

CONSIDERATIONS REGARDING THE NORMATIVE DIMENSION OF THE JUDICIAL RESPONSIBILITY

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Abstract

The judicial responsibility, understood as an assembly of rules and obligations which are born by committing an illicit fact, can be taken only under the condition of the judicial responsibility. Knowing that the basis of the judicial responsibility is the illicit fact, the irresponsibility cancels the illicit character of the fact. So, the judicial responsibility should be analyzed depending on two criteria: the normative criterion (when the responsibility of some categories of people is established and defined by law) and the bio-psychological criterion (the state of psychic normality which includes the presence of discernment).

Keywords: *the juridical responsibility, the illicit character, the normative criterion, the bio-psychological criterion, rights and obligations.*

Introduction:

The juridical liability represents a premise of the juridical liability, an active way of reporting the individual and the collectivity to a certain cause, it involves taking certain liabilities and risks, sometimes by acting beyond the system of norms, which ensures their rights and obligations.

Thus, while the juridical liability has a normative character and aims at abiding or not abiding by the disposition included in the juridical norm, the juridical responsibility has a value character and aims at reporting the individual at the value contained and expressed by the juridical norm.

Talking about the juridical responsibility, we refer to a personality found under the condition of normality, we are talking about the person who is acting in report with the values expressed by the juridical normative system, meaning that the individual who made himself an own values system may choose the prescription of the juridical norm, by finding it according to his own convictions. The attitude focused in the continual social value, expressed by the juridical norm, is the juridical responsibility itself. The moment when the juridical responsibility was taken is the individual's decision, understood as a final act of the decision.

1. Etymological analysis

The notion of « responsibility » was born by the combination of two Latin words : the noun *res* (which may mean : thing, reason, interest, cause, etc.) and the verb *spondeo* (which is translated by : to guarantee, to promise). In the *verbis* contract from the old Roman law, the term « spondeo » meant a solemn promise of the debtor to perform that obligation assumed by the contract concluded with his creditor. In Gaius' « Institutions », it was provided that in the case of the *verbis* obligation, the answer « I promise ! Solemnly ! » (*spondeo*) was present. In *Larousse de la Langue Francaise* « *Lexis* » (1979, page 1629) it is provided that the term of « responsibility » was introduced much later than the term of « liability » and it means the obligation to fix.

2. The definition of the juridical responsibility

The juridical literature offers a diversity of opinions, under the aspect of defining, starting from the proximal type under which the juridical responsibility ought to fall. Depending on this criterion, we found the following types »

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In some authors' opinion, the juridical responsibility is an *obligation*, namely:

- the obligation of the subject to fulfill a certain debt that was born by not fulfilling a prior obligation¹;
- the obligation to be subject to a restriction, or to repair a prejudice²;
- the obligation of the one who did an illegal action to be subject to a juridical sanction³;
- the obligation to be subject to a restriction because of an illegal behaviour reported by the state⁴.

Paper content:

In the works of other authors, the juridical responsibility is understood as a *juridical relationship of constraint*, being defined as follows:

- it represents a complex of rights and obligations which form the content of a juridical relationship of constraint, which appears between the state as the only active subject and the author of the illegal action, as a passive subject.⁵;
- it is a juridical relationship of constraint having as object the juridical sanction.⁶
- we also find a more extensive point of view, as a necessary step to overpass the limits established by the juridical relationship: it is the institution which includes the assembly of juridical norms that aim at **relationships** which are born in the field of the activity performed by the public authorities under the provisions of the law, against the ones who break or ignore the order, with a view to ensure the observance and promotion of the public order and public wellness.⁷

Happily, there has been formed a group of authors that see the juridical responsibility from the point of view of the three factors highlighted previously : psychological, social and juridical.

Examples:

- it is a form of the social responsibility, which includes the complex of human attitudes reported to the juridical normative system formed in the society in which it lives, with a view to learn, preserve and promote this system and the values it expresses, in order to maintain and promote the juridical order and the public wellness⁸;
- it is a concept by which the legislator expresses certain persons' vocation to liability, for some juridical actions and deeds performed personally or through other people or things they manage (valid for the private law, because for the public law the author expresses the definition in a different way: it is the juridical institution by which any legal entity can be declared by the legislator liable for certain juridical actions and deeds which he may perform by issuing, organizing, executing, abiding by the law and making justice personally or through other people or by things managed by him)⁹;
- a skill, a real possibility or vocation to work with guilt¹⁰.

We consider that a scientific approach of the juridical responsibility imposes a certain interdisciplinary analysis and not a static position of equalization with the obligation when being subject

¹ see Alessandra Levi, *Teoria generale del diritto*, Cedam, Padova, 1967, p.389.

² see Antonie Iorgovan, *Administrative Law. Elementary Treaty*, Ed. Proarcadia, 1993, p. 175.

³ see I Oancea, *The notion of criminal liability*, in the *Annals of the University of Bucharest, series Social and Juridical Sciences*, no. 6/1959, p. 133.

⁴ see I. Iovănaș, *Theoretical considerations regarding the administrative responsibility*, in the *Law of RSR*, Ph. D. Thesis, Cluj, 1968, p. 49.

⁵ see M. Costin, *Juridical responsibility in the law of RSR*, Ed. Dacia, Cluj, 1974, p. 27.

⁶ see Ghe. Boboș, *The general theory of the state and law*, Ed Didactică și Pedagogică, București, 1983, p. 264.

⁷ see Lidia Barac, *A few considerations regarding the definition of juridical liability*, *Revista Dreptul*, no. 4/1994, p. 41.

⁸ see Lidia Barac, *Juridical responsibility and sanction*, Ed. Lumina Lex, București, 1997, p. 21.

⁹ see Valerică Dabu, *Policemen, prosecutors and judges between law and crime*, *Regia Autonomă, Monitorul Oficial*, București, 1997, p. 20.

¹⁰ see N. Giurgiu, *Responsibility and the Criminal Sanctions*, Ed. Neuron, Focșani, 1995, p. 7.

to the juridical sanction. In such vision the relation between the psycho-social and juridical responsibility becomes relevant. We can also get to this conclusion by relating the below thoughts:

1. *The juridical responsibility is a premise of the juridical liability.*
2. *The basis of the juridical liability is the illegal deed.*
3. *The irresponsibility removes the illegal character of the deed.*

So, the irresponsibility removes the juridical liability, logic followed in the juridical practice: the court firstly established if the subject is responsible, when enforcing the law in the resolution of a concrete case, and only after this do they check if this one will be liable for the respective action under the given circumstances. Namely, they refer to the responsibility of the subject. In this context, the juridical responsibility must be seen from two points of view:

- a) A **normative** dimension, when the law establishes and splits the responsibility in categories of people (for example, the responsibility of the public clerk)
- b) A **bio – psychological** dimension, as a normal state which includes the presence of the discernment.

The existence of the first dimension may be explained with examples which aim at the juridical responsibility at a constitutional level:¹¹:

- in article 21 from the French Constitution, it is provided: „The Prime Minister leads the actions of the Government. He is responsible for the national defense”;
- in article 65 of the German Constitution it is shown: „The Federal Chancellor established the main lines of the politics and takes the responsibility for them”. Within these limits, each federal minister leads their departments in an independent way and under their own responsibility”;
- in article 13 of the Constitution from Denmark it is provided: „The King is not responsible; his person is inviolable and sacred; the ministers are responsible of their behavior in front of the Government, the responsibility is regulated by the law”. In the same spirit, article 14 shows that „each minister who countersigned is responsible of this decision”;
- in article 22 from the Constitution of Belgium it is shown that „The law determines which are the responsible agents for the violation of the secret of correspondence”

In article 108 from the Romanian Constitution (from 1991) it is provided: „The cases of liability and the punishments given to the members of the Government are regulated by a law regarding the responsibility of ministers” In other laws also the concept of responsibility can be found (examples)

- in the Law of the local public administration (Law no. 69/1991) right in article 1, the responsibility of the organs of the local public administration is regulated;
- in the Law regarding the status of military employees (Law no.80/1995), it is provided – referring to this professional category – „They are responsible of the way in which they fulfill the missions given to them”

The bio – psychological dimension of the juridical responsibility has a position which alternates with the normative dimension: taking as example the public clerk or the military employee, responsible – after the provisions of the law – (the examples can be multiplied), we can retain, subsequent to the legal medical expertise, the irresponsibility of the one who committed an illegal deed (for example, he has a mental condition which cancels his discernment). In this case, the bio – psychological dimension is subsequent to the normative dimension, this being also the order of the research in the juridical practice. The places are switched if, in a primary phase, when the issue of juridical liability is not present. Namely, the public clerk or military employee reached this status and this position because they have proved in time, normally developed personalities, strong bio-psycho-social-cultural structures.

¹¹ see Les Constitutions de L’ Europe des Douze, La documentation francais, Paris, 1992.

Thus, speaking of juridical responsibility, we are talking about a personality found under the condition of normality, which necessarily includes the axiological component: the individual behaves reported to the values expressed by the juridical normative system. If the juridical liability is a normative one, aiming at the compliance or non-compliance of the prescriptions or dispositions of the juridical norms, the juridical responsibility is a value one, namely the individual that created himself an own values system may choose the prescription of the juridical norm because he finds it according to his own ideas. The inner forum is the one dictating such an attitude: the acceptance of the juridical order, seen separately or as a whole, and not a behavior external to his personality. The juridical responsibility represents the attitude focused on the social value contained and expressed by the juridical norm, value assumed and imposed by the individual, with the conviction that he is serving the public and personal wellness.

The normal individual, mentally developed, who acts freely can be legally responsible.

Note: The juridical responsibility is structured in two dimensions, each of them reflecting the fate of the whole, depending on the situation or the context. In the absence of such deal, negative, unreal conclusions may be drawn, some of them even with a comic denouement (we remind the provision of art. 13 from the Danish Constitution: „the King is irresponsible”).

3. The basis of the juridical responsibility

The two dimensions on which the juridical responsibility is situated attract, each of them, the identification of its own basis:

- the normative dimension in the virtue of which the juridical responsibility is provided and regulated by law, leads to an undoubted conclusion: the law is the basis of the juridical responsibility;
- the bio – psychological dimension requires as basis of the juridical responsibility the normally developed human personality, in its free manifestation. The mental normality must be correlated with freedom, which must be present in three stages: choice, decision (the free will) and action, In each team, the social values expressed by the juridical norm are aimed at, such values becoming criteria of the juridical responsibility¹². In this way, the juridical responsibility becomes itself a way to appreciate and evaluate the behavior required by the disposition of the juridical norm.

4. The stimulation of the juridical responsibility

The moment when the juridical responsibility starts is the decision of the individual, understood as a final act of the decision. He decides to act – and will act – according to the option chosen, by evaluating that this one is corresponding to the final purpose which must be reached. Such decision must be supported by proper training and education. By training, the informational field may be improved, by education the information may be affectively oriented, turning it into conviction. By training, he is learning the field of obligations and restrictions, by education he is using the freedom to act.

The stimulation of the juridical responsibility can be done by the complementary development of the two forms: training and education. Beyond the theoretical character of the two ways of stimulation, the individual must understand the elements which the society must ensure: a political and juridical democratic regime and necessarily, material and economic conditions mandatory for a decent way of living. In this way, under the conditions of material and social independence, the individual becomes a fertile ground where the training and education can seed the system of attitudes compatible with the values included in the juridical normative system.

¹² see L. Barac, op. cit., p. 29.

Conclusions:

Responsibility – higher form of integration

When the child is born, he has a hereditary potential which must be turned to value, shaped and stimulated by educational processes, socialization and social control. The human individual develops himself as a personality only in society, crossing a lot of social groups as a bearer of statuses and roles. The human is a social-cultural, educational and historical product, who received and assimilated the influences of the environment, historic stage in which he develops and lives.

By education and socialization, the individual assimilates norms and social models of behavior under the influence of certain social factors: family, school, social and cultural institutions, the system of practices from the collective he lives in. By socialization, the child is lead in order to acquire certain habits, knowledge processes, ways to act and behaviors, ideals according to the social environment. The socialization is in a complete inter-dependence with social integration, process by which the individual is assimilated in units and social systems by adapting to the conditions of the social life. In this purpose, the adaptation expresses the agreement between the personal behavior and the models of behavior belonging to a certain social environment. We are talking about a social maladjustment in case of people with mental diseases, criminals, individuals with behavior disorders, the causes being complex : hereditary issues, harmful living environment, frustration or emotional trauma, etc.

Juridical responsibility – condition of the public wellness

The juridical responsibility can be considered as an assumption of desirable values for the responsible individual and not only, desirable for his community. The law itself is a product of the will and expresses the will to live in a juridical community in which the coordinates are good and justice. Such an idea is found in the outstanding definition given to the law by the Romanian legal experts: “*jus est ars bori et acqui*” (the law is the art of good and justice)¹³.

From a different perspective, we consider that the finality of the law rule is the finality of the society itself – common wellness: “*Lex est ordinatio ad bonum comune*”. The common wellness, namely the public wellness cannot have conventional borders, it must be understood in the dialectic national wellness – international wellness. Coming back to the values protected by the juridical norms, these must be accepted as an exemplary collection, situated in an order corresponding to the needs and ideals of some human collectivities *hic et nunc*¹⁴. What could we understand by public wellness? Firstly, everything that characterizes the good generally, everything claimed by the personality of each of us in order to reach and build a dynamic, prosperous balance, the order which gives us safety and trust and moreover, that „universality of the values of human interest”¹⁵.

By its function of ensuring the preservation and improvement of the system of juridical norms, the juridical responsibility aims at promoting the public wellness.

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