

THE CONCEPT OF LEGAL LIABILITY

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Abstract

The failure to abide by the social rules could determine the application of sanctions of various types that could restore the social balance. The legal liability, unlike other forms of social liability, refers to the obligation of being held responsible for violating a legal rule. Starting from the hypothesis that the social rules and values may be violated or omitted in the individuals' actions, one can assert that the social liability may take several forms, depending on the affected social relationships, namely: moral liability, political liability, legal liability, etc.

This study aims at dealing with only several aspects related to the concept of legal liability.

Keywords: *the fundamental legal category, the social rules, legal liability, values, the legal sanction.*

1. Introduction

The legal liability is a form of social liability. The social liability can be encountered in everyday life under several and various forms. Although the legal liability is a series of specific particularities that configure its personality, in relation with the other forms of the social liability it is in a permanent interdependence and mutual influence.¹ Therefore, one can assert that the legal liability is accessory to any other form of social liability.

Nicolae Popa² conceives *responsibility* as an assumption of liability for the results of man's social action. Sociologically speaking³, "*responsibility*" as part of the social life evolved together with society. The social⁴ *responsibility* appears when the individual deliberately opts for a variant of social behaviour. *The legal responsibility is a form of social responsibility*, a legal phenomenon with an independent object of research.

The *notion of liability* is specific to law⁵ and is seen as a legal obligation according to a legal regulatory act.

In this study, we have tried to select, out the multitude of works dealing with the subject matter of the legal liability or responsibility, those we considered relevant for defining the concept of legal liability.

The first section of this survey will make a historical approach of the evolution of liability, will be followed by a section regarding the etymology of the words *liability* and *responsibility*, and in its last part the concept of legal liability will be defined under three aspects. Finally, we aim at making a synthesis of the conclusions deriving from our analysis.

Literature review

The subject of legal liability is not a new one in the legal science debates. The concern for the sanction of those who break the laws, the established order has existed since the oldest times, however the subject is far from being fully discussed.

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¹ Gheorghe Boboș, *General Theory of the State and Law*, (Didactică și Pedagogică Publishing House, Bucharest, 1983), p.262.

² Mihai Bădescu, *Theory of Legal Liability and Sanction*, (Lumina Lex Publishing House, Bucharest, 2001), p.119.

³ Irineu Ion Popa, *The Moral Substance of Law*, (Bucharest, Universul Juridic Publishing House, 2009), p.356 et seq.

⁴ Nicolae Popa, *Lectures on Legal Sociology*, (Bucharest, Printing House of the Bucharest University, 1989), p. 198.

⁵ Mihai Bădescu, *op.cit.*, p.114.

In this respect, we mention from older times the works of Plato, Thomas Aquinas, Montesquieu, Rousseau, Locke, Spinoza, Leibnitz, Paul Fauconnet who dealt in their works with the subject matter of responsibility; from the more recent period we mention Romanian authors such as: Dimitrie Gusti, Mircea Djuvara, M. Costin, Mihai Florea, Ion Craiovan, Gheorghe Boboș, Nicolae Popa, I. Humă, etc. and from the field of administrative law or constitutional law we mention Paul Negulescu, Anibal Teodorescu, Tudor Drăganu, Valentin Prisăcaru, Antonie Iorgovan, Ion Deleanu, Ion Muraru etc.

2. Paper content

In dealing with the subject matter of the legal liability, we start our theoretical demarche with a rhetoric question raised by Ion Craiovan⁶ in his work, *General Theory of Law*, namely: “*What could we understand for example from the complex institution the legal liability without resorting to social responsibility and to a conception on society and man?*”

Deservedly, we agree with the question raised as there is no possibility to deal with legal liability, which we consider a part of the social liability, without dealing with its relationship with the legal responsibility, and last but not least with the social responsibility. 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.

Any society and any form of social power is characterized by a certain regulatory system, a set of rules of conduct.⁷

Any holder of a right – regardless of whether it is a particular person before its equals or the state, or the state before its subjects, or the state before other states – must be liable for its actions, assuming the consequences of the commitments its makes or of the disregard of a legal debt.⁸ Thus, liability is very similar to responsibility as a general principle of law, although it allows for a certain touch of constraint, without being mistaken for the sanction, but rather being a general framework where the law is implemented.⁹

Although distinct in terms of their content, but directly relying on different factors, liability and responsibility are rightly connected to each other.¹⁰ On the one hand, they represent the manifestation of the multiple and various relationships between the individual and the collectivity, and on the other hand, liability and responsibility are forms or rather successive steps of the same general phenomenon of integration of individuals in the collectivity.¹¹

In the regulatory systems determined exclusively and objectively by the necessity of the social cohabitation of the members of society in their accession to their Common Good, in the systems where man is sympathetic to them because the protected values and the ordering criteria for these values are his own values and criteria, the observance of behavioural rules is a conscious and deliberate undertaking of the necessity, originating in conviction, therefore it is seen as responsibility.¹²

The social responsibility does not exclude the liability – including the legal one, as one of the segments of responsibility – nor is it reduced to it. The social responsibility¹³, which is an interiorized

⁶ Ion Craiovan, *General Theory of Law*, (Craiova, Sylvy Publishing House, 1999), 303 p.

⁷ Ion Deleanu, *Constitutional Institutions and Procedures in the Romanian Law and the Comparative Law*, (C.H. Beck Publishing House, Bucharest, 2006), p.35.

⁸ Dan Claudiu Dănișor, Ion Dogaru, Gheorghe Dănișor, *General Theory of Law*, (Bucharest, C.H. Beck Publishing House, 2008), p. 537.

⁹ Idem, p.537.

¹⁰ Mihai Florea, *Responsibility of Social Action*, (Științifică și Enciclopedică Publishing House, Bucharest, 1976), p. 88.

¹¹ Idem, p.88.

¹² Ion Deleanu, op. cit, p.39.

¹³ Idem, p.39.

dimension of the social agent, refers to the activity carried out on one's own initiative, sometimes through an original contributive action, depending on its strictly regulatory-legal basis.

Dumitru Maziu¹⁴ makes a historical incursion into various ages to highlight the manifestation forms of liability in time.

Thus, the author divides the evolution of the various forms of liability into three large periods: Ancient Time, Middle Ages, the period after the French Revolution (year 1789).

a.) In the Ancient Times, revenge seemed like a natural solution to an aggression. Dumitru Mazilu quoted some authors on this subject, namely: Seneca who, in his work "*On anger*", compared the sanctioning measure to the medical act, aiming to maintain the health of the cohabitation relationships within the citadel; and the Greek philosopher Socrates drew attention to the dangers in social relationships if the laws are violated and destroyed by each private person. If in Athens and Rome the sale of insolvent debtors was allowed, Solon suppressed this custom, saying that nobody should suffer any bodily violence for debts between private persons.

b.) In the Middle Ages, the sanctions were particularly severe, characterized by cruelty to intimidate and discourage the infringement of the existing rules. Also, the author mentioned that during that period the ecclesiastic law had an overwhelming influence. People guilty of having committed reprehensible deeds had to account for their deeds before the great feudal seigneurs who often applied sanctions arbitrarily in the cases they judged. To understand the meanings given to liability during that time, the works of Thomas More and Tommaso Campanella (...) should be researched, says the author Dumitru Mazilu.

c.) After the French Revolution of 1789, a true doctrine is developed regarding liability for breaking the law. The criticism against the feudal system expressed by the arbitrariness of the great seigneurs and by the cruel sanctions, often unjust, defined little by little the parameters of legal liability, at the foundation of which is the guilt stipulated in a legal norm. Dumitru Mazilu believes that the most prestigious things in this field are "Lettres persanes" and "L'esprit des lois" of Charles Montesquieu¹⁵ and "Dei delitti e della pene" of Cezare Beccaria.¹⁶

Also, the author Lidia Barac¹⁷ enounces an interesting point of view, from the same perspective of the analysis of the concept of *legal liability*. Thus, understanding that responsibility is a dimension of the individual, connected to his spiritual life, in discovering the premises of responsibility she 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.¹⁸

Antonie Iorgovan¹⁹ asserted that, as regards the institution of liability, either seen from the perspective of the general theory of law, or from the perspective of the legal sciences of the branch, the Romanian authors have been broadly concerned about the clarification of three essential issues:

a.) Identification of the fundamental legal category through which the notion of legal liability may be defined.

b.) Determination of the delimitation criteria (classification of the forms of legal liability).

c.) Determination of the conditions and grounds of legal liability (and implicitly of each of its forms).

¹⁴ Dumitru Mazilu, *Teoria generală a dreptului (General Theory of Law)*, (All Beck Publishing House, Bucharest, 1999), p.306-307.

¹⁵ Charles Louis de Secondat Montesquieu, *De l'esprit des lois*, 1748.

¹⁶ Cezare Beccaria, *Dei delitti e della pene*, Livorno, 1764.

¹⁷ Lidia Barac, *Răspunderea și sancțiunea juridică (Legal Liability and Sanction)*, (Lumina Lex Publishing House, Bucharest, 1997), p.10.

¹⁸ I.B. Lamarck, *Discours d'ouverture (1804)* in *Philosophie zoologique*, Paris, 1907, p.31 quoted by Lidia Barac, op cit. p.10-11.

¹⁹ Antonie Iorgovan, *Drept administrativ, Tratat elementar, vol III (Administrative Law, Elementary Treatise, volume III)*, (Bucharest, Proarcadia Publishing House, 1993), p.175 și urm.

Liability²⁰ is the natural consequence of any commitment. In a state of law nobody can go beyond liability as regards the way they fulfill their duties or the commission they accepted. When somebody accepts a public function, they accept rights, obligations, liability in the universality of their dimensions.

2.1. Etymology of the words: “liability” and “responsibility”

To present the etymology of the words “*liability*” and “*responsibility*”, we are going to mention the opinions of some foreign doctrinaires.

The author Henri Lalou²¹ asserts in his work “*La responsabilité civile. Principes élémentaires et applications pratiques*”, in chapter “*Generalities on civil responsibility*”, that etymologically speaking the word liability derives from the Latin word *spondeo*, which in the verbal contract (*verbis*) of the Roman law means the solemn *obligation* of the debtor towards his creditor to fulfill his obligations undertaken in the contract. In the same work, Henri Lalou asserts that the issue of responsibility was raised in all fields having to do with human activities: in morale, in international relations, in public law, in private law. In morale, responsibility refers to a double issue: human freedom and existence of a moral law.

As regards the international liability²², we are well aware of the controversies born from the responsibility for war or from the responsibility of the states for crimes or offenses committed on their territory at the expense of foreigners (...).

In the public law, the constitutional laws regulate the responsibility of the head of state, the ministerial responsibility, the responsibility of public servants.

The criminal responsibility that conditions the application of punishments requires a social unrest caused by a felony for which the responsible individual should be held accountable.

Whereas civil responsibility²³ requires essentially, on the one hand, a victim who suffered a prejudice and, on the other hand, another person who should repair the prejudice.

Henri Capitant²⁴ specified that the term *liability* derives from the Latin verb *respondere* which means both to respond and to pay in one’s turn.

Another French author who dealt with the subject matter of responsibility, around year 1977, was Michel Villey.

According to the assertions of the French author Michel Villey²⁵, the word responsibility appeared in the French language rather late (1783) and it seems it was used for the first time by Wecker: “the trust in this paper is born from the responsibility of the Government”.

Another author, the English professor A. Hart²⁶, analyzes legal liability bringing into the light the multiple meanings that can be ascribed to the notion of liability.

The same well-known representative of the analytical philosophy of law, A. Hart²⁷, drew the attention on the fact that the following distinct meanings can be ascribed to “liability”:

²⁰ Ioan Muraru, Nasty Vladoiu, Silviu Barbu, Andrei Muraru, *Contencios Constituțional (Constitutional Disputes)*, (Bucharest, Hamangiu Publishing House, 2009), p.45-46, quoted by Elena Emilia Ștefan “*Considerations on liability in administrative law*”, published in CKS – eBook 2011 p. 24-32.

²¹ Lalou Henri, *La responsabilité civile. Principes élémentaires et applications pratiques*, (Paris, Dalloz, 1932), p.1-3.

²² Lalou Henri. Op. cit, pag 2, <http://gallica.bnf.fr/ark:/12148/bpt6k61426111/f11.image>, accessed on 27 December 2011.

²³ Idem, p.2.

²⁴ Henri Capitant, *Vocabulaire juridique*, (Paris, Les Presses Universitaires de France, 1936), p.429, quoted by Sofia Popescu, *Teoria generală a dreptului (General Theory of Law)*, (Lumina Lex Publishing House, Bucharest, 2000), p.303.

²⁵ Villey M. *Esquisse historique sur le mot responsable. Archives de Philosophie du Droit*, dossier « La responsabilité », (Sirey, Tome 22, 1977). p 45-58.

²⁶ Hart H.L. *Ascription of responsibility and Rights. Freedom and Responsibility. Readings in Philosophy and Law*, (edited under the supervision of Herbert Moris, Stanford University Press, California, 1961), 147 p.

a.) The liability deriving from a certain role – the person is liable for fulfilling the duties deriving from the role they have, from the position they fill in a certain organization (e.g. the parents are responsible for raising their children);

b.) The causal liability – it can be ascribed not only to human beings but also to natural events, to dangerous things and to animals (the frost is liable for the road accident it caused, meaning that the accident happened because of the frost);

c.) Liability – when a person infringes the legal norm that obliges them to do a certain action or when the person is obliged by the law to bear a punishment or to repair the damage caused (either by their deed or by somebody else's deed);

d.) The capacity to be held liable – the person meets the requirements for being able to be held liable.

A whole range of theoreticians set out to defining the concepts of liability and responsibility, using the dictionaries of that time.

We notice that in the French language the term “*responsibility*” (responsabilitate) of the Romanian language has no equivalent, the only known term being that of liability, i.e. “*responsabilité*”.

Thus, the *dictionary of the modern Romanian language*²⁸ defines liability as the “fact of being liable, responsibility”, whereas responsibility is defined as the “obligation of doing something, of being liable, of accounting for something, liability”.

Similarly, the dictionary *Larousse* defines responsibility as being the “obligation of repairing damages caused to somebody else by themselves, by a person depending on them or by an animal or thing guarded by them; the obligation of bearing the punishment established for the committed felony; the capacity to make a decision without first referring to a higher authority; the need of a minister to abandon his functions when the Parliament refuses to trust in him...”, whereas “collective responsibility”, “the fact of considering all the members of a group as jointly responsible for the deed committed by one of the members of the group”.

2.2. Possible definitions of legal liability

In presenting the possible definitions that have been given in time to the legal liability, we start from the acknowledgement that we cannot find in the legislation any definition of the legal liability, regardless of the field.

On the other hand, the various pieces of legislation present the principles of holding someone liable, the conditions in which a person, regardless of their statute,²⁹ can be held liable.

We should also mention that the selection of the definitions we are going to present followed the three directions that have underlain the attempts to define the concept of legal liability, namely:

- a.) the obligation category
- b.) the legal relationship category
- c.) the legal situation category

Definition of legal liability as seen from the perspective of the category “*obligation*”

²⁷ H.L.A. Hart, op. cit, p.145 et seq., quoted by Sofia Popescu, (op cit), p.304; Radu I Motica, Gheorghe Mihai, *Teoria generală a dreptului (General Theory of Law)*, (All Beck Publishing House, Bucharest, 2001), p.223.

²⁸ On this subject please see Mihai Bădescu, *Teoria răspunderii și sancțiunii juridice (Theory of Legal Liability and Sanction)*, (Lumina Lex Publishing House, Bucharest, 2001), Nicolae Popa, *Prelegeri de sociologie juridică (Lectures on Legal Sociology)*, (Bucharest, Printing House of the Bucharest University, 1989), Mihai Florea, *Responsabilitatea acțiunii sociale (Responsibility of Social Action)*, (Științifică și Enciclopedică Publishing House, Bucharest, 1976), Lidia Barac, *Răspunderea și sancțiunea juridică (Legal Liability and Sanction)*, (Lumina Lex Publishing House, Bucharest, 1997).

²⁹ Hence, we refer not only to natural or legal persons, but also to dignitaries, public servants, etc.

Ilie Iovănaș³⁰ envisages legal liability as “an expression of the condemnation by the state of an illicit conduct, which consists in an *obligation* to bear a privation”.

M. Costin³¹ envisages liability as an obligation to bear the consequence of having failed to abide by some rules of conduct, an obligation falling upon the author of the deed which comes in conflict with these rules and which always carries the mark of social disapproval of such conduct.

Gheorghe Boboș³² agrees with M. Costin’s point of view, according to which legal liability is a complex of rights and accessory obligations which, according to the law, is born as a result of committing illicit deeds and which constitutes the framework for imposing governmental constraints by applying the legal sanction in order to ensure the stability of social relationships and guidance to the members of society in the spirit of observing the rule of law.

Among the French authors of civil law who connect the idea of liability to the idea of obligation we mention Henri Lalou³³. Also, we mention Rene Savatier³⁴ who gives the following definition to civil liability: “civil responsibility is the obligation falling upon a person to repair the damage caused to another by their deed or by the deed of the persons or things depending on that person”.

Definition of legal liability as seen from the perspective of the category “*legal relationship*”

The author Dumitru Mazilu³⁵ defined legal liability as a constraining legal relationship whose content consists of the state’s right to hold liable the one who violated the legal rule, applying the sanction established by the violated rule, and of the obligation of the defaulting party to be held liable for its deed and to be subject to the applicable sanction based on the violated rule.

A similar point of view is that of the author Gheorghe Boboș³⁶ who defines legal liability as a constraining legal relationship whose aim is the legal sanction.

According to the statements of Dan Ciobanu³⁷, legal liability is the situation deriving from a previous legal relationship, it is the legal relationship that finds its source in an illicit deed.

In the mind of Lidia Barac³⁸, *legal liability* could be defined as the *institution* containing the set of legal norms referring to relationships that are born from the activity conducted by the public authorities, in observance of the law, against all those who infringe or ignore the rule of law, in order to ensure the respect and promotion of the legal order and of the public good.

Also, we would like to mention the authors C. Stătescu and C. Bârsan³⁹ who claim that legal liability has an essential feature, i.e. “the possibility to apply the governmental constraint, if necessary”.

³⁰ Iovănaș I. *Considerații teoretice cu privire la răspunderea administrativă (Theoretical Considerations on Administrative Liability)*, Doctoral Thesis, (Cluj. 1968. p.4), quoted by Lidia Barac, *Elements of Theory of Law*, op.cit, p.154.

³¹ Mircea N Costin, *Răspunderea juridică în dreptul RSR. (Legal Liability in the Law of the Socialist Republic of Romania)*, (Dacia Publishing House, Cluj, 1974), p.19.

³² Gheorghe Boboș, *Teoria generală a statului și dreptului (General Theory of the State and Law)*, (Didactică și Pedagogică Publishing House, Bucharest, 1983), p. 31-32, quoting M. Costin, *O încercare de definire a noțiunii de răspundere juridică (An Attempt to Define the Notion of Legal Liability)*, in RRD (Revista Română de Drept) 1970, nr. 5.

³³ For details, please see Lalou Henri, *op.cit.*, p.1-3, quoted by Mircea N Costin in *op.cit.*, p.20.

³⁴ R Savatier, *Traité de la responsabilité civile en droit français*, Tome I, (Paris, 1939, p.1), quoted by Mircea N Costin in *op.cit.*, p.20.

³⁵ Dumitru Mazilu, *Teoria generală a dreptului (General Theory of Law)*, *op.cit.*, p.310.

³⁶ Boboș Gh. *Teoria generală a statului și dreptului (General Theory of the State and Law)*, (Cluj-Napoca, Ed. Dacia, 1994). 280 p.

³⁷ Ciobanu D., *Introducere în studiul dreptului (Introduction to the Study of Law)*, (Course, Bucharest: Ecologică University, Faculty of Law, 1990), 133 p.

³⁸ Lidia Barac, *Elemente de teoria dreptului (Elements of Theory of Law)*, (All Beck Publishing House, Bucharest, 2001), p.155.

³⁹ Stătescu C., Bârsan C., *Drept Civil, Teoria Generală a Obligațiilor (Civil Law, General Theory of Obligations)*, (Bucharest, Ed. All Beck, 1997), 340 p.

Definition of legal liability as seen from the perspective of the category “legal situation”

Thus, as regards the third category, i.e. that of the legal situation, we mention the conception of Antonie Iorgovan.

Antonie Iorgovan⁴⁰ believes that legal liability can be defined as “the legal situation consisting of the complex of rights and accessory obligations, the content of legal relationships determined by the legal norms that fulfil, at the level of the system of law, a self-regulatory & sanctionative function of the global social system”.

Through liability one aims both at re-establishing the regulatory order, by ceasing any actions that are contrary to this order using certain constraints, and at materializing a negative reaction of the social authorities (considered at the micro-, meso- or macro-social level) on the author of such deed, by placing the latter in an unpleasant, unwanted situation so that he may become conscious of the negative meaning of his deed and of the need to adopt in the future a conduct complying with the social rules.⁴¹

Consequently, Mihai Florea⁴² asserts, liability does not necessarily involve any option or conviction or initiative or interest from the agent in relation to the aims that are offered to him and for whose achievement he is committed, not even the understanding of their content. It simply contemplates the compliance with or infringement of certain prescriptions (obligations or interdictions), while the agent has rather a passive role rather than an active one.

Conclusions

In our study we have tried to make an inventory of the most interesting definitions of the concept of legal liability. We took into account both the opinions of sociologists and the opinions of Romanian and foreign jurists.

Considering the opinions of the reputed authors in this field presented above, we conclude that the subject matter of legal liability still remains unelucidated.

The legal liability is currently in the middle of a transformation process, together with the evolution of society actually, it has new dimensions, new correlations.

In this context of the redefinition of the concept of legal liability, we acknowledge how actual the famous expression of Juvenal⁴³ is: “*quis custodient custodes?*” Deservedly, this question⁴⁴ summarizes one of the most difficult problems standing in the way of accomplishing the rule of law: find the most efficient procedural ways to make the state’s bodies, which directly or indirectly have constraining force in view of making the citizens be compliant with the laws and, in their turn, be forced to comply with them.

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⁴⁰ Antonie Iorgovan, *Răspunderea contravențională (Misdemeanour Liability)*, (Bucharest, Bucharest University, Doctoral Thesis, 1979), p.98.

⁴¹ Antonie Iorgovan, *Drept administrativ, Tratat elementar, vol III (Administrative Law, Elementary Treatise, volume III)*, (Actami Publishing House, Proarcadia, 1993), p.182.

⁴² Mihai Florea, *Responsabilitatea acțiunii sociale (Responsibility of Social Action)*, (Științifică și Enciclopedică Publishing House, Bucharest, 1976), p. 63.

⁴³ http://en.wikipedia.org/wiki/Satire_VI (accessed on 29 August 2011).

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