

LAW, PHILOSOPHY AND RESPONSIBILITY: THE ROMAN INGARDEN CONTRIBUTION

The aim of this article is to carry out a critical and reflexive analysis of Roman Ingarden's philosophy of responsibility. Being a member of the phenomenological current, Ingarden mainly studied the ontological bases or conditions of responsibility by identifying different situations of responsibility. In this paper situations of responsibility have been analysed in the semantic contexts in which the word "responsibility" appears. Legally, the prescriptive contexts of using the word "responsibility" are particularly important since they are usually either ignored or inadequately separated from descriptive contexts. Roman Ingarden's views were supplemented by Alf Ross's aspects of responsibility. As a result, the elementary ways of understanding responsibility have been reconstructed; they are the basis for reflections on moral responsibility as well as legal responsibility

**ROMAN INGARDEN, ALF ROSS, RESPONSIBILITY, LAW AND MORALITY,
PHILOSOPHY AND RESPONSIBILITY, SANCTIONS, CRIMINAL LAW**

1. Introduction

The aim of this paper is to conduct a reflexive analysis of Ingarden's philosophy of responsibility and supplement it with comments about legal responsibility, in particular with Alf Ross's thought about responsibility¹. One of the tasks of the article is also to demonstrate that responsibility in law does not have to be the same as a sanction (punishment). Responsibility and punishment are two different things.

¹ There is a terminological problem related to the relationship of two terms, ie. "responsibility" and "liability" (and derivatives). We will assume in a further text that they can be used interchangeably (that there are synonymous and equivalent). Cf. R. G. Frey & W. Morris (eds.), *Liability and Responsibility. Essays in Law and Morals*, Cambridge 1991.

In law and jurisprudence, or more precisely in legal language, responsibility is identified or associated with sanction (punishment). An example can be criminal law. It can be said that criminal responsibility is understood as punishment. By employing Ingarden's concept of responsibility, it can be demonstrated that legal responsibility, that would be treated a special type of responsibility at all, involves various situations. In many contexts term "responsibility" is not about punishment. Thus in the article philosophical analysis of responsibility (or term "responsibility") will be shown as useful for legal uses. Two examples will be provided. First concerns the so called restorative justice. One of the faces of responsibility is about feeling yourself responsible for committed evil. The responsibility can be referred as a duty to do an act which is a kind of a substitute of committed evil (like compensation etc.). The second one concerns the idea of responsibility as a set of duty to be a good citizens, lawyers, parents, to fulfil specify social role accordance with social or cultural justified demands. The basic assumption of this article is an arbitrary adoption as a point of Ingarden's philosophy in a specific interpretation. In addition, the article does not exhaust the issue, it is only a contribution to further discussion. As for literature: there are many works about a responsibility. Sometimes less is more. Therefore only most significant works of Ingarden and Ross are deliberately used.

Roman Ingarden did not conduct any direct analyses of uses the term "responsibility", but his phenomenological approaches to the phenomenon of responsibility *implicite* involves various ways of using the term "responsibility"². It means that the situations of responsibility described by Ingarden can be treated as some contexts of using the term "responsibility" in order to analyse them more closely³.

An extremely comprehensive analysis of responsibility, full of interesting reflections, was presented by Roman Ingarden⁴. Ingarden's *Ontological Bases of Responsibility* – a book originally published in the 1970s in German as a separate book which was the result of Ingarden's speech at the 14th International Philosophical Congress in Vienna and which in the Polish version is part of the famous *Little Book About Man* – must thus serve as the basic point of reference.

Ingarden's responsibility may occur in two different meanings, so the expressions in which this term appears take the following meaning:

² Cf. R. Ingarden, *op. cit.*, pp. 73-74.

³ Cf. J. Woleński, *Analiza i odpowiedzialność [Analysis and Responsibility]*, Znak 1995, no. 485, p. 56 ff.

⁴ R. Ingarden, *O odpowiedzialności i jej podstawach ontycznych [Ontological Bases of Responsibility]*. [in:] R. Ingarden, *Książeczka o człowieku [Little Book About Man]*, Warszawa 2009, pp. 73-169. Original edition: *Über die Verantwortung. Ihre ontische Fundamente*, Stuttgart 1970.

- 1) outcome responsibility (result responsibility);
- 2) role responsibility⁵.

"Responsibility" defined as outcome responsibility may mean the act of transferring responsibility, taking responsibility or bringing to justice. For example: "The criminal is responsible for the murder" – this statement can be interpreted in different ways, but the topic of the sentence in which the term "responsibility" was used in a descriptive context is the act of being responsible for the committed act (which is usually disapproved) – the burden of suffering consequences of one's own acts. In contrast, in the normative context it is about the duty (obligation) to be responsible for the act, i.e. the duty to suffer consequences of one's own act. Responsibility defined in this manner can be analysed in two main aspects, i.e. in the aspect of the burden of suffering consequences of one's act by the one who is responsible and in the aspect of judging – bringing the perpetrator of the act to justice by body R, i.e. somebody else's reaction to the act. Furthermore, such responsibility may involve a decision made by the perpetrator to suffer the consequences of the act, in particular to remedy the damages made.

To put it simply, the expression in which the term "responsibility" appears as role responsibility means more or less that one should act in a responsible manner. Acting in a responsible manner is acting in accordance with the requirements of a specific social role and the expectation of other people related to this role – so this is acting *in accordance with best practise*. Thus it is responsibility defined as the performance of social roles in a consistent manner, not only the fulfilment of legal or moral duties.

It must also be mentioned that apart from the three indicated main meanings of the term "responsibility", this term is used in one more relevant meaning. The term "responsibility" is used in expressions such as "P is responsible" when referring to a reliable, solid person. In this sense a person who is dutiful can be relied on – is responsible. When we say about a doctor that he or she is responsible, we indicate his or her personal quality (i.e. a character trait). Usually the consequences of the fact that somebody has been irresponsible

⁵ The terms "outcome responsibility", "role responsibility" were used similarly to the quoted meaning in English by H. L. A. Hart in *Punishment and Responsibility: Essays in the Philosophy of Law* published first in Oxford in 1968. Hart did not use any references that would suggest that these terms were borrowed from previous works of other authors, indicating that it is his idea (but Hart used notes rather imprecisely, so this may explain the lack of notes). I assume that in this paper when translating Hart's terms into Polish. Many authors use terms similar to Hart's, in particular J. M. Fischer, *Responsibility and Autonomy*, [in:] *A Companion to the Philosophy of Action*, ed. J. T. O'Connor, C. Sandis, Oxford 2010, p. 309 ff.; T. Honoré, *Responsibility and Fault*, Oxford 2008, p. 7 ff.

will be interesting (meaning, that person is not solid, reliable), while a responsible person will most likely perform his or her social role properly.

2. On responsibility

As it was shown, Roman Ingarden's analysts, with whom we must agree, found the differentiation between two aspects of responsibility – responsibility "after the act" and responsibility "before the act" – to be particularly important for the philosophy of responsibility⁶.

Responsibility after the act rests on a person who committed an act and it is personal responsibility of this person for that act. Responsibility after the act applies to a situation in which a person committed an act and takes the consequences of his own act on himself. Roman Ingarden does not call this case of responsibility "outcome responsibility", but this term may be used to creatively develop his thought⁷.

The term "responsibility" as outcome responsibility is used in particular in the following situations: (a) somebody bears responsibility – is responsible for something, (b) somebody takes responsibility on themselves, (c) somebody is held responsible for something.

Bearing responsibility (a situation in which somebody bears responsibility, is responsible for something) occurs when person P committed act C and bears the burden of all consequences of this act. Expressions such as "Person P is responsible for act C" will usually refer to the perpetrator who caused, as a result of his or her (own) act, a negatively assessed state Q. This act holds the perpetrator responsible⁸. It is an activity that P (both) undertook and conducted (thus an element of awareness occurs). Thus, as Ingarden argues, bearing responsibility is a consequence of committing a specific act.

This means that outcome responsibility includes two strictly related elements: firstly, bearing responsibility for something; secondly, bearing responsibility before a ruling, competent body (e.g. court) whose existence we must assume. These elements jointly are the condition for using term "responsibility" in said sense.

Another issue is what the perpetrator of the act – the person bearing responsibility – should do with his or her responsibility. If the act is banned or disapproved, it is completely natural to expect that the perpetrator should be punished. However, as noticed, Ingarden

⁶ J. Filek, *Filozofia odpowiedzialności XX wieku*, Kraków 2003 [*The Philosophy of Responsibility in 20th Century*], pp. 188-203; A. Jedynek, *Odpowiedzialność w globalnej wiosce* [*Responsibility in the Global Village*], Warszawa 2008, pp. 18-22.

⁷ See:

⁸ R. Ingarden, *op. cit.*, p. 79 ff.

perceives bearing the burden of responsibility as a consequence of the act, he does not associate bearing responsibility with punishment. The statement that the result of an act is a moral wrong brings too strong connotations with punishment or a sanction. Continuing to interpret Ingarden's thought, we can imagine an example of an act *prima vista* that is morally or legally irrelevant and is not subject to any ban or order in a given community. After all, it does not mean that one will not bear any responsibility⁹.

Bearing responsibility evokes taking the consequences of one's own act in some way, but the person who bears responsibility does not always decide about how these results are shaped. These results are usually normatively determined in the community, in particular by law or morality. The answer to the question "What should a person who broke a promise, revealed a secret or lied do?" is quite intuitive; on the other hand, religious norms specify what a religious person should do if he or she sinned. In no way Ingarden's reflections lead to the conclusion that responsibility is borne only if one suffers (puts oneself into) an inconvenience – a sanction. However, it can be assumed that the person who bears responsibility should do something in relation to their situation, to the extent or degree that is possible and required because of remorse and the acceptance of their responsibility. It will be an act of compensation or a remedy act, and we must note that remorse, acceptance of one's participation in the case or the sense that one bears responsibility will be enough as an act of compensation¹⁰. In addition, it seems that if a person may be held responsible, the way in which the burden of responsibility will be removed can also be specified. If a person may take the burden of responsibility off, it can be done only under some moral, legal or religious norms¹¹. For Christians, the redemptive act of Jesus Christ to cover people's responsibility (sin) was very unique, even though the flaw of sin remained in human nature despite the justification.

The issue whether or not we bear responsibility (in this sense) for actions (and their results) that are beyond our control need to be explained. It depends on the way of interpreting the lack of control over our actions and results (outcomes). Ingarden claims that a situation in which a person does not have any influence on his or her own decisions and actions is beyond the border of responsibility. It is about the case when the person opposes internally ("me") or

⁹ For example, if somebody buys a car that consumes a lot of fuel, putting prestige over the environment, perhaps he or she should pay higher taxes or pay a sum of money for organisations that protect the environment.

¹⁰ Cf. N. Christie, *A Suitable Amount of Crime*, London 2004, p. 87 ff.; W. Schweiker (ed.) *The Blackwell Companion to Religious Ethics*, Oxford 2005, part II, in particular pp. 197 – 227.

¹¹ In any case, it seems that the ordinary retributive morality and only some moral doctrines based on scientific or *quasiscientific* knowledge include the category of forgiveness, for example to insane people; vengeance is completely primal.

tries to oppose the actions but is completely helpless and powerless (everything is happening beyond that person's control). Thus it is not only about the fact that somebody does not have his or her own beliefs and wishes: in the situation in question in which powerlessness and helplessness appear, these "actions" are not an indication of the "perpetrator's" beliefs and wishes. The expression "P bears responsibility" does not fit into such situations. Person P is responsible only if P, despite all, is able to affect the state of affairs. According to Ingarden, some knowledge about the implementation and nature of that action is a sufficient condition of bearing responsibility – which is also enough to speak about responsibility reasonably. This complies with the common language practise¹². For example, a wholesaler who marketed poisonous medicines that caused death of many people bears responsibility for this state of affairs, at least for the reason that he is (should be) aware of the risk associated with selling medicines. However, it remains uncertain whether the person that was only a storeman, a cashier, etc., bears responsibility.

Even if one does not have any influence on the state, we can say that one does not bear responsibility for this state; provided that the person in question was perceived as somebody who was able to bear responsibility (i.e. was sane, etc.), and each exception from this rule must be justified (e.g. with fairness). Aristotle gives us an example of a man who acts from fear (caused by a storm) by throwing goods overboard (because of that fear) as a person who is responsible¹³. There are various situations on which we have at least **some** influence (i.e. even the smallest, minimal) and which are within the scope of responsibility¹⁴. In a typical situation, we can intuitively differentiate the circumstances in which we would not demand any compensation, an act of remorse, apologies, etc. from a case of bearing responsibility. Such circumstances indicate helplessness, an ostensible (as Ingarden says) relation between the person and the state of affair¹⁵. We sometimes say: "This is force majeure, nobody was able to prevent that". And some other time: "P was unlucky, but he could have prevented that somehow". The science of law identifies it precisely: according to the definition, *force majeure* applies to situations on which a person does not have any influence. Thus there is a difference between helplessness and at least indirect control over reality, which is common. Uncommon situations must be solved *ad casum*.

¹² R. Ingarden, *op. cit.*, p. 86 ff.

¹³ Aristotle, *Nicomachean Ethics*, London 1893, III. 5, 7 - III.5.10.

¹⁴ The expression "to have at least some influence on the occurrence of state of affairs S" must be interpreted as the smallest participation of a person in the causes of the state of affairs; provided that the participation is at least an indirect implementation of the will and wishes of that person (who is responsible). Generally speaking: a person who is throwing goods overboard wants to do it and that is his or her will because he or she wants to survive the storm.

¹⁵ R. Ingarden, *op. cit.*, pp. 85-87.

It must be mentioned that one bears responsibility for negatively valued states of affairs related to the fact that people in general are social entities that function (so they not only act as agents) in a social group, which involves some burdens and benefits¹⁶. Responsibility can be analysed only through the social dimension¹⁷.

According to Ingarden, a situation in which somebody takes responsibility on themselves or (in other words) accepts responsibility is important¹⁸. The expression "person P takes responsibility for the act and its result" refers to situations in which person P decides to be responsible for his or her act. Also a person who does not decide to be responsible, i.e. to suffer the consequences of the act, bears responsibility. On the other hand, a person who negates the fact of bearing responsibility does not take responsibility. But the statement of a murderer that he does not bear responsibility does not reject the fact of committing a murder, so it does not take off the burden that the perpetrator is responsible for this murder.

When taking responsibility, person P who is responsible is ready to participate in everything that involves his or her responsibility for the state of affair. It happens so because the perpetrator – the person who bears responsibility – should be liable for his or her act. If person P breaks a promise given to R, the former bears responsibility for breaking that promise. On the other hand, if P takes his or her responsibility, P decides to suffer the consequences of breaking that promise. These consequences include, in particular, the fact that P should answer to the accusation of breaking the promise made by R. If R accuses P that he or she broke the promise, the latter should be responsible for that and intend to redress the wrong deed defined in this way (to apologise, etc.). It is hard to imagine that P would lie, denying that he or she made a promise; he or she would then bear responsibility not only for breaking the promise but also for lying and the like.

The expression "to take responsibility on oneself" appears in two contexts or situations. Firstly, if somebody took responsibility for their act (accepted their own responsibility). Secondly, if somebody took the burden of someone else's act on themselves (accepted responsibility for someone else's act or state of affair). If somebody took the burden of the act on themselves, they bear "their own" responsibility for this act.

Thus one can accept or take responsibility for a state while not bearing responsibility for that state of affairs. At least three basic cases are possible here (we will discuss them at the example of the search for a missing child): somebody is searching for a child wrongly

¹⁶ Cf. A. Ripstein, *Equality, Responsibility and the Law*, Cambridge 1999, 24-64, 264 ff.

¹⁷ D. Bonhoeffer, *O odpowiedzialności* [*On Responsibility*], Kraków 2001, p. 38.

¹⁸ Cf. J. Jadacki, *Analizy intencjonalne Romana Ingardena* [Intentional Analysis of Roman Ingarden], [in:] J. Jadacki, *Orientacje i doktryny filozoficzne* [The Philosophical Doctrines], Warszawa 1998, p. 364 ff.

believing that: (1) he or she is a parent of that child (or simply has a special duty to save each missing child – Don Quixote's syndrome), or (2) caused that the child is missing, or (3) somebody wants to take responsibility for something he or she is not responsible. *Prima facie*, the first and second situation are identical, but in fact they are not: in situation (1) I bear responsibility because of a duty (my task is to save the child), and in situation (2) due to the expected negative state of affairs (the duty to answer). It seems that in both situations the expression "took responsibility" can be used. If we assume that responsibility is indeed a social structure, then finding some acts to be acts of taking responsibility on oneself cannot raise any doubts.

The expression "to hold person P responsible for act C" (before a third party T) means that – using Ingarden's words – an authorised agent¹⁹ (an agent T) demands that the person answer for the act (and its result) by intending to bring the person to justice²⁰. "Being brought to justice" refers to a process aimed to identify the grounds for demanding an answer and the demand to give the answer. When speaking of being brought to justice, the focus is put on the third party and its activity. In *The Concept of Responsibility* Georg Picht says that "one is responsible before an authority, an employer who is the source of responsibility – the elected government is responsible before their voters, an official before his or her superiors, a student before his or her teacher and parents"²¹. The act of being brought to justice mainly involves the need to determine the competent body, it does not need to be the one who is the source of responsibility. The source of responsibility may be an employer's will expressed in a legal text, while the body that acts as the "authority" may be a court. One could even say that the separation of the source of responsibility from the body before one is judged was considered to be a standard in the society at least until the time of Montesquieu. It is embodied by the modern state and law even though there are some exceptions. But law undoubtedly creates social structures and institutions within which people function; this organisational and controlling function is not only performed by law. A pupil is responsible before a teacher and his or her parents only in some cases, in other cases he or she may be responsible before a court or his or her classmates.

The discussed expression: "being brought to justice" has two aspects in the normative context. First, the obligation to answer (answering) to an accusation; second, the obligation to

¹⁹ Ingarden uses the term "authorised body". But it means an entity that is competent, **authorised** to make a person liable to prosecution, **not** an entity that is somebody's representative. Therefore in the next part of this paper we will use the term "authorised", even if we refer to Ingarden (who uses the term "empowered" in each case).

²⁰ R. Ingarden, *op. cit.*, p. 76.

²¹ G. Picht, *Mut zur Utopie. Die großen Zukunftsaufgaben. Zwölf Vorträge*, München 1969, p. 233.

suffer the consequences of bearing responsibility. In the latter case, the authorisation to being brought to justice is highlighted. Being brought to justice means to demand answers and determine factual grounds. This kind of activity, not to say inquisitional, is the right of that authorised body. *Implicite* the focus is put on the authorised body, i.e. R brings P to justice before R (the competent body is usually emphasised, the one that must be subject to the competence is less important).

However, "bringing to justice" must be distinguished from "suffering sanctions", and in some context also from "bearing responsibility" (as Ingarden points out rightly)²². It is necessary to differentiate between the demand of an answer based on the factual grounds that are being determined and making that the sanction with the widest interpretation is used.

When bringing somebody to justice, the factual grounds for doing so are in particular determined. The act of bringing somebody to justice involves: first, the demand to answer the question about a specific act (the result of the act). If the issue of bearing responsibility is solved (positively or negatively), either the person that is brought to justice is freed from responsibility or is brought to justice. Making that somebody is brought to justice may be understood as the use of widely defined sanctions. In the sequence of stages, making that somebody is brought to justice is the last or is even placed beyond responsibility *sensu stricto* – as it is a consequence of bearing responsibility or the burden of responsibility.

Additionally, when the act of bringing to justice is completed, we will say that the person responsible has borne responsibility.

A consequence of bringing somebody to justice may be the fact that the person who is brought to justice will bear responsibility – will be held responsible (in other words: X bears responsibility in the sense that the authorised body made that X is brought to justice). In the discussed context the past tense is usually used, we say that "X bore responsibility"²³.

It must be emphasised that the possibility to judge somebody is not associated with the rightness or justice to demand an answer from somebody because it is a matter of the assessment of the actions of the body authorised to bring somebody to justice, in a specific case²⁴. Developing Ingarden's thought, one can note that the act of bringing to justice changes the status of the person that is brought to justice: that person becomes a suspect and may bear

²² Ibid., pp. 75 – 76.

²³ It would be a mistake to speak of enforcing responsibility. The object of the responsibility can be enforced on a person – an obligation, a debt or an execution. If somebody bears responsibility, they can be enforced to fulfil an obligation, for example to serve a prison sentence (if sentenced). It also seems that a responsible attitude can be enforced on the one who is irresponsible so one can act in a proper manner.

²⁴ J. M. Fischer, *Responsibility and Autonomy*, [in:] *A Companion to the Philosophy of Action*, eds. J. T. O'Connor, C. Sandis, Oxford 2010, p. 309 ff.

consequences of the act for which he or she is judged. Sometimes somebody takes the role of the perpetrator for some reason, taking suspicions on themselves. It is the case when one takes responsibility on themselves.

One may think that the expression "P bore responsibility for Q" means in some contexts "P was brought to justice for Q" (but it is different than the term "bringing to justice"). If we say that somebody was brought to justice or bore responsibility for something, we usually refer to a situation in which somebody was forced to compensate the wrong deed that caused, as determined by the judging body. Sometimes we refer to a situation in which the perpetrator took the burden of remedying the negative consequences of their act of their own will. In the discussed context the expression "P bears responsibility for Q" has a different meaning than the expression "P is responsible for Q". In other contexts the expression "P bears responsibility" and "P is responsible" are equivalents.

3. Alf Ross's concept of perspectives of responsibility

The concept of the outcome responsibility developed by Alf Ross illustrates well, but also creatively supplements the difference between transferring or taking responsibility and bringing to justice – such situations were identified and described briefly by Roman Ingarden.

The expressions in which the term "responsibility" appears as outcome (result) responsibility are connected in the way that they specify the main interpenetrating perspectives of responsibility. Alf Ross mentions two perspectives:

- a) about the possibility to demand reasonably that one answer and even excuse oneself for the act, its consequences or the state of affairs, an event – referring to Alf Ross, this is a perspective of giving account;
- b) about the possibility to judge one for what one has done – referring again to Alf Ross, this is a perspective of judgement²⁵.

Also another, third perspective may be considered:

- c) an obligation to compensate, that is to answer positively to the demand to excuse oneself and give account for the state of affairs one caused, usually the duty to compensate, i.e. to answer positively to the demand that one excuse oneself and give account for the caused state of affairs, as a rule, before the victim and on the initiative of the person who bears responsibility. We call this perspective

²⁵ Alf Ross says in fact about "responsibility of giving account" and "responsibility of sentencing", but he defines responsibility homogeneously as a moment in the course of proceedings (e.g. criminal proceedings), so most probably Ross's expressions can be used to define some perspectives of perceiving responsibility, A. Ross, *On Guilt, Responsibility and Punishment*, Berkeley – Los Angeles 1975, p. 16 ff.

(obviously not referring to Alf Ross) the perspective of compensation (reconciliation). It is a matter of restorative justice.

It is easy to see that the first two perspectives are strictly legal. The third one concerns a restorative justice. And it also fits perfectly into the legal scheme of speaking and thinking about responsibility. As for third perspective, there are no sanctions or punishments, only a responsibility that combines moral and legal elements. Ross 50 years ago did not see that, he only saw an answerability (duty to answer) in the court and the sanction (two prima facie different perspectives, but still rooted into a legal positivism). In modern jurisprudence is identified also a problem of relations between a perpetrator and victim, as a result a responsibility and obligation to restore social bounds and status quo ante are taking into account also by the law.

When we analyse responsibility (as outcome responsibility) from the point of view of the judging (authorised) body, we rather say: "P is brought to justice"; when we say about responsibility from the perspective of the person responsible: "P is responsible (bears responsibility)". The perspective of compensation is described by this expression: "P took responsibility" (and consequently we will even say: "P acted responsibly" – as discussed below). From the Alf Ross point of view the following terms: "to give account" (or responsibility of giving account) and "resolution" (or responsibility of sentencing) are related to responsibility due to the special way of perceiving responsibility as a moment in legal proceedings (strictly: in the criminal proceedings) determined, on the one hand, by the accusation, i.e. the demand to give account, on the other hand, resolution (in particular sentencing), which is a form of judgement.

Alf Ross concludes, in order to judge a person, that person must be the one of whom one can demand the account or the answer to a given question. The one who can be accused can be condemned for a murder²⁶. A similar thought is included in the reflections of R. A. Duff, philosopher of law²⁷. But it is hard to ignore the aspect of the obligation which is connected in particular with the attitude of the person that bears responsibility for something. This aspect is not taken into account by Ross, but there is one more moment between the accusation and resolution (e.g. sentencing), i.e. the moment *sui generis* of reconciliation,

²⁶ A. Ross, *On Guilt, Responsibility and Punishment*, Berkeley – Los Angeles 1975, p. 16 ff.

²⁷ R. A. Duff, *Legal Theory Today. Answering for Crime*, Oxford – Portland 2007, p. 21. Many authors representing different philosophical views share this opinion. It is enough to mention the continuator and at the same time the critic of Roman Ingarden's Husserlian phenomenological method. Cf. R. Ingarden, *op. cit.*, p. 78 ff.

which often closes the proceedings in a given case (at least that is what the supporters of conciliatory solutions of social problems, abolitionists and many philosophers and ethicists would want). Legal, moral or other norms may be the grounds for demanding the account and the answer (i.e. the answer to an accusation).

4. Role responsibility as a special form of responsibility

In some cases the person responsible bears responsibility after the act. Then person bears responsibility for his or her own committed act. Roman Ingarden points out that in many cases we say about responsibility that comes only from acting²⁸. In the meaning defined for the purpose of further deliberations, this will be responsibility before the act. In contrast, outcome responsibility is retrospective responsibility for the act that was committed in the past; role responsibility is prospective since it involves an interest or a value that was violated. Retrospective responsibility is connected with a pathological situation, i.e. with violation of obligations, in this sense it is a negative form of responsibility. It involves the consequences of the act; such consequences are usually some form of sanctions.

It is responsibility understood as a consistent performance of social roles (not only legal or moral duties) and it is only one of the way of understanding responsibility.

Responsibility before the act defined in that way refers to activities set or specified by a system of norms related to a given social role that is complex enough. It is about the kind of responsibility mentioned in sentences such as: "Parents are responsible for bringing up their children properly." or "The doctor is responsible for a reliable diagnosis of a patient's health state". Parents or doctors are responsible before the act in the sense that they are expected to use their social roles in accordance with the rules of best practices; the doctor should perform a reliable diagnosis (with his or her best medical knowledge and abilities, requirements of law and professional ethics, etc.).

We should act in such a way to manage our social role and sometimes we indeed act this way – we act then in a responsible manner. The discussed meaning of the word "responsibility" can be called role responsibility because of the connection of responsibility defined in such a way with a social role. Role responsibility is determined by some linked sets of obligations related to a given social role, so it is similar to the expectation about following a specific pattern of conduct.

²⁸ R. Ingarden, *op. cit.*, p. 96 ff.

A reference point is thus the position of a person in a social group and his or her obligations determined by culture, society, including law. The one who treats his or her role seriously is called a responsible person. The primary social institutions, for instance marriage, are also regulated by law. Thus it seems that role responsibility of people involved in a *quasilegal* relationship will occur in areas where legal norms comprehensively regulate social institutions.

Summarising the acting normatively, we have to act in a responsible manner. Let us refer to Ingarden's quote: "As regards all our acts, we can be guided by the fact that something bad or good may result from our acts and the former must be avoided and the latter must be made"²⁹.

In the aspect of behavior control, the function of the responsibility for the role, and thus its social sense, is to ensure "primary" effectiveness of legal norms³⁰. The purpose of law is making people act in accordance with legal norms. Repressions directed backwards, aimed at those who violate the norms, give only an illusion of the effectiveness of the law, and are themselves exposed to moral criticism (because they are always associated with suffering)³¹. Since there are no obstacles to define a normative system that does not use repression as law, the legal responsibility for the role will constitute the basic tool of social control in such a system. This requires the implementation of proposals that are close to legal perfectionism; it must be assumed that the addressees will be willing to take action and they will do so responsibly. Responsibility for the role, in the discussed scope, is embedded in the civic and professional ethos or values associated with a given social role (e.g. a parent). Law and a state whose officials would be corrupt and incompetent would be dysfunctional, even if every subsequent official was held accountable for the corruption and lack of competence. Ultimately, at least those who control others must reliably carry out their own responsibility. In such a system of "a chain of infringement", the law would also not be an effective tool for influencing social phenomena, being rather a dummy of the normative system. As a result, the primary responsibility in the modern state should be the responsibility for the role associated with being a citizen. From the point of view of criminal law (or repressive regulations), also because of its restorative function (which is globally recognised) , also someone who

²⁹ Ibid., p. 95.

³⁰ It seems that in an international law, the (legal) responsibility is based on the rudimentary principle "pacta sunt servanda" that will determine the behavior of contractual parties, often without the possibility of retrospective sanctions.

³¹ P. Cane, *op. cit.*, pp. 12-35; Z. Bankowski, *Living Lawfully: Love in Law and Law in Love*, Dordrecht 2001, pp. 62-73.

committed a crime should be morally able to take up responsibility and to repair evil caused by his deeds. It is a matter of an education, a social pressure, or a general ability of the moral and legal systems to shaping proper attitudes. This conclusion leads to strong thesis that there are no "real" law without responsibility.

5. Conclusions

Generally speaking, according to the legal doctrine view on a responsibility, the responsibility is a sanction, or the obligation to bear sanctions. A narrow account of responsibility as a sanction does not keep up with the changes of law and views on law. A deeper analysis leads directly to the conclusion that we should talk about two different concepts of responsibility - result and role. An analysis of the direction of changes in law leads to the conclusion that the traditional way of thinking about legal responsibility needs to be transformed. The starting point is the justification of the view that responsibility is not the same as punishment or sanction. It concerns especially the doctrine of criminal law. What is the change in the paradigm of responsibility? The criminal law can be examined as a good example. First of all, the answer requires the identification of three levels: the philosophy of criminal law, the doctrine of criminal law and criminal law. The philosophy of criminal law, at least since the 1970s, emphasizes the importance of taking responsibility by the perpetrator. Authors who advocate the concept of punishment as a kind of social communication medium (J. Feinberg, R.A. Duff, A. von Hirsch) and a representatives of a restorative justice movement claim that the core function of responsibility is to make offenders recognizing their own responsibility and voluntarily realize a "corrective act" - which is a manifestation of understanding of the evil done³². The term "criminal responsibility" means in such a context that it is different from the response of state bodies aimed at the punished (sanctioned) of the perpetrator, etc.

It seems that the considerations of classical philosophers of responsibility, such as Roman Ingarden and Alf Ross, allow legal doctrine³³ to perceive the complexity of legal responsibility (or uses and contexts of a term "responsibility" as well) and literally contribute to a deep reflection on the law and problems of legal philosophy (such as punishment).

³²See: R.A. Duff, *Trials and Punishments*, Cambridge 1986; J. Feinberg, *The Expressive Function of Punishment*, „The Monist” 1965, No. 49, p. 397–423; N. Christie, *Conflicts as Property*, „The British Journal of Criminology” 1977, No. 17, p. 3ff; J.O. Haley, *Confession, Repentance and Absolution*, [in:] *Mediation and Criminal Justice: Victims, Offenders and Community*, eds. M. Wright, B. Galaway London 1989, pp. 195–211.

³³ Cf. A. Peczenik, *Scientia Juris. Legal Doctrine as Knowledge of Law and as a Source of Law*, Dordrecht 2005, pp. 3 – 17

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