

EUGENIU SPERANTIA
A PIONEER OF ROMANIAN LAW'S PHILOSOPHY
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ABSTRACT

In the sperantian view, the social normativity is seen as being of the individual one and the individual spirit of normativity comes from society, which regulates the people rights from the social point of view. Because man is a living being, creative, having social and spiritual needs, the society creates norms, even if are not all social.

KEY WORDS: social norms, law, juridical reports, philosophical doctrines

INTRODUCTION

The law is seen as a entirety of social norms, and the creation of social norms is perceived as a normal action of the social life, after the fundamental „the society creates laws”, laws of life ,laws of human mind, sprung from the nature and the conditions of social life. Analyzing the social norms and laws, the author presents three important items: the normativity, which devolves from the laws of life, the mind as a life manifestation, submitted of rigorous norms, but also a norms creator and the society as a general structure of the social life. The social consciousness follows the individual one, and the life normativity is manifested by social norms, written as rules, conventions, norms, laws.

The normativity

The normativity of life is manifested through social norms, written as rules, conventions, norms, laws. The law of the society as a society consciousness has normativity characters, but these can't be confused with Law.¹ The author goes back with the analyze till the 18th century, quating from Christian Thomasius², who discuss the reports between: justum, honestum, decorum, viewed as the law, the moral and the polite.

The same Thomasius is credited with the possibility of applying sanctions idea, as the main difference between The Law and Moral. The moral obligations don't suport coercive means, while the juridical ones may be aplyed by compulsion³. Eugeniu Sperantia returns to Durkheim, developing his observation according to which the social involve coercion, giving many examples in this way.

Eugeniu Sperantia says that the law may be a entirety of social norms, with a fixed and organised punishment, an accepted definition but not satisfactory. The Law in his mature forms, is a rational and intentional product, the punishment not being the essential rate of

¹ E. Sperantia, *Course of Laws Philosophy and Sociology. Juridical encyclopedia lecturers with a historical introduction in The Law's Philosophy*, Publisher Romanian Book Typography, Cluj, 1936.

² W. Schreiders, *Christian Thomasius, 1655-1728*, Meiner Publisher, Hamburg, 1989, p. 138. Christian Thomasius lived between 1655-1728 in Germany. He was a well known german philosopher and lawyer. Eugeniu Sperantia refers to the papers: *Institutiones iurisprudentiae diviane* (1688) and *Fundamenta juris naturae at gentium* (1705).

³ E. Sperantia, *op. cit.*, p. 12-13

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Law. The Law has an own power, practice a certain authority⁴. The author thinks that the juridical norm, when it is accepted, decreed and applied with conviction, it is based on the claim that she is the best and most fair, remembered and taken characteristics from Thomasius. The justice derives from the *justus* law, being the social norms evaluation of law, which follow the establishment and the keep of the law through the justice, being the legal nature of society. Through the same analysis reminds regulations and statutes with partial application, the statutes of different associations or congregations, named functional societies, similar to the legal order. These statutory norms limit the people behaviour and the statutes respecting is punished by guarantee measures, the statutes respecting a fair posture. Beginning of the social organisations and associations, the author develops the idea of legal order which a state, with a well define social organisation, must have and grow it. All private associations supports its existence on the legal authority of a State. A state must ensure the rule of law, a legal order through the authority it has to guarantee the rights of religious, cultural associations and those of individuals. The state mustn't accept the existence of another organisation which on the same territory, to develop parallel duties with the state's, even more juridical.

Proving a true spirit encyclopedic, Eugeniu Sperantia makes a parallel between the sports regulations and lyrical phenomenon, quoted Louis Andre Fouret⁵. The sports games and those of the children may anticipate and form a political consciousness, social and juridical, because of the fact that strengthen compliance with certain standards accepted custom and consecrate. Eugeniu Sperantia is the follower logical definitions, not always suitable, but necessary in an inter-disciplinary and encyclopedical. The sperantian erudition enroll in the same coordinates, the author is aware of the writings of jurists and sociologists most important of his time. So Jhering is quoted with a law definition: „ Die Form der durch die Zwangsgewalt des Staates beschaffene Sicherung der Lebensbedingungen der Gesellschaft.” Sperantia knows the importance of the german's jurist's definition, who focuses the social life, meaning that the law not guarantees the right of individual and collective interests. Return to the social norms by juridical point of view, the author is sure that the law's norms don't only move above individual and collective goals, being the society life's conditions cannot guarantee the accomplishment of private and limited goals.

The mind- the life's manifestation, submitted by rigorous norms, but also creator of norms.

Eugeniu Sperantia develops the idea of the standardization, the social modeling of individuals, after some certain social norms. The society is seen as an entirety of individuals submitted to the common norms. On the other hand, in his analysis starts from the law existence premise, by finding and explaining the juridical norm between the other norms of social convention of society. The social reports are seen as exchange processes and of the movement of ideas, just consciousness contents. The endowed ideas with a certain value are appreciate to the extent that the people receive them in their consciousness, something without value doesn't exist. Sperantia grouping the values accepted by people in two great classes: purely conceptual and sensory-motors values. The values' possessions consciousness consist in the presence in the human consciousness of some mental contents: a scientific truth, a real information, a lyrical comparison, a song, a novel, a religious faith. All these are conceptual values, which cannot exist just in the individuals' mind. The empirical or material values fall under the incidence of senses, the material objects being known or contemplated. Both the action and the senses are attitudes of the human consciousness. The easiest way is contemplating the physical possession sensory, in sperantian thought. The conceptual possession is exercised through the intellectual functions, and the sensory-motors possession is exercised by intellect consciousness, helped by the sensory functions.

⁴ *Ibidem*

⁵ It is about the article "Social sense", in *Revue de l'Institut de Sociologie* (Bruxelles), 1927, p. 349-359

The society- the general structure of the social life

Talking about the definition of the society in relation ensuring legal rights by the state, the author remembers the ideas of Juan Mariana⁶, Hobbes⁷ and Rousseau⁸ relevating that the social life is a natural fact, and his insurance cannot exist just in acts of care.

The juridical norms are different by the social ones, they can't maintain the life and social order, like the juridical norms do. Eugeniu Sperantia describes the way which defined categories of social and legal norms that maintain legal and social order and stability to a country, to a colectivity and to individuals. The author realizes a distinction between the cardinal juridical norms and adventitious juridical norms, that guarantees the social life existence, respectively the aplicability of cardinal norms „all the legal provisions which having in mind the safety of the state, who are considering organizing and living conditions of the public force, all rules for the administration of sanctions and procurement of materials for the above purposes, all rules that prepared the order soul for maximum safety enforcement cardinal rules of law are all legal rules adventitious.”⁹

He also brought to the attention the opinions of the well known Russian sociologist and jurist, G. Gurvitch¹⁰, when he recalls the regulatings and the statutes with partial aplication, the statutes of different associations or congregations, named *functional societies*, analogues to the legal order.

These statutory norms limit the behaviour of the individuals and compliance with statutes is punished by measures to guarantee fair statutes according to a fair posture.

The Law's theme guaranteed by state is discussed and enriched of expectations, taking an idea of one of the leading lawyers and law philosophers of his time, Hans Kelsen¹¹ who talks about: „Alles Recht ist Staatsrecht, aller Staat ist Rechtstaat”¹².

Eugeniu Sperantia develops the idea of Kelsen, motivating that the Law's hystorical origins can be confused with the State's, because of the fact that the last is an ensemble of creating organs, Law application and guarantee. The Law concept appears in the word State, it cannot talk about a State without the Right which defends and serves.

Conclusions

In the point of view of Eugeniu Sperantia, the social life is also possible without some norms, which are no important anymore in the ensemble collective life. There are social norms, needful to society and there are just useful norms. Their cataloguing is made by the

⁶ A. Soons, *Juan de Mariana*, Twayne Publisher, Boston, 1982, p.21. Juan de Mariana lived between 1536-1624 in Spain, being a Jesuit priest, hystorical and jurist. His work which Sperantia refers to is *De rege et regis institutione*, published in Toledo in 1589.

⁷ A. Martinic, *Thomas Hobbes*, St. Martin's Publisher, New York, 1997, p.84. Thomas Hobbes from Malmsbury lived in England between 1588-1679. He was a philosopher and a politician. The most known of his works, which Eugeniu Sperantia refers to is *Leviathan*, published in 1651, considered a foundation stone in the area of political philosophy and the theory of social agreement between the State and the individuals.

⁸ C. Bertram, *Rousseau and the Social Contract*, Routledge publisher, London, 2003, p.15, Jean Jacques Rousseau lived between 1712-1778, being born in Switzerland, in Geneva. He is considered one of the great French enlightenments from the 18th century, remembered by Sperantia for his political philosophy. The main work which Sperantia refers to is *Du contract social ou Principes du Droit politique*, published in 1762.

⁹ E. Sperantia, op. cit., p.23

¹⁰ P. Bosserman, *Dialectical Sociology: An Analysis of the Sociology of George Gurvitch*, Porter Sargent publisher, Boston, 1968, p. 112. G. Gurvitch lived between 1894-1965, being contemporary with Eugeniu Sperantia. He was a Russian sociologist and jurist, born in France. He was one of the most famous sociologists of that time. He was one of the prominent explorers and the publishers from the 20th century in The Law's Sociology.

¹¹ R. A. Metall, *Hans Kelsen: Leben und Werk*, Verlag Franz Deuticke Publisher, Vienn, 1969, p.19. Hans Kelsen lived between 1881-1973, in Austria, being contemporary with Eugen Sperantia. He was a Law's jurist and philosopher. Sperantia quated from the empowerment work of the Austrian teacher, titled *Allgemeine Staatslehre*, supported and published in 1911, at the University of Vienn.

¹² E. Sperantia, op. cit., p.19-20

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collective consciousness, which defines a compulsory or coercive character attached to some social norms, potential legal. At the same time with the punishments organisation, there are specified the ways and the agents who must apply the punishments, the most reglementary social norms being those which present the most importance in the collective opinion. The author concludes that the moral is a whole of practical norms which imposed to consciousness and the Law's elaboration cannot remove from the moral judgement. Therefore, at the conception and establishment of rule of law always prevailing principles those who make it up. In the sperantian thought, the Law never can remove of the Moral, because of the fact that the legislature will not settle for other legal provisions that his conscience would not accept for himself.

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