

LIABILITY AND RESPONSIBILITY

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Abstract

The violation of a social norm establishing a rule of conduct engages the violator's liability.

Responsibility is a social phenomenon and it expresses, in its shortest definition, an act of commitment of the individual in the process of social interaction.

This study aims to analyze the concepts of liability and responsibility, but also the relationship between them, starting from their common fundamentals and ending with the main differences between the two notions.

Keywords: *liability, responsibility, social relationships, violation of the rule of law, social order.*

1. Introduction

Man is essentially a social being. He ripens in the society and is a creator of social relationships.¹ The social history of mankind is nothing else but the history of their individual development, regardless of whether they are conscious of it or not.²

Several surveys³ on legal sociology warn about the fact that the failure to meet the society's expectations regarding the law is particularly connected to *liability*, that the law cannot exercise its influence in the society, unless it succeeds to identify the *person responsible* and to establish *the liability* (...).

In the doctrine of speciality⁴ an interesting question has been raised with regard to the specificity of justice, namely that of the relationship between law and justice, which is essential, and of the relationship between justice and social order. As regards the second relationship, the social order, different from justice and unmistakable for it, is the foundation of a stable social organization, but also the most important. "The established social order is the one that separates us from the catastrophe; most people in the civilized countries prefer to tolerate some injustice than suffer the risk of the catastrophe"⁵.

Historically speaking, states have been concerned with inserting the subject matter of *responsibility of human action* under various terminologies, both in Constitutions and in the common acts⁶.

Two distinct texts in the Declaration of the Rights of Man and of the Citizen of 1798 underlies the natural right of the citizen to control the governor.⁷

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¹ Ion Deleanu, *Instituții și proceduri constituționale (Constitutional Institutions and Procedures)*, (C.H. Beck Publishing House, Bucharest, 2006), p.28.

² Marx- Engels, *Opere alese în două volume*, vol II, ("Politică" Publishing House, Bucharest, 1967), p.416, quoted by Nicolae Popa in *Prelegeri de sociologie juridică (Lectures on Legal Sociology)*, (Bucharest, 1983, Faculty of Law - Bucharest University), p.7

³ Sofia Popescu, *Teoria generală a dreptului (General Theory of Law)*, (Lumina Lex Publishing House, Bucharest, 2000) p. 300.

⁴ Gheorghe Iancu, *Proceduri constituționale, Drept procesual constituțional (Constitutional Procedures, Constitutional Procedural Law)*, (Bucharest, Publishing House of the Official Gazette, 2010), p. 109.

⁵ Maurice Hauriou, quoted by Gheorghe Iancu, op cit, p.109.

⁶ such as Declarations.

⁷ Cristian Ionescu, *Analiza fundamentelor teoretice și politice ale controlului parlamentar. Studiu de drept comparat (Analysis of the Theoretical and Political Fundamentals of Parliamentary Control. A Survey of Comparative Law)*, in *Liber Amicorum Ioan Muraru*, (Hamangiu Publishing House, Bucharest, 2006), p.139 et seq.

Thus, the *French Declaration of the Right of Man and of the Citizen* of 1789 sets forth the following in its article 15: “Society has the right to call any public servant to account for the way they perform their function”.

The *Universal Declaration⁸ of Human Rights* in its article 8 sets forth that: “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law”, and according to article 29 paragraph 1 “Everyone has duties to the community in which alone the free and full development of his personality is possible”.

As a witty remark emphasized in the Romanian administrative doctrine, the political liability of the Government is engaged on the background of the committed harm, therefore it triggers a special procedure and finally materializes into a constitutional sanction.⁹

2. Literature review

The subject matter we are dealing with herein will be approached from several perspectives: of the philosophy, of the legal sociology, of the general theory of law, but also of the administrative law, bringing into attention, as a synthesis, the opinions of foreign doctrinaires such as: Paul Fauconnet, *La responsabilité*, (Éd. II. F Alcou, Paris, 1928), Hans Jonas, *Le principe de responsabilité*, (Paris, Cerf 1990), etc. but also of Romanian doctrinaires: Mihai Florea, *Responsabilitatea actiunii sociale (Responsibility of Social Action)*, (Științifică și Enciclopedică Publishing House, Bucharest, 1976), Lidia Barac, *Răspunderea and sancțiunea juridică (Liability and Legal Sanction)*, (Lumina Lex Publishing House, Bucharest, 1997), Mihai Bădescu, *Sacțiunea juridică în teoria, filosofia dreptului and în dreptul românesc (Legal Sanction in the Theory and Philosophy of Law and in the Romanian Law)*, (Lumina Lex Publishing House 2002), Nicolae Popa, *Prelegeri de sociologie juridică (Lectures on Legal Sociology)*, (Bucharest, 1983, Bucharest), A. Iorgovan, *Tratat de drept administrativ (Treatise of Administrative Law)*, vol. II, (All Beck Publishing House, Bucharest, 2001), Mircea N Costin, *Răspunderea juridică în dreptul RSR (Legal Liability in the Law of the Socialist Republic of Romania)*, (Dacia Publishing House, Cluj, 1974), Gheorghe Iancu, *Proceduri constituționale, Drept procesual constituțional (Constitutional Procedures, Constitutional Procedural Law)*, (Bucharest, Publishing House of the Official Gazette, 2010), etc.¹⁰.

3. Paper content

3.1. Short considerations on “responsibility”

Almost all authors who dealt in their studies with the subject matter of liability started their research by conceptualizing the terms of *liability* and *responsibility*.¹¹

The issue of man’s responsibility has been a meditation subject for a long time.¹² Currently we use, at least in the Romanian language, the two terms of “liability” and “responsibility” with the same meaning or with very close meanings, but never accurate enough.

Usually, the meaning of the terms of *liability* and *responsibility* is that of a formally imposed obligation to do or not no a particular thing, in relationships imposed to the social agent (to the individual) from the outside¹³.

⁸ dated 10 December 1948.

⁹ A. Iorgovan, *Tratat de drept administrativ (Treatise of Administrative Law)*, vol. II, (All Beck Publishing House, Bucharest, 2001), p. 413, quoted by Cristian Ionescu, op. cit, p.141.

¹⁰ This itemization is merely given by way of example and does not exhaust the vast range of doctrinaires who approached this subject.

¹¹ Lidia Barac, *Răspunderea și sancțiunea juridică (Legal Liability and Sanction)*, (Lumina Lex Publishing House, Bucharest, 1997), p.3.

¹² Mihai Florea, *Responsabilitatea acțiunii sociale (Responsibility of Social Action)*, (Științifică și Enciclopedică Publishing House, Bucharest, 1976), p.5.

A possible starting point¹⁴ for setting up a *theory of responsibility* may have been the French sociology, represented by Emile Durkheim, but it was altered afterwards particularly by A. Bayet¹⁵ for whom the human behaviour is dictated by a series of inner needs, specific both to society and to the individual, the felon being the victim of the social agents who inoculated the crime to him: "...how come we are able to consider a criminal *responsible* for his actions, as if his committing the crime or not depends on his own will?" This way, the abolition of *responsibility* is suggested.

At the beginning of our century, the French sociologist Paul Fauconnet¹⁶ attempted to rehabilitate the idea of *responsibility*, analyzing the issue of *responsibility* in his treatise "*La responsabilité*" as seen from the perspective of the individual who commits a felony, the responsibility being of legal nature, being in fact a legal (criminal) liability, with moral dimensions.

In Fauconnet's opinion, the concept of responsibility is part of the system of collective representations. It is the abstract summary of all the collective ways of thinking and feeling thoroughly experienced in the rules and judgments of responsibility.¹⁷

In his mind, the criminal is a "falsely accused"¹⁸ who bears the liability that society rests upon him, to purify himself from the deeds that even its rules contain virtually and which it inspires individually, as he is unable to avoid them.

In Fauconnet's opinion, responsibility is a social fact: "all beings are virtually capable of becoming responsible. The responsibility of a subject does not derive from features that would be inherent to him, but from the situation he is engaged in."¹⁹

Paul Fauconnet asserts in his work "*La responsabilité, Étude de sociologie*"²⁰ that responsibility in general corresponds to the sanction in general. However, since there are various kinds of sanctions, they correspond to the various kinds of responsibility. *Among these count*: legal sanctions and moral sanctions, criminal sanctions and civil sanctions, sanctions with the meaning of compensation or punishment, restitutive or retributive sanctions.

Also, Fauconnet specifies that this parallel classification of responsibility with the sanction revealed difficulties regarding the nomenclature. Thus, there is a distinction between legal responsibility and juridical responsibility (we refer to juridical responsibility through organized sanctions), moral responsibility (through diffuse sanctions - and refers to the responsibility of the moral agent towards its own conscience), criminal and civil responsibility and mixed responsibility, restitutory and retributory responsibility, responsibility corresponding to repressive sanctions, and remunerative (premium) responsibility.

In his same work "*La responsabilité, Étude de sociologie*"²¹ in Part I called "*Description of responsibility*", Paul Fauconnet makes a presentation of the subject matters of responsibility. Thus, he asserts that man is responsible because he is able to play the role of: "*patient de la peine*". Legally speaking, responsibility is a particular case of capacity; the adult and normal man is fit for being punished. However, Fauconnet mentions, the adult and normal man is not the only possible subject

¹³ Mihai Bădescu, *Sacțiunea juridică în teoria, filosofia dreptului și în dreptul românesc (Legal Sanction in the Theory and Philosophy of Law and in the Romanian Law)*, (Lumina Lex Publishing House 2002, Bucharest), p.54.

¹⁴ Lidia Barac, *quoted paper*, p.7.

¹⁵ Stelian Stoica, *Etica durkheimistă (Durkheim's Ethics)*, (Științifică Publishing House, Bucharest, 1979), p.131 et seq.; Nicolae Popa, *Prelegeri de sociologie juridică (Lectures on Legal Sociology)*, (Bucharest, 1983, Faculty of Law-Bucharest University), p.201-202; Mihai Florea, *Responsabilitatea acțiunii sociale (Responsibility of Social Action)*, (Științifică și Enciclopedică Publishing House, Bucharest, 1970, p.10-11, quoted by Lidia Barac in *op cit*, (Lumina Lex Publishing House, 1970), p.7.

¹⁶ Lidia Barac, *op cit*, p.7-8.

¹⁷ Paul Fauconnet, *La responsabilité, Étude de sociologie*, (Paris, Librairie Felix Alcau, 1929), p.4, www.gallica.bnf.fr, (Accessed on 27 December 2011).

¹⁸ Mihai Florea, *op. cit.*, p.12.

¹⁹ Paul Fauconnet, *La responsabilité*, (Éd. II. F Alcau, Paris, 1928), p.396 și Nicolae Popa *op cit*, p.202.

²⁰ Paul Fauconnet, *La responsabilité, Étude de sociologie*, p.12-16.

²¹ Paul Fauconnet, *op cit*, p.26-83.

of a judgment of responsibility. The child, the insane, the corpse, the animal, collective objects and beings may become responsible, but in the chapter regarding the *subject matters*²² of responsibility Fauconnet states that the following are entirely irresponsible: children (providing historic examples of cases where children were judged starting from the age of 3, 7 and up to 14 years in various archaic societies), alienated persons, dead persons, animals and legal persons.

It seen from another perspective, responsibility is magisterially approached in a monograph dedicated to the study of law and morale by the author Irineu Popa²³ in the section called “*Libertatea ca fundament ontologic al răspunderii (Freedom as the ontological foundation of responsibility)*”, from the researcher’s point of view who sees the world through the prism of religion.

Thus, the author²⁴ considers that man is a rational and volitional being. Though will, his thought is transposed into practice and thus he becomes a subject, i.e. a person who wants to undertake and undertakes responsibilities. His freedom, even if related to actions exterior to him, is still related to man.

Responsibility, in general, is conditional²⁵ on:

- a) Man’s knowing what there is and what there will be, and on the control powers on the development of events that the subject assesses through deductive and inductive proofs;
- b) Man’s capacity to project achievable conducts;
- c) Man’s weighing, depending on the purpose, among the possibilities he has in order to choose “the best, the most efficient, the most suitable for him, the most cost-effective, etc.”

The author Irineu Popa also states in the work mentioned above that, regardless of the perspective from which we look at responsibility, it should be freed from compulsion.²⁶

The author Lidia Barac²⁷ provides a definition of social responsibility in her work called: “*Răspunderea și sancțiunea juridică (Legal Liability and Sanction)*”. Thus, the author specifies that “as an institution, *social responsibility* could be defined as the social institution which includes man’s complex of attitudes in relation to the system of values, institutionalized by the society he lives in, for the preservation and promotion of those values, for the perfection of the human being and the preservation of life in community, with a view to maintaining and promoting social order and the public good”.

3.2. Short considerations on “liability”

In general, in the usual terminology, the notion of “*liability*” means that a person or an authority has the obligation to justify and explain its own actions.

Transposed in the administrative law applicable in the European Union, we think fit to interpret this meaning of liability by the fact that any regulatory body must be liable for its actions before another authority.

²² Paul Fauconnet conducts an exceptional research work as regards the subject matters of responsibility, providing examples for each separate case, at least one example for each subject matter, specifying even the sources of inspiration for them: the vendetta against the crocodiles happens in Madagascar, trials against children, insane people, and animals are described. On the same occasion, the horrors committed during the Inquisition are described among others (when besides the bodily punishments there were also spiritual or temporal punishments like excommunications, burning of houses, seizure of the heretic’s assets, etc.), with a highlight on the taboos and rituals of the ancient period.

²³ Irineu Popa, *Substanța morală a dreptului (The Moral Substance of Law)*, (Bucharest, Universul Juridic Publishing House, 2009). Please note that the High Reverend Irineu Popa is an Archbishop of Craiova and a Metropolitan Bishop of Oltenia.

²⁴ Irineu Popa, op cit., p.353-364.

²⁵ Gheorghe C. Mihai, Radu I Motica, *Fundamentele dreptului, Optima Justitia (Fundamentals of Law, Optima Justitia)*, (All Beck Publishing House, Bucharest,1999), p.111.

²⁶ Irineu Popa, *Substanța morală a dreptului (The Moral Substance of Law)*, op. cit., p. 358.

²⁷ Lidia Barac, *quoted paper*, p.15.

Liability as an essential component of any form of social organization existed even in the primitive society. In the primitive society (...) there was no state, no law, and implicitly at that time the institution of legal liability did not exist.²⁸ In this society, the victim instinctively responded with an immediate physical reaction, as strong as possible. The idea of *revenge* contains the entire idea of law, as it was developed afterwards.²⁹

As early as the Ancient Times, Plato, in his works, determined, among others, the meaning of legal liability, establishing that nobody must remain unpunished for violating the law, regardless of the damage they cause through such violation.

The legal sociology operates with notions such as the statute and role of the individual.³⁰ According to Lidia Barac³¹, the word “liability” is connected to everything that is organized. According to professor A. Laubadere³², the French administrative law envisaged the public servant’s personal responsibility and the responsibility of the administration.

In Valentin Prisăcaru’s mind, the legal liability, considered in its broad meaning, consists both of a sanctionative liability and of a reparatory liability. If the sanctionative liability is the manifestation of the attitude that the state has towards the person who violates a legal rule, then the reparatory liability is the method through which the prejudiced person is entitled to a repair of the prejudice caused by a guilty action – by violation of a legal rule or of a convention³³.

Mircea Djuvara believed that the legal rule will have a “social efficiency” if there is a conviction that the government body who created the legal rule was competent to do it: “*a state that is recognized as being legitimate issues commandments through its bodies which, more often than not, are recognized by it as legitimate. Also, even a factual authority which, because of a higher necessity, issues regulations can be sometimes recognized as legitimate.*”³⁴

If we consider the two large parts of law – as a whole of the legal rules – the public law and the private law, we will notice that even the legal liability³⁵ is divided in two parts:

- a) legal liability in the public law
- b) legal liability in the private law

Besides this division, the legal liability is also divided depending on the branches of law that the rules regulating the legal liability belong to, specifically for each branch of law:

- a) civil liability
- b) criminal liability
- c) administrative liability

²⁸ Mihail Eliescu, *Răspunderea civilă delictuală (Offensive Civil Liability)*, (Academiei RSR Publishing House, Bucharest, 1972), p.6, quoted by Iulia Boghîrnea in *Teoria Generală a Dreptului (General Theory of Law)*, (Sitech Publishing House, Craiova, 2010), p.197.

²⁹ Ioan Ceterchi, Ioan Craiovan, *Introducere în teoria generală a dreptului (Introduction to the General Theory of Law)*, (All Publishing House, Bucharest, 1993), p. 107, quoted by Iulia Boghîrnea in *op cit*, p.197.

³⁰ Nicolae Popa, *Prelegeri de sociologie juridică (Lectures on Legal Sociology)*, (Publishing House of the Universităţii Bucharest, 1983), p.32-37.

³¹ Lidia Barac, *Elemente de teoria dreptului (Elements of Theory of Law)*, (All Beck Publishing House, Bucharest, 2001), p.153.

³² A. de Laubadere, J-C.Venezia et Y. Gaudement, *Droit administratif*, 16^e éd., (Paris, L.G.D.J), p. 145.

³³ V. I. Prisăcaru, *Răspunderea administrativă, mijloc de întărire a legislației economice (Administrative Liability – A Method to Consolidate the Economic Legislation)*, (“Arbitrajul de Stat” Magazine no. 2/1972), p.4.

³⁴ Mircea Djuvara, *Teoria generală a dreptului. Drept rațional, izvoare și drept pozitiv (General Theory of Law. Rational Law, Sources and Positive Law)* (All Beck Publishing House, Bucharest, 1999), p.529 quoted by Iulia Boghîrnea in *Teoria Generală a Dreptului (General Theory of Law)*, (Sitech Publishing House, Craiova, 2010), p.136.

³⁵ Valentin Prisăcaru, *Tratat de drept administrativ român, partea generală (Treatise of Romanian Administrative Law, General Part)*, 3rd Edition revised and supplemented by the author, (Lumina Lex Publishing House, Bucharest, 2002), p.684.

The reason of being, i.e. of the concrete forms of legal liability, can only be the same as that of liability³⁶ itself. The existence the categories of liability is based on the fact that the legal rules of management and organization are grouped into subsystems depending on the nature of the social relationships they regulate.

The evolutions³⁷ of law, as compared to the requirements of social life, generate new forms of legal liability, which are different from the traditional legal form due to their specific nature. Thus, the legal liability in the environmental law tends to form its own institution of legal liability in the event of a trial in which it the court holds, in a certain stage, in the environmental protection and development field, “the civil, misdemeanour, or criminal liability, as the case may be”.

The entry into force of the new Civil Code³⁸ determined a reconsideration of the institutions of law, including the legal liability. Here are some examples of novelties, among others:

- He who occupies a real estate, even without any title deed, is liable for the prejudice caused by the fall of or throwing an object into the real estate,
- Another amendment refers to the codification of the doctrine and of the case-law regarding the misuse of law. The misuse of law is expressly sanctioned in article 15 “no right can be exercised so as to damage or prejudice another person or in an excessive and unreasonable way, contrary to good faith”, and in article 1353 “he who causes a prejudice while exercising their rights shall not be obliged to repair it, unless such rights were abusively exercised”.

At European level, there is an institution called the European Ombudsman³⁹. The role of the European Ombudsman is to defend the rights and interests of citizens, receiving their complaints regarding faulty administrative acts in the activity of community institutions or bodies, except for jurisdictional institutions.

3.3. Foundations of “liability and responsibility”; differences

We find particularly interesting Lidia Barac’s inclination towards the subject matter of liability, who in her work “*Răspunderea și sancțiunea juridică (Legal Liability and Sanction)*” dedicated a section called “*The biological levers of responsibility*” to research. Thus, in Lidia Barac’s opinion⁴⁰, as responsibility involves values, it must be sought in the individual’s existence, as it depends on feelings, attitudes, being expressed by what we call human behaviour.

Understanding that responsibility is a dimension of the individual, connected to his spiritual life, in discovering the premises of responsibility the author Lidia Barac is of the opinion that it is not enough to point out only its social levels, but it is also necessary to move the problem beyond these levers, by researching and studying thoroughly the spiritual life of man. In this framework we will acknowledge that the foundation of man’s spiritual life is the experience, as it is the result of the complexity of organization at psychological level.⁴¹

³⁶ Antonie Iorgovan, *Răspunderea contravențională (Misdemeanour Liability)*, (Bucharest University, Doctoral dissertation, 1979), p.88.

³⁷ Ion Craiovan, *Tratat de teoria generală a dreptului (Treatise of the General Theory of Law)*, (Bucharest, Universul Juridic Publishing House, 2007), p 437- 438.

³⁸ Law no. 71/2011 for the implementation of Law no. 287/2009 on the Civil Code, published in the Official Gazette no. 409/10 June 2011.

³⁹ Elena Emilia Ștefan, “*Ombudsmanul European și dreptul la o bună administrare (The European Ombudsman and the Right to Good Administration)*”, Challenges of the Knowledge Society, 4th Edition, Nicolae Titulescu University, Bucharest, 23-24 April 2010, (article published in Volume I of the Conference, Prouniversitaria Publishing House) p.756- 788.

⁴⁰ Lidia Barac, *Răspunderea și sancțiunea juridică (Legal Liability and Sanction)*, op.cit., p.10.

⁴¹ I.B. Lamarck, *Discours, d'ouverture (1804)* in *Philosophie zoologique*, (Paris, 1907), p.31 quoted by Lidia Barac, op cit. p.10-11.

In the understanding of Mihai Florea, the factors⁴² that liability and responsibility are based on are multiple and dissimilar and refer basically to the totality of objective and subjective elements that condition the existence and functionality of liability and of responsibility.

The most general and common factor of the foundation of liability and responsibility is the *need of social cohabitation of human individuals*. As a determining historical and social phenomenon, responsibility is based on three fundamental factors, as Mihai Florea believes, namely the objective needs of social life, the freedom of agent, and its wilful self-commitment, based on an option in the achievement of a social objective.⁴³

The social-objective needs to which certain values were associated or which are manifested as values, Mihai Florea continues with his argumentation, witness a complex differentiation process, depending on how the society or a given collectivity relates them to its concrete historical requirements, on the way it interprets them and, consequently, on the choice it makes among the various possible directions of evolution of this society or collectivity.

Starting from this aspect, by analyzing the three categories of actions: obligations, interdictions and permissions, Mihai Florea asserts that they originate in the same objective social needs, in the same directions and trends of evolution of the given social life, which differentiate one from another particularly by the way they relate to the agent.

Another particularly interesting approach is the conception of professor Nicolae Popa on the subject matter of liability and responsibility.

At the same time, we also notice that sometimes the way the forms of legal liability are defined reveals an identity of the sanction (punishment) with the liability, professor Nicolae Popa asserts. The author criticizes such a point of view because the sanction refers to only one aspect of responsibility and entitles⁴⁴ the assertions of some sociologists claiming that the law does not envisage responsibility as such, only its limits; responsibility is reduced to liability⁴⁵.

The legal responsibility, as Nicolae Popa asserts, must be defined as “a conscious and deliberate attitude of assuming concerns for how legal rules are achieved, for the integrity of the legal order, and for the actions that the individual carries out in order to ensure a climate of legality”.

Opposite to this meaning of legal responsibility, the legal liability “is not as much a relationship between the individual and the collectivity as it is a relationship between the authority of a collectivity and the individual”.

As seen from this perspective, professor Nicolae Popa continues, “the legal responsibility does not exclude liability, but it is not reduced to it either, and the legal liability does not exclude responsibility, but it does not necessarily require it”. Among the various forms of social liability - political, moral, etc., legal liability “is an aggravated form of liability that never loses its social features and which enjoys a special treatment as compared to the other forms”.⁴⁶

As for the *differences between liability and responsibility*, we are going to continue presenting Mihai Florea’s opinion, as expressed in the aforementioned work, *Responsabilitatea acțiunii sociale (Responsibility of Social Action)*.

Thus, the author identifies a number of 6 dissimilarities⁴⁷, namely:

⁴² M Florea, op cit, p. 58.

⁴³ Mihai Florea, op. cit., p.205.

⁴⁴ Nicolae Popa, op cit., p.207.

⁴⁵ A. Hlavec, *Problema responsabilității (The Issue of Responsibility)*, Revista de filozofie (Philosophy Magazine) no. 2/1975, quoted by Nicolae Popa, op cit, p.207.

⁴⁶ Nicolae Popa, op cit, p.211.

⁴⁷ Mihai Florea, op., cit.73-76, and also Mihai Bădescu, *Sacțiunea juridică în teoria, filosofia dreptului și în dreptul românesc (Legal Sanction in the Theory and Philosophy of Law and in the Romanian Law)*, (Lumina Lex Publishing House 2002).

1. They are not only based on different external factors, but their manifestation itself requires a series of different subjective factors from the agent. Whereas liability only requires the agent's obedience, responsibility requires much more elements from the agent.

2. If liability and responsibility do not coincide in terms of the content or of the factors they are based on, they are sometimes dissimilar to a certain extent in terms of the collectivities and social structures and in terms of the objectives they relate to.

3. Liability and responsibility do not coincide in terms of their nature either. If liability is more of a normative nature and particularly or preponderantly of a legal nature, responsibility preponderantly and directly involves values.

4. Liability and responsibility are different from each other also through the main direction in which the relationships between the agent and the society are taking place. In the current social action, liability is manifested particularly as the active presence of society, as an expression of certain requirements that society imposes to the agent, who finds himself as a potential patient of the system of social rules. In exchange, responsibility is manifested as a free human presence.

5. Also, liability and responsibility do not entirely coincide as regards the consequences of their functioning, their social functions. (...) While liability more particularly and directly refers to the conservation of the given social system, responsibility results in a greater improvement of the social system and in its development.

6. Liability and responsibility are also dissimilar in terms of the ways and methods by which society stimulates and ensures their normal functioning; on the one hand they depend on the deontological foundations of liability and of responsibility, on the other hand they depend on their role towards society.

Conclusions

In this study we have sketched the notions of liability and responsibility, trying to present to the reader, in our own fashion, the most interesting opinions of the legal literature.

According to our analysis, liability and responsibility concern equally the citizen and the state, they are concepts that evolved together with the society, were transformed and adapted to the modern times, entering the age of computerized society.

The fact that things are as described above, namely that there is responsibility including from the public authorities, is proven by the multitude of cases in which the state was condemned. Thus, in 2010⁴⁸, after the Court issued the decisions acknowledging the violation of the provisions of the Convention or of its additional Protocols, the Romanian State was condemned to pay EUR 3,874,287. During the period of 01 January 2010 - 31 December 2010, the legislative power is responsible in 79.26% of the cases where condemnation decisions were issued (107 out of 135), the executive power is responsible for 65.92% of the cases (98 out of 135), the judiciary power is responsible for 54.812% of the cases (74 out of 135), the Public Ministry for 15.55% of the cases (21 out of 135), and the Constitutional Court is responsible for 0.74% of the condemnations (1 out of 135 cases).

The widest area for the assessment of legal responsibility⁴⁹, as an attitude of the individual in relationship with the legal regulatory system in general, remains the area governed by the constitutional law. The constitutional rules were the object of the individual's reflection, a measure for his social responsibility.

⁴⁸ Dragoș Călin, Mihaela Vasiescu, Paula Andrada-Coțovanu, Florin Mihăiță, Ionuț Militaru, Lucia Zaharia, Elena Blidaru, Roxana Lăcătușu, Lavinia Cîrciumaru, Cristina Radu, *Decisions of the ECHR in cases against Romania, volume VI, 2010, Analysis. Consequences. Potentially Responsible Authorities*, Universitară Publishing House, Bucharest, 2011), p.2586 et seq.

⁴⁹ Lidia Barac, *Răspunderea și sancțiunea juridică (Legal Liability and Sanction)*, op.cit, p. 36.

The integration of the legal rules and liability in the wide sphere of the social rules and liability takes place as part of a correlation process between the various forms of social liability which manifest in a permanent interdependence and mutual influence.⁵⁰

There are legal sociology surveys warning that the disappointment of the society's expectations towards the law is particularly connected to liability, that the law cannot exercise its influence in society unless it succeeds to identify the person responsible and to establish the liability⁵¹.

In conclusion, we have the pleasure to mention the opinion of professor Antonie Iorgovan⁵² who said that "*liability must be regarded as the phenomenon that manifests itself on the background of the committed harm*". This is a conception rather classical and at the same time dominant suggestively expressed by an author⁵³ by this wording: "the illicit deed is the objective ground of liability and the application of the legal sanction its main consequence".

References

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