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THE INFLUENCE OF EXISTENTIALIST PHYLOSOPHY ON LEGAL THINKING. CASE STUDY: JEAN-PAUL SARTRE

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Abstract

The subject of this article is the relationship between of J.P. Sartre's philosophy and legal thought, as he relies on an initial analysis of the relationship between existential philosophy as a whole, and Law. Existentialism establishes another way to understand the world and man, being able to cause changes in the legal thought. The consciousness conscious of its acts, as Sartre's strong ontological theme, is one of the universal assumptions of any legal system, based on which the possibility of legal liability is founded, thereby participating in the foundation of approaches regarding the research of the legal consciousness. Building on the interpretation of Heidegger's ontology purpose in the establishment of an ethics developed by Sartre, we consider that ontology is the strength of the ethical vision of the French author, having the ontology of consciousness at its core. As an effort to arrive at self-consciousness, authenticity can make the transition from the presumption of knowing the law and consciously relating each behaviour to it, to the possibility of a substantiation of responsibility on philosophical grounds. Understood as liberation from the constraints of conventions towards experimentation of own experiences, authenticity helped to diminish the importance of some of the social conventions, the dilution of the importance of the family institution being one of the examples in which this existentialist concept determined in the legal area a reconfiguration of a social institution.

Keywords:

existentialism, legal consciousness, legal thought, Sartre, ontology, anxiety, authenticity, alienation, freedom, feminism.

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1. Introduction

The topic chosen is under the sign of a general question: Is philosophy useful to the legal thought? This question was answered in different forms, the existence of the discipline called *The Philosophy of Law* tending to devote a favourable response. In turn, our approach is an argument for the positive response to this question. By continuing the positive argumentation, we see as eloquent one of the contemporary answers given to that question, which tends to indicate the consequences of the absence of philosophy in legal thought: "Judges must not be philosophers. And, obviously they are not. But any judgment involves a philosophy. And it is tragic for individuals when the judge lacks the judgment of its philosophy. As there is no neutral legal argument philosophically speaking, the lack of philosophical substantiation of judgment is equivalent to the arbitrary choice of the finality of the judgment. When the court is bound to judge laws, not behaviours, then it is bound to philosophize." (Dănişor, (2014), : 9).

The subject of this article is the relationship between the philosophy of Jean-Paul Sartre and legal thought. It involves an initial analysis of the relationship between existential philosophy as a whole, and Law, followed by moving the problem from the field of formal identification of certain links to the establishments of certain essential relationships between existentialist philosophy and philosophy of law; in this "place" we hope that we will be able identify connections of existentialism with the fundamentals of law and the debates that existentialist philosophy introduces regarding the attempts to substantiate the law.

Reported to the legal sphere, existentialism can be seen as an exercise of careful observation of everyday life and of the individual, as a research based on which certain conclusions can be drawn on the problems of the legal system, their effects in social life. In this context, the main link between law and existentialist philosophy is that existentialism, through the attention centred on the individual, determines the approach of the person with its whole universe of issues and concerns affecting legal meditation with the possibility of taking into account *the existence* of the individual within law systems. In other words, existentialist thinking provides several key milestones which participate in the argumentation of the importance of existential coordinates of a person, namely to the counterbalance of the tendency to centre the legal system on social interests. However, existentialist philosophy provides several arguments for rethinking the meaning of society, namely the relationship between the individual and society.

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If we consider that in case of some of the existentialist philosophers (Heidegger, Sartre, Camus, Merleau-Ponty) the *existence in the world* is one of the essential coordinates of man, one of its existential factors, we can consider *Mitsein* and the *fact-of-being-in-the-world* as a foundation of social life and thus of law.

In analyzing this topic we must take into account all the social consequences of existentialist philosophy, both the negative and the positive ones. In this respect, it is worth remembering that some of the existentialist philosophers were contemporaries of fascism and communism, having some connection with one or the other regime. In Sartre, the question is a complicated relationship with Marxist ideology, namely with the manner in which it is best known in history, communism. But our analysis will focus on the relationship between the connection of their thinking and Law, largely bypassing biographical aspects.

From another perspective, the fundamental premise of this article is the fact that existentialism establishes another way to understand the world and man, in so far as he accedes to the public conscience or to the field of knowledge specific of those concerned with the philosophy of law, being able to cause changes to the legal thought. We believe that the influence of existentialism on the legal thinking must be addressed according to two time coordinates, past and future, as we can speak both of cognitive transfers that have already occurred and of those that may follow. At the same time, given the magnitude of the issue of existentialist philosophy, influences on legal thinking must be pursued simultaneously in their own right, translated into principles of law or legal acts, and indirectly, as a change in the way of thinking aspects of the legal order based on the new way to understand the man. These prospects are underpinned by a additional coordinated, which can be defined as influences that existentialism exerts on other philosophical trends, causing in turn, changes in the legal thought.

2. A brief history of the topic

Since the height of existentialist philosophy a series of reflections on the topic of its possible links to law arose, a remarkable work on this subject being *The Importance of Being: Some Reflections on Existentialism in Relation to Law* written by Anthony Blackshield, which is one of the landmarks of this article. Blackshield envisages primarily the impact of existentialist philosophy on understanding the society, generating a series of consequences on legal thought starting with lawyers: "If any philosophy has been widely regarded as a new philosophy of our century, it is existentialism; and though its claim

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to novelty is open to question, it is at least a distinctively contemporary field of philosophic endeavour, which on that ground alone is worthy of notice by the contemporary lawyer". (Blackshield, (1965), : 68). It is obvious that the author first refers to the area of implicit influences, suggesting that they will inevitably act on the change of the influence over the real that lawyers have.

Another author, John Lunstroth, indicates a possible line of research suggesting that existentialism arises perhaps from the same metaphysical conditions that led to the birth of constitutionalism. (Lunstroth, (2012)). We believe that the problem should be viewed simultaneously, from another perspective as well: constitutionalism has created the context necessary for the emergence of existentialism. If we consider the link between the Universal Declaration of Human Rights and a large part of the principles that govern contemporary constitutions, we must take into account the information according to which René Cassin, one of the authors of the draft of the Declaration, would have read in 1947 at least one work of Sartre, "Reflections on the Hebrew Issue ". (Prost, A., Winter, J., (2013), : 318). Although R. Cassin has not agreed with the French philosopher's perspective, the possibility of some influences cannot be excluded.

Interrogations on the Sartriene philosophy in the context of a work of philosophy of law are present in Ronald Dworkin as well: "We might reinterpret the long existentialist tradition in philosophy, or at least extract what is most persuasive in it, through that second view of our dignity. It gives a different and more plausible meaning to JeanPaul Sartre's declaration that our existence precedes our essence." (Dworkin, (2011), : 231). But Dworkin quotes relatively secondary works of the French thinker, at least relative to our goal, missing the careful approach of ontology.

To identify possible influences on the existentialism of the French philosopher on the legal thought we shall resort to the approach of the work organized on the following dimensions: ontology, alienation, authenticity, freedom, influences on the feminist movement, moral and political thinking.

3. Ontology

The main perspective from which we approach Sartre's ontology contributes to *the genesis of legal consciousness*. The idea of existence of a true issue of the philosophy of law in the area of legal consciousness, the question of how legal consciousness is formed in case of an individual, deserves a careful consideration, as it may receive a substantial contribution from the French philosopher's thought. Our approach is focused on the

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potential contributions of the way in which Sartre reasons the conscience issue on a theory of legal consciousness, being dependent on the adoption of a scientific model of legal consciousness.

4. Self-consciousness (as the foundation of legal consciousness

In his ontology, Sartre starts from the idea that the being of a thing is reduced to the series of its appearances, the search of the being behind appearances being required. The phenomenon reveals the thing as it is without making reference to the Kantian thing in itself; the thing is actually the series or the law of its appearances. The appearance is the essence, the latter being the law that coordinates the series of the appearances of the thing. For the phenomenon to reveal itself as transcendent, to "refer" to the thing as its sense, the subject must transcend the appearance to the overall series of which it is part. The being of an existence is not itself revealed to us, but it is the foundation always present of existence. Consciousness goes beyond the existence to the meaning of its being: the phenomenon of being. The being appears at the same time with consciousness: "The being is the condition of any disclosure ...". (Sartre, (2004), : 14).

Things are presented to us through consciousness, as it is that something that concerns the being. But, the acknowledgment of the existence of things is based on the acknowledgment of one's own existence: things are to the subject. *I exist* involves taking a distance by means of which the subject looks at itself as existing. The basic law of the knowing subject is to be aware of; consciousness is the dimension of trans-phenomenal being of the subject. Because consciousness is not possible before being, existence involves essence. The fact that, from a phenomenological perspective, any consciousness is conscious of something and this means that it is transcendent, giving birth to meanings about what it is not.

Consciousness must be aware of itself, as it involves self-knowledge in order to know: "The spontaneous conscience of my perception is *constitutive* of my perceptive conscience." (Sartre, (2004), : 18). Self-knowledge is carried out in two ways: *thetic* and *non*-thetic. The definition of the *non*-thetic mode can be reduced to the formula: any object positional consciousness is also a consciousness non-positional to itself. This is a pre-reflective cogito; it is an operative intent present as revealing-revealed. It indicates that the only way of existence of a consciousness of something is through self-consciousness. To be a consciousness of something, consciousness is first (or implicitly) self-consciousness (without putting forward its existence, in the *non-thetic* way). Conscience meets, somehow, the

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condition of being: exists and is at the same time. In order to be "conscious" consciousness (self-consciousness) must first aim at something, because its existence is linked to that something, no less, to itself. Consciousness depends on the phenomenon in order to be (any consciousness is consciousness of something) and the phenomenon depends on the conscience (any phenomenon is phenomenon for a consciousness).

The being of consciousness is traditionally thought as self-relating. Taking over the approaches specific to phenomenology Sartre presents us a dependence of consciousness of something exterior to it. So, the being of consciousness seems to have two lines: self-relating and self-relating itself to something else. This dependency of consciousness on its exterior it, on the facts aimed, sends to the existence of a strong link between the individual and what surrounds him, a relationship which may be the seed of a legal foundation. Consciousness which is not its own cause, which is formed in relation to the aimed ones, is a way out of solipsism. Even if, to enable the postulation of freedom, the French philosopher denies causality intervention in the consciousness existence, we cannot fail to notice that it is linked to those existing "outside" or to others, to the objects, to the world. Moreover, in his later writings Sartre would admit that the sense of the facts targeted by consciousness does not consist of conscience accidentally, as it appears in a world where the meanings already exists.

As we have mentioned before, from the perspective of the French thinker who can be included within the phenomenological tradition, consciousness is always consciousness of something. However, this definition does not fully render consciousness, it does not deplete it. Consciousness is also a consciousness of the consciousness of something. This second way can be *thetic*, where consciousness says that it is consciousness of something, or *non-thetic* as "I do not think that I think." In Sartre's words: "consciousness is a being for which in its being the question of its being is raised to the extent that this being involves a being other than it" (Sartre, (2004), : 30).

Consciousness is born directed to a being that it is not it, while being oriented towards itself. This return to the own activity of consciousness, this self-reference, together with the external endorsement, captures the entire assembly of consciousness. Being intentionality, consciousness puts forward the thinking (*thetic*) as object, drawing a sentence of reality and by the same act, it puts itself in a negative way, non-positional (*non-thetic*) as not being that object. So, it is present in any act of knowledge, even if not consciously, the consciousness that we know. If consciousness was not at the same time self-

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consciousness it would be an unconscious consciousness. We see each other knowing, or we know each other knowing.

Consciousness is careful about its acts. This consciousness, aware of its acts, is according to the French philosopher the being of consciousness. While appearance exists only for a subject than the being of the phenomenon would refer to these structures of consciousness, immanence from one self to another. The being of the subject is this tension between self and self: "What can be called subjectivity is the consciousness (of) conscience". (Sartre, (2004), : 29-30). Consciousness conscious of its acts is one of the universal assumptions of any legal system, based on which the possibility of legal liability is founded. However, the existence of two modes of reporting, *thetic* and *non-thetic*, tends to generate a gap in the adjacent responsibility of this presumption. We see thus that the French philosopher opens the possibility of moving from presumption to its demonstration, attending implicitly, to the substantiation of the steps regarding the study of legal consciousness.

For a better understanding of the issue of consciousness we illustrate the solution proposed by the French thinker by means of an example: If I take into account the couple reflex-reflected, I see that I become the subject of thought for me. I have in this case a double gnosiological status: as subject and object simultaneously. It is as if I have two natures. Through this I take away from me. I feel this *for-me (for-itself*) closer. But specific to conscience is to lie in relation to itself in the *non-thetic* manner. I mean, while I think of something I am conscious (I think), I know I think of something or that I aim at something In other words, the existence of my conscience is this continuous relationship between for-itself and self. The distance between for-itself and self is given by the fact that the for-itself can never capture the self, as the latter must, somehow, include the for-itself, and this would reach an infinite progression; for-itself cannot reach the self because the self also includes the for-itself with the self.

The returning of the subject to itself (self-reflexive moment) is a foundation of legal consciousness, establishing a form of accountability. The reflection is the fact that the for-itself is aware of itself. In any sighting of something external a continuous relating of consciousness itself is present. So, there is no simple relationship between consciousness and the aimed things, but a relationship mediated by a third term: self-reporting of conscience, or self-consciousness.

The main feature of this consciousness is that it is a revealing intuition; it means the intentionality of consciousness: the fact that it

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transcends itself. A revealing insight involves a revealed: "absolute subjectivity can only exist in front of a revealed, immanence can only be defined in the notification of a transcendent". (Sartre, (2004), : 30). The idea of a transcendence of the subject is one of the directions of law substantiation.

5. Nothingness

For a proper understanding of the meaning of this idea we consider necessary a brief outline of the meaning that Sartre gives to Nothingness. In order that the being of the phenomenon depends on consciousness, it necessary to distinguish the object from consciousness not by his presence, but by its absence. The being of the object is defined as a lack, a pure non-being. Considering the being of the object as being the infinite series of its appearances, it is never present as a whole, in relation to consciousness. It appears on a background of absence, of nothingness. The being of the object "is the one that evades that which, basically, will never be given, that which is offered through quick and successive profiles ". (Sartre, (2004), : 29). At this level Sartre approaches M. Heidegger's conclusions that revolve around the idea of permanent occurrence of the being. For example, in the presence, the relationship between me and the surrounding objects is based on the fact that the for-itself is a witness that *I am not the objects*. I am given to myself as being what the objects are not, or the objects are given to me as not being what I am. The reality of an object is the fact that it is not here and that it is not *me*.

The first man's relationship with the world is a questioning reporting of the former to the latter. We ask about its ways of being and about its being and we waiting for a response from the interrogated being; interrogation takes place amid a pre-interrogative familiarity with the being. Our question involves a triple negation: first that the question might not reveal anything, then the possibility of a negative response (nothingness of knowledge in the human and possibility of nothingness in the transcendent being) and finally that any response involves *it is so and not otherwise*, which means it is based on a negation. Thus, we are surrounded by nothingness: "The permanent possibility of non-being outside us and in us is that which conditions us the questions about the being". (Sartre, (2004), : 43). Nothingness haunts the being; the *being* is, while nothingness *is not*. Non-being appears as a new component of the real. Nothingness is like a worm within the being.

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Any choice requires an annihilation of the other possibilities; a limiting cut-out of non-being into being. The fragility of a being is manifested by the fact that a being carries within itself a possibility defined by non-being, frailty introduced by human by means of the limiting individualizing report. Any destructor is based on man's possibility of maintaining a relationship to the non-being: "The prerequisite for that to be possible to say *no* is for the non-being to be a perpetual presence in us and outside us, for nothingness to *haunt* the being". (Sartre, (2004), : 50). In other words, negation, denial, resistance, have an ontological foundation. This idea has rich legal consequences, revealing one of the implied ways of construction and interpretation of the law.

An interesting approach to Sartre's Nothingness can be found in Blackshield, as it can be characterized by the comparison between Nothingness and social areas where either the law is silent or the legal text can be assimilated to nothingness because of the initial formulation or due to its obsolete nature. Obviously, this perspective is particularly relevant in the legal areas such as common law where judges are called to do justice. Considering the fact that EU member states operate simultaneously, in the national legal area in the EU area, the latter having a strong common law character, the applicability of this type of analysis is more extensive than you might think at a superficial glance. Blackshield believes that the legal void, namely silence law, as Sartre's Nothingness opens room for choice: „Once legal nothingness is seen as creative freedom of choice, we can more frankly address ourselves to what really takes place in the working of the judicial process. Judges can be more honest with themselves, and can more freely shape their decisions to meet changing social needs when it is desirable to do so." (Blackshield, (1965), : 114).

Through ontological dignity that attaches to Nothingness, Sartre established the definition by negation, cataphatic. In law, at least property can be defined in this way: my land is not the neighbour's land to the north or the south. What is mine has the implicit feature that is not someone else's. When we analyze the property, this positioning is at least implied, often gaining an explicit form. In the conditions of a"weak" evidence that this land is mine becomes a hard evidence (or reinforces the evidence) that he is not someone else's. Usucapio institution is supported by such an approach[2]. In procedural law some of the terms aimed at demonstrating precisely this "it is not": no one is interested, one does not want to continue the trial, there is

[2] We believe that usucapion is based on the economic interests of a modern society so that any land shall be in the civil circuit, namely in the "fiscal circuit".

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no one else entitled. The death finding of the court is based on the fact that the one presumed as dead "is not" and not on the fact that he is dead. Hence, it is worth extracting all the implications of this mode of reporting, being able reach the foundation of a legal research method.

6. Alienation

In the play *Behind Closed Doors*, written by Sartre, three people are closed together in a salon and get to torture each other; the well-known Sartre's formula *the hell are the others* show the faith in the fact that social relationships can lead to alienation and loss of freedom. It is a dead life due to lack any future. Alienation can be understood as an inauthentic way of being. In a previous paper we mentioned one of the best known examples of alienation in Sartre's thinking: "J. P. Sartre speaks of an alienation of one's own body in the status of object-to-other; this alienation, with the whole range of meanings that it involves, is discussed as a mechanism that generates the possibility of a tragic experience. Alienation (and all contingency) is experienced as facticity to the level of non-reflexivity (namely without being thought of as such). Through the other gaze we have an extra perspective on us: one of our faces object as an object among the objects of the world, with which we enter into objecthood relationships; this situation alienates us."(Rotilă, (2009), : 182).

The legal consequence of the concept of alienation is the possibility of relieving part of the responsibility of the individual within the crowd in emergency situations (bystander effect). (Darley, J., Latanica, B. (1968)). As we will see below in the analysis of freedom, such a result is not consistent with the first part of Sartre's thought, but is justified by ideas existing in the second part of his work.

7. Anguish

We constitute a conduct as possible but that nothing can determine as to follow, says Sartre. Which means that there is no link between what we are and what we will be as they do not necessarily flow one from the other: "*I am the one who will be, not having to be that way*." (Sartre, (2004), : 75). The consciousness of being your own future under the guise of *not being* is called by Sartre *anguish*. Nothing prevents us to throw ourselves into the abyss; decision comes somewhat from the future, from a self which we are not yet, but which we want to preserve. This is the anxiety about the future. There is an anguish to the past, illustrated by the French philosopher by the example of the player: All previous decisions not to play are cancelled when "I realize,

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with anguish, that *nothing* prevents me from playing. And the anguish *is me*, as long as by the simple fact to reach the existence as a consciousness of being, I make myself *not to be* this past of good decisions *which are me*." (Sartre, (2004), : 77). We make ourselves not be the ones who we were; the decision belongs to us, it is part of a *I* was, but we annihilate this self by the fact that we play again.

S. Kierkegaard characterizes anguish before the error as anguish before freedom and M. Heidegger sees anguis as notification of nothingness. Sartre believes that both are right, freedom being related to nothingness: "Fear is non-reflective apprehension of the transcendent and anguish is self-reflexive apprehension; they pass one to the another. For *Dasein* there is even a permanent possibility of finding itself "before" nothingness and discover it as phenomenon: anguish ". (Sartre, (2004), : 57).

The study of anguish aims to show the existence of a specific consciousness of freedom. Freedom revealed in anguish is caused by this nothing which is located between reasons and act. If, from phenomenological perspective, the contents of consciousness do not exist, then there can be no reason in consciousness, but for the consciousness. Sartre suggests that the reasons are outside consciousness, somewhat replacing causal determination. Here we can glimpse one of the difficulties of phenomenology linked to the idea of exteriority of consciousness. But consciousness is outside even to itself. It is transcendence in immanence. The reason appears as the correlate of a consciousness about the reason. Consciousness sees itself separated from the future from its liberty separate. The freedom to choose between our potential causes anguish. The player, to be able to play again, needs to reinvent his self, which is the essence of man; this suggests the dependence of essence on existence. He puts his past, which included the decision to no longer play with all its motivations, in a *past* mode and rebuilds himself; from the perspective of the game there is another self.

The anguish of citizens can influence social behaviour in various ways, thereby being one of the generators of behaviours that fall under the legal rules. In front of existence anguish can generate an attitude of indifference to moral and legal constraints versus ideals and goals, moving the citizen into an area of anomy. Social indifference also contributes to the dilution of social capital, destroying the communication cohesion and paving the way of behaviours that manifest indifference to the law.

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8. Bad faith

Anguish "occurs when I free myself from the world in which I committed to myself to apprehend myself as consciousness possessing a preontological comprehension of its essence and a prejudicative sense of its potential." (Sartre, (2004), : 85). Sartre suggests that our usual attitude is an escape from anguish. Our own possible must be grasped as existing in the future and separated from the self by nothingness. An abyss separates us from any of our projects as long as it implies the possibility of not being and as long as it is not yet. To avoid anguish for-itself has a power of annihilation even within anguish; "This annihilating power annihilates anguish as far as I avoid it and annihilates itself as far as *I am it to avoid it*. It's what is called *bad faith*." (Sartre, (2004), : 91).

In the attitude of bad faith consciousness instead to turn its negation outward it turns it to itself. Bad faith is lying to oneself. The example Sartre gives: evidence of bad faith gives a woman who going on the first date, knows the intentions of the man who speaks to her, but does not want to take an immediate decision, separating the words from the final intent, inquiring about what the attitude of her partner offers to her. When her hand is touched and this is a step that she refuses to herself wand this is when the rupture between spirit and body interferes in her case: she does not realize that she is abandoned.

Sartre believes that bad faith is the daily human attitude, being similar, I think, with the impersonal *se* postulated by Heidegger. If we see in the impersonal *se* a transcendental of moral and legal consciousness, bad faith should be considered as capable of being located in the same area.

9. Authenticity

The importance of some of the concepts of Sartre's philosophy for the legal thought philosophy has been underlined by Ronald Dworkin and George Kateb, (Wallach (2013)), the authors referring in particular to the concept of *authenticity* in the early thinking of the French philosopher. This perspective on Sartre's thinking was launched during the life of the author, Blackshield point out the importance of this concept: „'authenticity' in the existentialist writings is a prescriptive value concept. It is, in fact, the core (and probably the sole substance) of the existentialist ethics: and since it is as an ethical philosophy that existentialism is prima facie most likely to be of legal significance, it may be worthwhile to examine some of the problems that such a value standard involves". (Blackshield, (1965), : 89). Ronald Dworkin also emphasizes the importance of authenticity for legal thought by

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mentioning this concept in the work cited: „Authenticity is central in the work of many of the most prominent modern philosophers - Kierkegaard and Nietzsche, for example, and also Sartre and other philosophers who called themselves Existentialists". (Dworkin, (2011), : 209). We agree with the authors mentioned on the ethical importance of the concept of *authenticity*, but without considering it like them as the focus of Sartre's ethics. As previously mentioned, using the interpretation of the purpose of Heidegger ontology in substantiating an ethics held by Sartre, we still believe that ontology is the resistance point of ethical vision of the French author, having the ontology of consciousness at its core.

If we think authenticity as a continuous effort to reach self-consciousness in its existential meaning, then we can discuss the possibility that this way of being is the foundation of the legal responsibility of the citizen. Which means paving the way for the transition from the presumption of knowing the law and of consciously relating each behaviour to it[3], to the possibility of a substantiation of responsibility on philosophical grounds, existentialism being a first step in this direction.

One of the meanings of authenticity is the person's ability to escape the constraints of conventions towards experimenting one's own feelings. In other words, through the authenticity of existence, existentialist philosophy has contributed to diminishing the importance of some social conventions, the most recognizable effect being represented by the dilution of the effect of the family, which resulted in the legal area to its reconfiguration[4].

Another sense of authenticity with an extensive legal career because of its consequences is the idea of coincidence with one's own nature, the most visible effect being represented by the ensemble of legal changes governing (prohibiting) homosexuality[5].

[3] We believe that his universal presumption is a useful abstraction, actually ensuring the keystone of any legal system. At the individual level, this presumption has a totalitarian character (in the sense given by E. Levinas to this concept), being located away from the concrete individual possibilities. One of the forms of justification for this presumption is another hypothesis: the legal system rests on the moral principles, while the law can be deduced by the citizen from the moral principles. Obviously, this approach lies at the level of the presumptions useful to the society.

[4] One example is the decriminalization of adultery in the new Penal Code applicable in Romania, as a reaction (relatively late) to the social and legal changes that occurred earlier in the West (and) under the influence of existentialism.

[5] The changes range from the decriminalization of homosexuality by criminal law (one example being represented by the New Romanian Criminal Code) until permission of gay marriage.

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Authenticity understood as a form of coincidence with the origins contributed to postmodern fight for minority rights, taking the form of political correctness, who knows multiple legal effects. The identity of communities, based on traditions and the right to difference (compared to other communities, including against the majority community in the bosom of which it defends its right to identity), is one of the collective faces of authenticity, which often contribute to the donation of an individual size of authenticity.

Betschart is right to consider authenticity as being closely linked to morality and freedom: „Authenticity requires a man to choose his values in exertion of his freedom and in consideration of his situation, to act consistently according to his values, and to assume responsibility for his actions." (Betschart, (2012), : 2). However, this connection must be first of all understood in the ontological context, and starting from here we can discuss about its ethical and legal effects.

10. Freedom

In Sartre's ontology, the being-in-itself does not produce nothingness or rules it out; it has no relation to nothingness. Man is the being that makes nothingness come into the world: "To this possibility of human reality to secrete a nothingness which isolates it, Descartes, after the Stoics, gave a name: it is *freedom*. But freedom is only a word here ". (Sartre, (2004), : 66). Human's being, as long as it triggers the appearance of nothingness in the world, appears as freedom. Human freedom does not belong to its essence, but precedes it; man does not exist first of all to be free, but he is a free being from the beginning. Freedom precedes the essence of man and makes it possible.

A brief outline of freedom in Sartre's thinking may be structured in the following lines: human-reality can choose how it wants but it cannot fail to choose; choice is the foundation of the being elected but not the foundation of the very choice. We are a freedom of choice but we do not choose to be free. We are condemned to freedom. For-itself is bound to manifest in the form of elections. Freedom prescribe other limits my freedom. Free choice of personal goals involves assuming the limits of these choices. Freedom manifests in relation to the given; there is freedom only in the situation. The given may be understood as living in a world whose meaning is already created by other for-itself. Addressing consciousness and freedom by Sartre can be viewed from the perspective of transcendental foundation that he provides for some of the principles of law. Freedom is in

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the human's being, as he possesses an understanding of freedom. Sartre discovers in freedom an opportunity of suffering, the man coveting to the condition of objects. Things are what they are, while man is always the result of his choices. French thinker believes that we cannot admit a consciousness externally driven, as it would become pure exteriority and may not be consciousness. Freedom implies the will: "Our being is both non-positional consciousness and *choice*". (Ghideanu, (1988), : 135). Freedom is regarded by Sartre especially considering the goals in the second part of his work advocating for an engaged freedom. Freedom is simultaneously a curse and the sole source of man's greatness. Human nature is the whole of characteristics that explain the act. Freedom means the existence of human potential and removes causality, the flow with necessity of the present person from the one who was. The lack of causality in choosing the potential shows the nothingness existing in consciousness. The significance of the past depends on the present project.

Consciousness is the ontological foundation of freedom, generating capacity of choice regardless of context. Sartre believes that even prisoners are free. The ontological perspective causes a burdening of the human with a freedom, in fact, limited. This definition of freedom has, however, a strong component, generating a form of responsibility for one's own acts regardless of context, which can be considered an argument for maintaining man on the paths of human behaviour including in critical situations. In other words, it participates in a hard definition of humanity, through which a set of potential obligations are prescribed under any circumstances.

Even if the effects of such an approach pertain to the field of moral, we must consider that they generate a possible basis for legal sanctions correlative to responsibility. From a legal perspective, relating to the example given by Sartre to highlight the absolute sense of freedom, some relevant questions arise: Should we consider applying the *lex patriae* to the prisoners of war, namely the reciprocal behaviour, with reference to the legal system of the country of origin, especially in the cases in which detention takes place in the homeland territory? In other words, to prisoners of war two simultaneous legal systems can be applied: the provisions of the state which got them as prisoners and those of the state whose citizens they are? As we can see, the consequences of this way of thinking freedom are extremely problematic when trying to translate them into legal terms. M.M. Ponty also shows this: „The absolute choice, the choice of existence, beyond all the reasons, is violent only when it does not present itself as a choice but takes itself for the law of the world." (Ponty, (1973), : 164). (Ponty, (1973), : 164).

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From a certain perspective, Sartre goes from man's total freedom postulated in the first period of his thinking, to the idea of freedom conditioned by the meeting of the basic needs of the body. Critics have suggested a possible difference of status between the two approaches: the first definition of freedom is based on ontological freedom while the second aims at material freedom. (Heter). In the second vision, authenticity assumes limits of freedom. For example, oppression occurs, man retains freedom of choice, but has a choice only between inhuman options. The freedom of choice of the worker forced to work for the minimum wage to meet his basic needs is a paradoxical situation, while being held and limited by the inhuman choices he is required to do. The impact of this placement actually turns the social class into a destiny, the social forces acting in such situations transforming the individual into a slave.

11. Moral

The problem of existence of an ethics in Sartre knows various approaches in research literature; Based on these controversies, we can consider as problematic the opportunity to identify key links between Sartre's thinking and Law. In his fundamental work Sartre was not concerned about the legal, about justice as a way (hodos), as making justice through the rule of law, so that the approach of the relationship between philosophy and law seems difficult. The situation is partly offset by biographical aspects and by some secondary works. However, as shown above, we can identify a very complex approach to consciousness in Sartre's philosophy, which is based on the phenomenological method and aims at metaphysical purposes, thereby providing a basis for the research on moral and legal consciousness.

Moreover, Sartre's ontology was sometimes interpreted from an ethical perspective; for example, Ernest Stere considers that "under the ontological garment the tendencies of a moral philosophy act in fact which Sartre wishes to present it as the "true humanism". (Stere, (1988), : 436). The same perspective we encounter in Tudor Ghideanu, who believes that a moral choice is present in Sartre's philosophy, assigning him the "intent to open for the phenomenological ontology from L`Etre et le Néant a moral perspective, an ethic of responsibility for man-in situation." (Ghideanu, (1988), : 160).

The idea of a fundamental relation of ontology with ethics is found in the work Being and Nothingness: "What am I? A being that it is not its own foundation, who, as being, could be different than it is, as far as it does

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not explain itself the being. This primary intuition of our own contingency is what Heidegger will give as primary motivation of the transition from inauthentic to the authentic. It is restlessness, call of consciousness ("Ruf des Gewissens"), feeling of guilt. In fact, Heidegger's description clearly shows the care for an ontological foundation of an Ethics which he claims he does not handle as well as to reconcile humanism with the religious sense of the transcendent ". (Sartre, (2004), : 136). Sartre's argument is true in case of his philosophy, as it involves the case to ontologically establish an ethics.

A good classification of moral thinking of the French philosopher is conceived by Alfred Betschart under the form of three meta-ethical definitions which can be found in Sartre:

1. Anthropological ethical values: „All values are created by human beings. As Sartre wrote in his preface to Francis Jeanson's book Le Problème moral et la pensée de Sartre in 1947, ethical views and what in German is called Weltanschauung are the same. They both are part of the fundamental choice each human being makes. At a later stage these originally individual values may develop into a part of the practical-inert or the hexis, where they form mores, values, goods, exemplary conducts, ideals, and particularly institutions such as law. This ethics differs from others by allowing man to choose evil…". (Betschart, (2012), : 1).

2. Situational ethics: „There are no rules that can be applied universally in all situations, and there are no concrete norms that can be deduced from general rules. In new situations, man has to invent new norms." (Betschart, (2012), : 2).

3. As an ethical discourse in which man is called to justify to his fellow being.

Analysing the relationship between biography and Sartre's bibliography, Betschart reached the next conclusion: „Sartre's actual behaviour suggests that—within the limits his meta-ethical position sets to any normative ethics—not one or the other normative ethics is to be followed, but that the ethics of authenticity and the consequentialist ethics have to be combined to lead to ethically correct behaviour". (Betschart, (2012), : 10).

Referring to his moral vision, Sartre divides his thinking into two periods: before 1947 and beyond. Like other authors indicated in this article, our approach is based in particular on the works published in the first part of his life dominated by the ontological vision.

Thus, we have tried to show in this section so that the discussions on the existence or absence of an ethic in Sartre's philosophy are far from

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being concluded. Given the inevitable link between ethics and law, it is obvious that the situation is largely applicable to the relationship which is the topic of this article.

12. Existential Psychoanalysis

Sartre proposes existential psychoanalysis as a research method specific to his existentialism, and in its investigation horizon man must be considered a totality and not a collection, each piece expressing it entirely. In this approach we can see a moral accountability form, which can also be considered a reason to punish. The method starts from experience and is based on a pre-ontological comprehension of man on man, the essential approach being the hermeneutic one, the aim being represented by the deciphering of man's empirical behaviours.

This method incorporates the comparative one and the latter shall compare the behaviours to make the unique revelation gush. Unlike traditional psychoanalysis, existential psychoanalysis seeks to determine the original choice (rather than the complex) raising to this choice, trying to highlight the crucial decision by means of which the person becomes a person; also, within this method Sartre rejects the postulate of the unconscious. Existential psychoanalysis aims to find the original way each one has to choose their being. The French thinker refuses the horizontal determinism (the causality of the antecedent) and the vertical one (the act being a symbolic court which translates a deeper desire) of Freudian psychoanalysis. His method to refers to the past and the future. Comprehension is made in two reverse ways:

- Synthetic progression - climbing from the act considered up to the possible final act;

- Regressive psychoanalysis – going down from the last possible act up to the imagined act.

The utility of existential psychoanalysis to moral and legal thinking is indicated by Dworkin as well: „We can discover a character or style as we live, interpreting what we do as we do it, in search of rather than following a thread. Sartre called that "existential psychoanalysis." (Dworkin, (2011), : 210). Heter considers that this method is linked to Sartre's political thinking: „Search for a Method (Question de méthode, 1967), the preface to the French Critique, formulates the "progressive-regressive" method, which melds psychological and sociological explanations of human action. The two major components of the method are a regressive analysis of static social structures such as class, family and era, and a second progressive analysis

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where complex permutations of structures are explained from the lived perspective of individuals and groups." (Heter). We believe that in this variant of interpretation the utility of this method for legal thought may be taken into question.

13. Political Philosophy

Any legal system knows deep dependencies to the political system within which it is set. In this respect, we can speak of the possible significant consequences of J.P. Sartre's thought on legal thinking. The transformation of possibility into reality, however, depends on the extent to which the political thinking of the French philosopher was embraced.

One of shadow zones of Sartre's political thought is its relationship with communism. Sartre had for communism at least one form of sympathy. M. M. Ponty indicates, however, that in Sartre's case we can rather talk about a settlement of communist language in a new form. The only hint that Ponty indicates is that Sartre was convinced that it had a perspective different than the communist ideology, arguing in this sense the position to support communism by own arguments different from those of ideology: „Sartre "understands" communist politics, justifies it from the proletarian point of view, and thus (to a degree to be specified) makes it his own for reasons quite different from those of the communists. His principles are, in truth, not only different from those of the communists, they are practically opposed to them; and what Sartre contributes is a brief on the failure of the dialectic." (Ponty, (1973), : 97). Thus, he comes to justify Communists' actions rather through what they do than through what they think. (Ponty, (1973), : 99).

Criticism of the relationship between Sartre and communism knows some contemporary readjustments, the most obvious reversal of current interpretations being provided by Betschart: he believes that the relationship with the Soviet Union's policy is best explained by Sartre's moral, (Betschart, (2012), : 10), providing in this respect a whole explanatory framework by means of which he tries to demonstrate both the Sartrian activism and the fidelity to his own ethical principles.

14. Feminism

One of the obvious links of Sartre's existentialism with current legal thinking takes place in the field of anti-discrimination legislation based on some of the principles underlying the Feminist Movement. It is a bond mediated by the influence that Sartre had on the philosophy of Simone de

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Beauvoir, the author using a series of Sartre's concepts in analyzing the situation of women. We have already indicated, in another work, the profound influence that the author from a French thinker, "compared to Sartre, Simone de Beauvoir is more concerned with daily problems closer to the ontical; we largely see in her works applications of the basic concepts of Sartre's ontology". (Rotilă, (2009), : 192)[6]. Since the French author has made an important contribution to philosophical foundation of feminism, influences are visible. Simone de Beauvoir participates in the philosophical foundation of the feminist movement, by recourse to existentialism, and the impact of her work can be found in the principle of equal opportunities or anti-discrimination legislation. It is the most obvious consequence of existentialist thinking on legal thinking, as it is a clear contribution to the donation of a new dimension of the principle of equality.

Conclusions

Consciousness conscious of its acts is one of the universal assumptions of any legal system, on which is founded on the possibility of legal liability. In other words, the return to subject to itself (reflexive moment) is a foundation of legal consciousness, creating the basis for a form of accountability. However, the existence of the two modes of reporting, *thetic* and *non-thetic*, tends to generate a gap in the responsibility adjacent to this presumption. We see thus that the French philosopher opens the possibility of moving from presumption to demonstration, thereby participating in the foundation of approaches regarding the research of legal consciousness.

Building on the interpretation of Heidegger's ontology in the foundation of an ethics developed by Sartre, we consider that ontology is the strength of the ethical vision of the French author, having at its core the ontology of consciousness. In this perspective, thinking authenticity as a continuous effort to reach self-consciousness, in its existential meaning, we have to discuss the possibility for this mode to constitute the foundation of the legal responsibility of the citizen, paving the way to the transition from the presumption of knowledge of law and of the conscious reporting of each behaviour to the possibility of a substantiation of responsibility on philosophical grounds, existentialism being a first step in this direction. Given the place ontology occupies in Sartre's philosophy we can say that he

[6] In this paper we analyzed the relationship between Sartre's ontology and Simone de Beauvoir's thought.

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tries a ontological justification of the social order, providing implicitly certain arguments concerning the metaphysical foundation of certain law principles.

The consequences of the absolutist way of thinking freedom (We are condemned to freedom!) in the first period of Sartre's thought are extremely problematic when trying to translate them into legal terms. The road of Sartre's thought moves from total freedom of man postulated in the first period of his thinking, to the idea of freedom conditioned by meeting the basic needs of the body, while within the second view authenticity assumes limits of freedom.

We can talk about a definite influence of Sartre's existentialism on legal thinking in the field of anti-discrimination legislation, determined by the influence that Sartre had on the philosophy of Simone de Beauvoir, namely by the importance of this author to the feminist ideology.

A philosophical trend can generate a lifestyle or at least can influence several manners of being. Clearly, existentialism falls into the status of philosophical trend, causing at least some ways of being. Sartre's philosophy, an important part of the existentialist trend, has inevitably consequences on individual lives and, at least sometimes, even collective. In this way, we believe that Sartre's thinking participates in the social construction of certain individual and collective realities. To the extent that the encounter between these modes of being and legal systems in which the people who joined them live collide, we are depending on perspective, in the situation of failure to comply with legal norms or in that of a unjustified maladjustment of the legal systems to the new social visions. This forwards the risk that legal thinking could set considerable limits to human freedom to choose the values and ways of being, especially given that individual choices do not conflict with the rights of other individuals. Overall, this is the main (prescriptive) argument for which legal thinking must take into account the existential philosophy, including Sartre's philosophy[7]. Beyond this general perspective, we showed in this article the various ways in which Sartre's philosophy influenced or probably should influence legal thought.

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[7] It is a sufficient justification of the relevance of the interpretative approach made in this article.

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