavior, a certain set of rules, toward certain facts and things.

In this order of ideas, for notion of social coercion is specific the term of exterior coercion and that of interior coercion.

Thus, when an individual rejects certain social rules of coexistence, he could justify his acts or facts on some "interior" constraints, not only on some "exterior" constraints. This exposure will led to the idea of human as dominant „moral automaton" toward the irresistible starting.

If we say that there are no interior constraint, in consequence we will cancel the differences of essence between a deliberately act or fact, committed intentionally and consciously, toward acts or facts committed under the influence of outside fear, fears or effects of fear, anger or other emotional states.

The theory of social constraint could be an exercise which by certain social elements and conditions of facts would actually embed in itself a mixed character: being indices of the interior and exterior constraints.

These behavioral differences, generated by impulse and type of coercion, if would be excluded, would eliminate the distinction between free behavior and manipulated behavior, between a honest behavior and a disguised or apparent behavior.

In these conditions, the theory of liberty reports us in a theory of rules system, of the relation between an individual and community, of the individual with social group, as well as of the relation with society.

As the result of studies of personality's psychology, based on the eight cultures of some primitive tribes, the scientist Kardiner states that, within each social group, there is a structure of behavior common to entire social group, which he calls basic personality. Thorough the basic personality he understands a specific psychological configuration, appropriate to the members of a specific social group, which is

¹ Angela Cucer, *Course Notes at discipline of Personality's Psychology* (Chisinau 2013), 5.

objectified in a certain lifestyle, the "matrix" on which subsequently is developed the features of individual character. For Kardiner, the causality has a double meaning: on the one hand there are causal relations from the environment to individual, on the other hand from the individual to the environment.¹

We believe that this causative report was the source for which were enacted some type of social constraint: road traffic code – regulates the road safety and normality, and in fact would indicate that this regulation is "contrary to" freedom of movement. Another form of social constraint, but unregulated, but that requires a protocol behavior is the code of good manners - being "contrary" to real thinking and desires of the individual, freedom of personality.

CONCLUSIONS

On the way of consequence, there are prerequisites to say that the social constraint, as dualist report „freedom-coercion”, has a relative character, depending on the social position in which the individual is.

Therefore, we are free and at the same time we are constrained from social point of view, depending by our level of perception, adaptation, interest and preoccupation toward a certain condition of fact, because it hasn't big importance what happens with us, but how we perceive or understand this thing. Or, our perception is determined also by the social environment in which the person is and to which the individual has taken action.

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