

The Influence of H.L.A. Hart's Conception of Social Roles on the General Theory of Legal Responsibility and Liability and Its Reflection in Romanian Positive Law

Lecturer **Lucian-Sorin STĂNESCU**¹

Abstract

Social roles would have remained a concept of the social sciences, if the analysis of the typology of (Romanian) criminal law sanctions would not allow a parallel between them and the punishments provided for certain legal "figures", which could reflect the reception and response of the law to such social entities. The realization of this parallel would not have been possible without reviewing the works of general theory of law and comparative law through which the concept of the English philosopher H.L.A. HART, who has the merit of having proposed the concept of social role as a basis or cause of responsibility and, in particular, of legal liability has penetrated the Romanian legal doctrine. In the following, we set out to verify the validity of H.L.A. Hart's theory of "social roles" as the basis of legal responsibility and liability in Romanian positive law, associating this sociological category with the legal concept of "natural person".

Keywords: social roles, natural person, responsibility, legal liability, positive law, system and typology of punishments in Romanian criminal law.

JEL Classification: K41, K42

1. Subject and methodology of the study

The idea of law's inherent and non-divisible sociality, which presupposes a holistic vision of society and the individual, has very recently been exemplified in a way that is more appropriate for the scientific usefulness of our study. Professor Ion Craiovan asks philosophically, "What could we understand - Professor Ion Craiovan asks himself - of the complex institution of legal responsibility without the appeal to the idea of social responsibility and a conception of society and man?"², in which sociological theories, especially those that explain in one way or another the action of social actors, institutions and the functioning of the social mechanism must be included in legal research, as they are practically inseparable.

Among the paradigms brought into discussion to explain action and social systems as totalities³, the functionalist paradigms, with their hyperfunctionalist extension, whose exponents were Talcott Parsons and his main disciples or sociologists whom he influenced, are of interest to our study because they are centered on the concept of "role".

According to Robert K. Merton's theory, the social position of an individual can

¹ Lucian-Sorin Stănescu - Faculty of Law and Administrative Sciences, "Stefan cel Mare" University of Suceava, Romania, lucian.stanescu@fdsa.usv.ro, <https://orcid.org/0009-0009-0268-9968>.

² Ion Craiovan, *Filosofia dreptului sau dreptul ca filosofie*, 3rd edition, revised and added, Pro Universitaria Publishing House, Bucharest, 2024, p. 266.

³ Allan G. Johnson, *Blackwell's Dictionary of Sociology: a guide to the use of sociological language*, Translated from English by S.G. Drăgan and V. Russo, Humanitas Publishing House, Bucharest, 2007, p. 250.

be described by the multiple roles he occupies (*status-set*), which refers to the institutions of belonging of the individual and by the set of elements (*role-set*) that compose them and characterize the specific position of the individual in each of these social institutions.⁴ Recourse to the methodology of social sciences in the framework of legal knowledge and research is aimed at a more complex understanding and interpretation of social phenomena, of which their social action, whether in accordance with or contrary to legal norms, is carried out in accordance with their will and desires, permitted by society or, on the contrary, are not convergent with the social model and then trigger legal liability.

Social role theory, borrowed from the functionalist sociological paradigm, was introduced into the general theory of legal responsibility and liability by the English philosopher H.L.A. Hart and represents such an example of specialized and complex legal epistemology.⁵ Moreover, the transfer of paradigms from one legal culture to another through translation and interpretation, respectively from the British legal culture of the jurisprudential type to the Romanian one, of the continental type, may contribute to the expansion of the sphere of legal knowledge, all the more so as this study aimed to test the validity of the social roles theory as a basis of legal responsibility and liability in Romanian positive law.

2. Reflection of H.L.A. Hart's conception of law, responsibility and legal liability in the general theory of law in Romania

The work of Herbert L.A. Hart has penetrated more slowly, but quite early, in the general theory of law in Romania and, in particular, in the general theory of legal liability, and at this moment it is far from being assimilated.

The merit of making the English philosopher H.L.A. Hart known in the general theory of law in our country and of interpreting his work belongs to Professor Sofia Popescu, first, in a chapter dedicated to his conception in a courageous compendium for those times on *Contemporary Conceptions of Law*⁶, published in 1985, and, later, in a textbook of general theory of law, in the fifth chapter, dedicated to "Legal Liability", published in 1992, together with Professor Genoveva Vrabie.⁷

Invoked as the author of the conceptual analysis of law, in the field of legal liability, H.L.A. Hart is introduced through the semantic analysis of legal responsibility and liability in his work *Ascription of Responsibility and Rights*, which reveals that the terms 'responsibility' or 'liable for' or that of 'answer', although covering different ideas and relations, are in close semantic connection and, therefore, they do not primarily have a descriptive function in relation to the facts or situations in question, but rather a function of either the perpetrator's assumption of responsibility for the consequences of the acts or the attribution of legal liability for the actions carried out⁸, following the justification of those actions by the person concerned in response to the questions put to

⁴ Ion Craiovan, *op. cit.* p. 268.

⁵ Ibid, p. 296.

⁶ Sofia Popescu, "H.L.A. Hart", in Sofia Popescu, *Concepții contemporane despre drept*, Ed. Academiei, Bucharest, 1985, p. 102-116.

⁷ Sofia Popescu, "Răspunderea juridică" (chap. V), in Genoveva Vrabie, Sofia Popescu, *Teoria generală a dreptului*, Ed. "Ștefan Procopiu", Iași, 1992, p. 141-169.

⁸ Ibid, p. 142-143.

him by a legitimate authority.

Thus, in everyday language, sentences like "I did (that)" or "He did (that)" are similar to accusatory sentences like "You did (that)" or "He did (that)" which have sententious meanings and are often used by lawyers.⁹

Regarding the four bases of legal liability or the four different meanings of liability (the author using the same Romanian legal meaning of the term *Responsibility* in Hart's theory, namely that of legal liability, which we subscribe to in this context - *n.a.*) proposed by the English philosopher, Sofia Popescu points out that they are: liability arising from a specific role; causal liability; tort liability (here we are talking about the *Responsibility-Liability* model, i.e. legal liability, practically transposed into a civil law sanction, arising as a logical consequence of the responsibility of the author of the act that generates the damage - *n.a.*) and personal capacity to respond (from a legal point of view).¹⁰

In the presentation of H.L.A. Hart's contribution to the issue of legal liability, the social role as its (new) foundation is - in our opinion - not particularly relevant, the author stating that in this situation the person is liable for the performance of duties arising from the role he or she has or the position he or she holds in an organization (for example, "parents are responsible for the upbringing of their children").¹¹ Taking H.L.A. Hart's very argument, she points out that, in the common understanding, "a person is responsible or behaves responsibly, that is, taking his or her duties seriously and being willing to make every effort to fulfill them."¹² But to be socially accountable, in whatever form, that is, moral or legal, that is to say, to give an account to someone, presupposes a way of transmitting the required information, and this aspect presupposes giving some answers to the questions put to the perpetrator in relation to his deed.

H.L.A. Hart, i.e. to say back, to convey a message to the questioner, i.e. to justify something, may mean that a person may be required to answer certain questions, and this seems to be the original meaning of the term *respondeo* in Latin, namely, "to answer accusations or incriminations which, if they are proved to be true, and if the person accused fails to dispel them, he becomes liable to punishment."¹³

This is the point of interference between Ms. Sofia Popescu's presentation of H.L.A. Hart's conception and the interpretation that Professor Gheorghe Mihai gives to this theory in his monograph dedicated to the general theory of legal liability, published in 2006. Going further with his reasoning, Prof. Gh. Mihai emphasizes the distinction made by H.L.A. Hart between answering questions as a form of communication and information and liability as an institutionalized form of giving "a binding answer to a set of questions" by a responsible person, legally able to be held liable.¹⁴

As regards the meanings that H.L.A. Hart gives to the notion of "responsibility", Professor Gheorghe Mihai notes the following: a) arising from a certain role in social life of the person being questioned (who is asked to account for a reprehensible act - *n.a.*), for example, the guardian towards the ward; b) arising from the situation in which

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid, p. 144.

¹³ Ibid, p. 143.

¹⁴ Gheorghe Mihai, *Fundamentele dreptului. Teoria răspunderii juridice*, Vol. V, C.H. Beck Publishing House, Bucharest, 2006, p. 64.

the "person being questioned" (the person who is asked to account for a certain authority - *n.a.*) violates a mandatory legal rule and is thus legally obliged to bear a sanction, depending on the branch of law in which the rule is located; c) arising from the fulfillment of the conditions of responsible personality of the person being questioned (the minor not fulfilling these conditions); d) arising from a natural causal relationship which makes it possible to state that "floods were responsible for the collapse of rural dwellings."¹⁵

This is the area of linguistic analysis in which the analytic philosophy of H.L.A. Hart searches for legal essences in the sense of legal concepts and expressions¹⁶, as Professor Ion Craiovan points out in his book *Introduction to the Philosophy of Law*, published in 1998. In this work, the presentation of H.L.A. Hart's theory is limited to the conceptualization of law that he carries out in his most important monograph, *The Concept of Law* (Oxford University Press, 1961), but his conceptual analysis is important "for discovering the nature of legal institutions, irrespective of the differences between the societies in which the legal order can be found."¹⁷

In all three editions of the treatise on the *Philosophy of Law or Law as Philosophy* (published in 2010, 2019 and 2024, of which we have cited only the most recent - *n.a.*), Professor Ion Craiovan has reserved each time a chapter dedicated to the analytic philosophy of law belonging to Herbert L.A. Hart, which he develops in his best-known work, *The Concept of Law* (Oxford, 1961). Hart that it is relevant to the importance of the conceptual analysis of law, the complexity of the relations between social reality and legal norms and the constructive value of law in social life¹⁸, only to emphasize that the second major work of the English philosopher, *Punishment and Responsibility, Essays in the Philosophy of Law*, Oxford University Press (1968), has again remained in the dark and, consequently, the importance and originality of the approach of the theory of social roles as a theme of legal responsibility and liability has not been received and critically analyzed in our legal doctrine.

H.L.A. Hart's Monograph on the Concept of Law was fully translated into Romanian in 1999, in Chisinau, Republic of Moldova, after its first edition, which was published by Oxford University Press in 1961. The translation from English into Romanian was realized after the original edition of *The Concept of Law* (Second Edition, 1994), and the author of the translation is Ștefan Lupu, without an introduction or notes by the translator, this not being a critical edition in Romanian.¹⁹ As Hart's work, *Punishment and Responsibility, Essays in the Philosophy of Law*, Oxford University Press (1968), has not been translated into Romanian, the idea of social roles as a basis of legal responsibility has remained insufficiently explored in Romanian legal doctrine, as well as the works of Talcott Parsons or Robert K. Merton, which increases the importance of this study.

Only one monograph has been dedicated so far in Romanian sociological

¹⁵ Ibid, p. 65.

¹⁶ Ion Craiovan, *Introduction to the Philosophy of Law*, C.H. Beck Publishing House, 1998, p. 76.

¹⁷ Ibid, p. 77.

¹⁸ Idem, *Philosophy of Law...*, *op.cit.*, p. 216.

¹⁹ Lucian-Sorin Stănescu, "A History of Legal Translations in the 20th Century", in Muguraș Constantinescu, Titela Vrânceanu, Daniel Dejica (coordinators), *A History of Literary Translations in Romanian, 16th-20th Centuries*, Volume II, Ed. Academiei, Bucharest, 2022, p. 1734.

doctrine to the work of one of the most influential theorists of the 20th century, entitled *The Sociological System of T. Parsons*, published in 1973 and which, in the ideological context of the time, is approached through a (pro)-Marxist reading grid.²⁰ However, the monograph's merits cannot be diminished in terms of its faithful presentation of the Parsonian conception of action and the social system, from which we have also extracted the references to social roles and their place in the structure of society in our attempt to demonstrate the reception and penetration in H.L.A. Hart's theory of responsibility and legal responsibility of this sociological concept, whose theoretical and practical importance may be greater than its critics have so far realized.

The essential problem on which Parsons concentrates is the analysis of the structural aspects of action or, as he expresses it, its "anatomy", in the sense that he starts from the idea that action is a relation of adequacy between subject and object, reducing its understanding to the set of processes that take place in the world of consciousness, of the subjectivity of the agent who acts.²¹ In his effort to configure a concept of multilateral man, that *homo actionis*, although criticized by the author of the monograph dedicated to his system on the grounds that this type of man is no longer a *summum* of social relations as in Marx, Parsons resorts to a conceptual mutation that is extremely relevant for understanding the genealogy of the idea of "social roles".

The author of social action is no longer man, neither one-dimensional nor multidimensional, but the "social actor," understood as "a structure bearing structures."²² Thus, by action, Parsons understands human behavior as internally motivated, goal-oriented, guided by norms and values.²³ Human action thus becomes social insofar as, by virtue of the subjective significance which he himself attributes to it, it also takes account of the behavior of others and thus directs its course²⁴ towards the goal.

Also, human action is intrinsically rational, but also symbolic, by relating it to a sphere of norms, values and symbols, which are specific to the social framework of action. Socialization is a process of gradual acquisition of society's norms and values through mechanisms of learning, imitation, identification and projection, leading to the internalization of society's imperatives in the individual's inner being.²⁵ The values and norms that society establishes are the 'symbolic language' that makes it possible to communicate and understand the expectations linked to the roles that human actions embody and fulfill, which are governed, on the one hand, by the intrinsic and symbolic rationality of their authors and, on the other hand, by the principle of complementarity of expectations, according to which "in society, each actor, through his action, has a role to fulfill, and roles are the functions that society commands individuals to perform in order to ensure their maintenance and its own."²⁶

From this perspective, society appears as a structure of institutionalized roles in which the individual is engaged and according to which he must orient his action and all his behaviour.²⁷ In Parsons' conception, the social structure is a system of ordered

²⁰ Lucia Dumitrescu-Codreanu, *The Sociological System of T. Parsons*, Ed. Științifică, Bucharest, 1973.

²¹ Ibid, p. 43.

²² Ibid, p. 47.

²³ Ibid.

²⁴ Ibid, p. 48.

²⁵ Ibid, p. 65.

²⁶ Ibid, p. 68.

²⁷ Ibid.

relationships of actors as role-players in relation to each other, in other words, "the structure of the social system is its role structure."²⁸

In our opinion, such equivalence may justify the classification of Parsonian theory as hyper-functionalism, but the question arises whether such an approach can explain the functioning of society in its entirety solely on the basis of the existence and fulfillment of social roles. In other words, can we say that society in its totality is the arithmetical sum of the roles it has and trades them with the individuals who compose it, or are there also areas not covered by the existence and fulfillment of roles, without this excluding the sociality of human actions performed even in the absence of roles fulfilled by their holders.

3. The socio-legal relationship between the concepts of natural person and social role. Own contributions

As far as we are concerned, we pointed out in the monograph *The Parthenogenesis of Forms of Legal Liability*²⁹ that in society, the individual "manifests himself in relations with others not in his pure Ego, but by adapting himself to these relations and, therefore, he will appear socially as a person."³⁰ In these social relations, insofar as they are regulated by legal rules, the human individual "wears countless masks" - as the authors Gheorghe Mihai and Gabriel Popescu put it in a plastic way - which the law itself attributes to him "even before birth and even after death."³¹

In order to achieve its goal of stability and certainty that it must confer on inter-human relations, "Law has been placed in the situation of having to model fundamental concepts that preserve their operational character in the most diverse random conditions of evolution of the legal society, thus ensuring the continuity and internal logic of the normative system of utmost importance in the human community."³² One of these essential categories is the concept of the (*physical*) *person*, i.e. that 'legal mask' which a human being wears and which determines the role played by that person in the sphere of relationships covered by the law.³³

In our older legal doctrine it has been argued (in a most Mertonian way - *n.a.*), that in his social activity, while *the masks of the person* are in the obligatory social "props" of the Law, the person fulfills and conforms (also) to multiple *roles*, which are assigned to him by society and recognized by the other participants in social relations, these representing "the expectations of others from the person, who receives and exercises certain actions and responsibilities."³⁴ Turning to the original etymological meanings of the legal term "person," we discover that in Latin, the borrowing of the word *person* (*persona*) from the language of the theater, having the meaning of a mask worn by the actor on stage, "specifically a lamella that made the voice sound louder," had an

²⁸ Ibid, p. 85.

²⁹ Lucian-Sorin Stănescu, *Partenogeneza formelor de răspundere juridică*, Universul Juridic Publishing House, Bucharest, 2018, p. 43-58.

³⁰ Gheorghe Mihai, Gabriel Popescu, *Introducere în teoria drepturilor personalității*, Ed. Academiei Române, Bucharest, 1992, p. 53.

³¹ Ibid.

³² Ibid, p. 9.

³³ Ibid.

³⁴ Ibid, p. 53.

important significance and "allows us to glimpse a beautiful allegory."³⁵

But the tendency to "dramatize" is inherent in human nature, and before acting on stage, man has acted in life.³⁶ According to a particular need or interest, man externalizes certain behaviours, either to satisfy the vanity of others, to please someone, or to gain something, by imitating the behaviour of others or by manifesting himself in a behaviour desired by others.³⁷ In this way, it becomes clear that "the character is not the actor, but the one he presents to the audience through the mask behind which he is. There, behind the mask, we will find him ready to change masks, depending on the stage situations in which he is involved".³⁸ As such, if the role expresses the behavior of an actor on stage and in the life of a character, let us see then, "what is a character"³⁹, i.e. an intermediate concept between a person and a social role, which is not of a legal nature.

The answer to this problem can only be an inter-relational one, at the confluence of the concepts of *person*, *personality* and *social role*: "anchored in social life, the insubject becomes a *person*. The *person* rests on an inner system, by building an inner system the individual becomes personality. By being anchored in life, the individual plays a *social role*".⁴⁰

The concept of a *character* in psychology designates an individual who plays a certain role, the same individual having the capacity to manifest himself through several characters, although he is only one person. This term refers to the *person-in-role* and translates into attitudes and behaviors that respond to the assumed roles.⁴¹ In its psycho-social dimension, the *personality-person-character(s)* relationship is defined as a systemic relationship, where the personality is the system itself, and the person and the character are in a state of permanent interconnection, as a double projection, social and psychological. Thus, from the social point of view, *the character* is equivalent to the *person-in-social-role*: "as the person plays numerous roles on the stage of social life, in relation to age, sex, political-cultural life, circumstance, the person is externalized through numerous characters."⁴²

From a purely psychological point of view, "the character represents the molding of the person in a social model, his embodiment in a dynamic scheme of life, which may be the expression of a social function, a life experience, needs, aspirations, incorporating the attitudes and behaviors that society has prescribed."⁴³ So we can say that the character, like the person, has a moment of birth. It is not a biological parturition, however, as in the case of the *person*, for it precedes and succeeds - in its normative dimension - the human individual, beyond his biological birth and death. On the contrary, since it is a social representation or, better, a representation on the stage of social realities, it is based on "imitation of a model".

In other words, just like man and his legal "mask", i.e. the (physical) *person*,

³⁵ Emil Poenaru, *Civil Law. General theory. Persoanele*, All Beck Publishing House, Bucharest, 2002, p. 298.

³⁶ Ion Alexandrescu, *Person, personality, character*, Junimea Publishing House, Iași, 1988, p. 223.

³⁷ Ibid.

³⁸ Gheorghe Mihai, *op.cit.*, p. 16.

³⁹ I. Alexandrescu, *op.cit.*, p. 213.

⁴⁰ Ibid, p. 213.

⁴¹ I. Alexandrescu, *op.cit.*, p. 227.

⁴² Ibid, p. 232.

⁴³ Ibid, p. 233.

the character (in his social role, which always implies a ludic dimension - *n.a.*) "has a dynamic of being of his own, he becomes."⁴⁴ Therefore, if the social model into which the character-actor enters voluntarily or compelled by needs or aspirations is regulated by legal norms, then he has the possibility of conforming to the given legal forms, creating legal relations whose content of rights and obligations is equivalent or, on the contrary, he can reject them by violating them, thus giving rise to legal relations of liability, whose finality consists in the application of a legal sanction, in relation to the specifics of the ignored norm. Thus, from the perspective of law, we agree with the idea that "just as an actor wearing a 'mask' and its 'voice amplifier' can play his role, can be heard and is heard by the spectators, so too can a person with a personality play his role on the stage of life, of society, can assume obligations and enjoy his rights."⁴⁵

Then, throughout life, the law regulates the rights of *the person-in-his-social-role*, which belong, *de facto*, to the human personality, another hypostasis of the human individual that has recently received legal recognition, being regulated by the Romanian Civil Code in force (art. 58, paragraph 1, Civil Code). From this perspective, the positive law records and regulates all the stages of his or her becoming in society: "as he grows older, each stage of man's life is expressly regulated by the law, the passage of time bringing with it important changes in man's status as a subject of law; his legal status changes as a result of his advancing age; when a minor reaches the age of 14 and then 18, man's legal status as a subject of civil law changes, even substantially, that is to say, as time passes, man acquires new and new rights and assumes new and new obligations in various sectors of economic and social life. The law (objective law) lays down the conditions under which the marital status of a natural person as a subject of civil law changes, the manner and conditions of acquiring and changing one's name, establishing and changing one's domicile, etc."⁴⁶ Thus, human behavior becomes "socially relevant" only insofar as the agent appears not as a mere human individual who anticipates and intellectually dominates natural causalities, but as a "bearer of a role in society", a role defined by attitudes and behaviors objectively associated with a set of rights and obligations.⁴⁷

Accordingly, to the extent that human behavior, in its social dimension, collides with the legal norms to which it is obliged to relate, the law regulates and imposes legal responsibility on the individual, under all the legal disguises of the *person-in-at-law*, starting with changes in the status of the human personality endowed with responsibility, in order to ensure the regulation and evaluation of all its axiologically oriented behavior in society. Thus, legal responsibility is that which marks the entry of the responsible human personality under the rule of the authority of society, the purpose of which is to protect all human individualities that are present and express themselves in their social roles. Therefore, "positive law holds X as a natural person liable in civil relations, X as an offender in criminal relations, X as a taxpayer in tax relations. But the personality of X cannot drop his masks - as many persons as he may be - because even as long as he

⁴⁴ Ibid.

⁴⁵ Ibid, p. 298.

⁴⁶ Ernest Lupan, Dan A. Popescu, *Persoana fizică*, Lumina Lex Publishing House, Bucharest, 1993, p. 6, *apud*, E. Poenaru, *op.cit.*, p. 299

⁴⁷ Tudor Avrigeanu, *Pericol social, vinovăție personală și imputare penală*, Wolters Kluwer Publishing House, Bucharest, 2010, p. 207.

enters into legal relations of different species, he manifests himself *as he is* in the social context."⁴⁸

Accordingly, the plurality of masks, of *persons-in-rights* is equivalent to, covers and therefore derives from a plurality of human actions, each of which corresponds to strictly determined social and legal roles, most of which are governed by different rules of conduct containing a regulatory character by which society defends its general interest as fully as possible.⁴⁹

4. The impact of the category of social roles on the general theory of legal liability and its implementation in positive law

If H.L.A. Hart's intention was to propose the social role as a new basis of responsibility, but especially of legal responsibility (Professor Peter Cane is not quite sure that this is what the English philosopher was aiming at *either* - *n.a.*), then his approach can be considered revolutionary at least from a double perspective.

First of all, both in the legal systems of the Romano-German family (and thus also in the Romanian legal system) and in the jurisprudential systems belonging to the *common-law* area, the structure of legal liability is identical and has the following formula (with some variables): the wrongful act, guilt, capacity to be liable, causal link, the damage or socially dangerous consequence and the corresponding legal sanctions.⁵⁰

In the Romanian legal literature, the structure of legal liability is generally known as the "conditions" of legal liability or of legal responsibility⁵¹, which are identical to those in Western legal literature.

On the other hand, as early as 1924, M. Finkelstein pointed out that the theory of liability is approached more from a statistical and social point of view rather than from the attribution of liability on the basis of guilt or any other causal basis.⁵² On the subject of legal liability, as a species of social liability and the understanding of its causes and purposes, the same author notes that "the old ethical and metaphysical conceptions have been replaced by a sociological vision"⁵³ or, in turn, H. F. Finkelstein's conception of legal liability. L.A. Hart's conception of law oscillates between "a philosophical search for universal truth and a sociological or anthropological search to identify the common features of real social practices"⁵⁴ (Hart defines law as "social practice" - *n.a.*).

Therefore, if the social role is a psycho-sociological figure or projection, and if

⁴⁸ Gheorghe Mihai, *Fundamentele dreptului...*, Vol. V, *op.cit.*, p. 29.

⁴⁹ *Ibid.*, p. 62.

⁵⁰ For a comparative perspective, see, Vernon Palmer, "General Theory of the Inner Structure of Strict Liability: Common Law, Civil Law, and Comparative Law," *Tulane Law Review* 62, no. 6 (1987-1988): pp. 1303-1356, available online at: https://www.researchgate.net/publication/244415811_A_General_The_ory_of_the_Inner_Structure_of_Strict_Liability_Common_Law_Civil_Law_and_Comparative_Law#fullTextFileContent, accessed: 02.06.2024; Gheorghe Mihai, *Fundamentele dreptului...*, Vol. V, *op. cit.*, pp. 149-269.

⁵¹ See Gheorghe Mihai, *Fundamentele dreptului...*, Vol. V, *op.cit.*, p. 31.

⁵² Maurice Finkelstein, "The Functional View of Legal Liability", *International Journal of Ethics*, vol. 34, no. 3/1924, p. 252, available online at: <https://www.journals.uchicago.edu/doi/pdf/10.1086/intejethi.34.3.2377311>, accessed: 02.06.2024.

⁵³ *Ibid.*, p. 243.

⁵⁴ Peter Cane, „Role Responsibility”, *The Journal of Ethics* 20 (1-3):279-298 (2016), DOI 10.1007/s10892-016-9235-8, available online at: <https://philpapers.org/rec/CANRR>, p. 294.

social responsibility is a general consequence of human actions in society⁵⁵, taking into account the suggestion of H.L.A. Hart, not in the human action prohibited by the legal law, thus becoming an unlawful act, but in the social role that its author plays in the society from which he has received it, then what we propose is to verify whether positive law has taken this form or figurative representation of social reality and has regulated it through its rules, establishing specific legal sanctions for failure to fulfill the "special" obligations - as Professor P. Cane calls them - that derive from those roles.

A first observation to be made in the extremely complex transition from forms of social responsibility to forms of legal responsibility⁵⁶ is that the "social action/conduct - agent of action/person" *pattern of analysis*, which is specific to responsibility derived from social roles, is also identical in the case of the establishment of legal responsibility, irrespective of the legal system in which it is assessed and generated, by setting in motion the state mechanism for applying specific sanctions in the event of failure to comply with specific obligations attached to those roles, and irrespective of the form in which liability is presented in positive law.

In another vein, we dare to advance the idea that the sociological figure of "social role" enters the world of law through the concept of (*physical*) *person*, starting from the meaning of the original term *persona*, which for the Romans: "meant in the theater the mask worn by the actor on stage, hence his role in the play and by analogy the role that someone has in legal life."⁵⁷

As such, in positive law, the human individual is considered as a *person*, - without these two attributes inherent to the human being irreducible, but, on the contrary, both having legal relevance (see the concept of "human rights" - *-n.a.*), - i.e. his legal form, his "social figure", having the following names or role attributes as follows natural or legal person in civil legal relations, offender in criminal legal relations, civil servant in administrative relations, citizen or stateless person in constitutional relations, taxpayer in tax law⁵⁸ and the list could be completed with the doctor, in civil and medical legal relations, but also in criminal law relations, in the situation where he is the active subject of offenses against the person or the fetus or of offenses of service; the magistrate, in legal relationships under criminal law, criminal procedure and civil law or judicial organization, the military, the police, the lawyer or the notary public in criminal legal relationships, and so on, in particular in those relationships which are established on the basis of relationships of legal and conventional authority.

These different social positions and statuses, vested with varying levels of authority and power, generate a natural 'structural tiering' of society, which has been exploited from an ideological perspective.⁵⁹ From the perspective of law, the challenge is to try to observe, beyond the imperativeness and neutrality of legal norms, whether it has recognized the existence of an immanent structure of society, which is not the product of any political regime, but the result of the configuration and interaction between the roles "given" by the social actions of their holders.

⁵⁵ Laura-Maria Stănilă, *Criminal Liability of Individuals*, Hamangiu Publishing House, Bucharest, 2012, p. VIII.

⁵⁶ Ibid.

⁵⁷ Gheorghe Mihai, *op.cit.*, p.17 (footnote).

⁵⁸ Ibid.

⁵⁹ Lucia Dumitrescu-Codreanu, *op.cit.*, p. 94.

It is only that the isonomy of law presupposes, as an elementary principle, the equality of persons before the law or this principle could represent a limit or an incompatibility of the recognition of a differentiated legal status of persons in various social roles and with unequal social statuses, especially those involving state authority, or another form of authority established by law. However, in a first sense, this equality has an abstract content, because - as Professor D.C. Dănișor - "it is imposed only when the individual is replaced by the person, an abstract subject of law, created by the legal order, either on the basis of the physical existence of an individual, or on the basis of the objective existence of a structure of inter-individual relations".⁶⁰ The formal character of legal equality prohibits the State from creating different legal treatment of persons in relation to certain features of themselves or of the group to which they belong, as a rule, these being those over which the person has no control or very little control. Therefore, equality before the law is about the uniform application of the law regardless of its content.⁶¹

These considerations allow us to formulate the idea that the equality under the law and before the law of persons, more precisely, of people, as bearers of the "legal mask" of the natural persons who represent them in the various legal relations, is the response that the law gives to a social world that is already pre-constituted on the basis of laws and structures in the construction of which it did not participate *ab initio*, but which it takes them as such, regulates them through its rules, thus initiating a concomitant process of shaping and transforming this world.

The observation that "society appears as a structure of institutionalized roles, legitimated and governed by collective values and norms"⁶² seems appropriate in this context, and the law, especially criminal law, does nothing but further institutionalize these roles, configuring the limits of the lawful exercise of the "special obligations" that Professor Peter Cane spoke of and instituting certain specific sanctions, certain conduct or actions of the holders of the social roles in question.

In our opinion, the competence of judicial bodies to resolve certain criminal cases according to the criterion of 'personhood' (*ratione personae*) is, in our opinion, precisely the incorporation into positive law of social roles and structures, in particular those institutionalized on the basis of relations of legal, formal or conventional authority and which form part of the societal superstructure. This form of jurisdiction is subsidiary in relation to subject-matter jurisdiction, which is the rule in the investigation and prosecution of offences, with the proviso that not every capacity that the active subject of an offense may have given rise to jurisdiction by the judicial authorities on the basis of the capacity of the person, but only that capacity expressly provided for by law.⁶³

By the regulations contained in the Romanian Constitution in force and in the Code of Criminal Procedure, the competence of certain judicial bodies expressly provided by law is determined by the quality of the person, such as the President of Romania, senator, deputy or member of the Government, in which cases the competence

⁶⁰ Dan Claudiu Dănișor, *Constitutional Law and Political Institutions. Teoria generală*, Vol. I, Ed. C.H. Beck, Bucharest, 2007, p. 605.

⁶¹ Ibid, p. 606.

⁶² Lucia Dumitrescu-Codreanu, *op.cit.*, p. 68.

⁶³ Ion Neagu, Mircea Damaschin, *Treatise on Criminal Procedure - General Part*, 3rd edition, revised and added, Universul Juridic Publishing House, Bucharest, 2020, p. 379.

to judge the merits of the case lies only with the High Court of Cassation and Justice⁶⁴ (and the list can continue with magistrates, judges of the Constitutional Court, military and so on, each of the courts of law and the public prosecutor's offices attached to them have jurisdiction according to the status of the person, with the exception of local courts and public prosecutor's offices, which have residual jurisdiction).

We consider that this vertical competence of the judiciary is precisely the reverse of the principle of equality before the law, which it complements and adapts to the eidetic realities of the social world. Consequently, 'uniformity' does not remain the only expression of equality or its 'natural' expression, but the complementary vision of this principle implies the differentiation of legal situations in relation to the social role held by the holder of a social action incompatible with legal norms and consequently implies the use of different (procedural) means and sanctions to make individual situations comparable before the law.⁶⁵ We also believe that the system of complementary and accessory punishments in (Romanian) criminal law is designed to respond to the reception of attributes or "special obligations", to use Professor Cane's phrase, of different social roles in the situation of the commission of offenses by persons who were in various such roles, whose importance for society has been hypostatized by criminal rules.

Thus, if the main punishments (life imprisonment and imprisonment) are directed against the person himself (deprivation of liberty, in which case, at the limit, the natural person is identified with his background personality - *n.a.*), on some of the person's rights (deprivation of rights), his or her acts (nullities), the criminal fine (also the principal punishment) is directed against the natural person's assets, the complementary punishments (whose function is clearly complementary to the principal ones) concern prohibitions on the professional functions and public dignities held by the offender at the time of the offense, as an expression of an understanding of the social usefulness of the person concerned, who will thus no longer be able to work for the common good of the society of which he is a member in his own right⁶⁶, as a result of obtaining on merit roles involving state or professional authority, both of which are part of the social establishment. At the same time, however, these "secondary" punishments (as Vintilă Dongoroz called them) also entail prohibitions of certain rights that imply the annulment of "natural" authority or, in any case, of private law, namely, the deprivation of parental rights (Article 66, paragraph 1, letter 'e', of the Criminal Code).

If we refer to the classic typology of the valences or functions that punishments fulfill in society, namely the exterminative, compensatory, afflictive, corrective or additive and integrative valences⁶⁷, we will not easily find the category in which we could easily integrate the complementary and accessory punishments, which, by their nature, either complement the main punishment after its execution or accompany it from its very beginning.

It is clear that these types of punishments do not have repressive or afflictive valences, not producing violence or suffering on persons who have committed crimes in

⁶⁴ Ibid, p 380.

⁶⁵ Dan Claudiu Dănișor, *op.cit.*, p. 611.

⁶⁶ Lucian-Sorin Stănescu, *Partenogeneza...*, *op.cit.*, p. 13.

⁶⁷ Paul Alexandru Georgescu, *Filosofia dreptului în contextul actualității*, Titu Maiorescu University Publishing House, Bucharest, 2001, p. 257-261.

relation to the social roles they hold at a given time, but they produce deprivation of certain rights or allowances or public dishonor, which can be integrated with additive and integrative valences, "which are legitimized by a double enhancement specific to human nature and social life."⁶⁸

5. Conclusions

The legal existence of these types of punishments leads us to conclude that social roles are not just a sociological concept or 'figure', devoid of any connection with the social reality they embody, even in a playful manner. In our opinion, they are subjective representations or forms of social reality, relating to human behavior and action in certain social contexts and relations, unanimously accepted in the collective mind, which the law has known and accepted as such, transposing them into the framework of legal normativity. In other words, we can say that social roles belong to an immanent structure of the social world, represented both in the subjective perception of each individual member of society and in the general perception, so that, like any social structure based on social relations, they have been objectified in positive law.

This is also the functionalist conception, typical of Talcott Parsons and Robert K. Merton, on social stratification, in the sense that it stems from the distinct needs of society, not from the needs or wants of individuals.⁶⁹ Stratification systems are generated by the different responses that human societies give to two needs common to all, namely the need to motivate the more talented members of the community to occupy important and difficult positions, and, on the other hand, once they are installed in those positions, to fulfill the tasks assigned to them, in which sense the rewards must also be greater.⁷⁰ As a result, law did not create social stratification, but took it on board as a reality of the social world and was called upon to regulate it through legal rules. As the method of regulation by law is legal equality, more specifically the equality of legal situations before the law, the differences between the social roles and statuses fulfilled by the social actors confronted with the legal law have required different instruments and solutions in terms of functional competence and according to the quality of the person in criminal law, which reflect social hierarchization, but subsuming it under the principle of legal equality.

Herbert L.A. Hart is to be credited with having made the junction between the sociological concept of social roles and the theory of law, in particular the theory of legal responsibility and liability. His theory of social roles as the basis of legal responsibility and liability has also been taken up in the general theory of law in Romania, but it has a marginal position in the general theory of legal responsibility and liability. In spite of this marginal theoretical status, which needs to be revised through in-depth studies, the recourse to the verification of the theory through some positive law institutions, namely the complementary and accessory punishments in Romanian criminal law, which concern the prohibitions on the professional functions and public dignities held by the offender at the time of the commission of the offense, allowed us to validate this theory

⁶⁸ Ibid, p. 262.

⁶⁹ Gerhard E. Lenski, *Power and Privileges: a theory of social stratification*, translated by Dan Ungureanu, Amarcord Publishing House, Timișoara, 2002, p. 37.

⁷⁰ Ibid.

for the first time, whose scientific and even practical usefulness may increase once it is detailed and publicly exposed.

In conclusion, we can state that the theory of social roles has one or more objectified hypostases in the world of positive law, but the claim or aim that they should be considered as another legal basis for one or more forms of legal liability cannot be validated from the point of view of legal research in the sense of admitting changes in the rigid structure of liability in positive law. In other words, the social role cannot replace crime as the sole basis of criminal liability or tort as the sole basis of civil liability in tort, any such substitution having the effect of a conceptual and structural change in the general theory of legal liability, which is as yet unpredictable.

However, we may risk to assert that social roles have the capacity to potentiate the general theory of legal responsibility, their analysis or references to them even requiring their application to the analysis of the structure of legal responsibility, especially in the branches of public law, where the position or function held by a social actor entails the attributes of conventional authority, power and even privileges (we refer here to criminal law, administrative law and constitutional law).

As regards the legal sanctions of Romanian criminal law aimed at prohibiting the exercise of professions, trades or functions of public dignity in the exercise of which the active subjects have committed some offenses, for a certain period of time or certain rights arising from the authority with which they were vested, irrespective of their nature, public or private, we consider that they are the response of criminal law to the social command to preserve those imperatives or ('functional prerequisites')⁷¹ of Parsons' social theory, to which we subscribe, in the event of a breach of the legal rules governing them.

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⁷¹ Lucia Dumitrescu-Codreanu, *op.cit.*, p. 94.

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