

GENERAL CONDITIONS ON THE CHARACTERISTICS OF JURIDICAL RESPONSIBILITY

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Abstract

In this paper we analyze the implications stages of legal liability in the general theory of law. This research work aims, through a thorough analysis on the land developed general theory of law, to present practical issues relating to legal liability. Define, examining interdependencies stages of evolution and legal liability; - Presentation stages novel legal liability in civil law of Moldova; - The analysis of the stages of legal liability; - Conclusions The current research paper was prepared using the research method of natural law and historical method. Also, the work was developed using research methods and theories positivist and critical-comparative theories. Theoretical basis of the research study consists of numerous studies and scientific papers of Russian and local doctrine publicized, in the final bibliography. Scientific originality of the results obtained from the research are that legal liability occurs when a certain mode of behavior does not fit in some limits accepted by social rules. Researchers, jurists, eminent authors from all over the world have a constant interest to reveal features of legal liability stages in a large number of works, both in the general theory of law and other branches of science in law.

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JEL Classification: K10, K42

1. Preliminary considerations

One of the fundamental principles of law is the principle of responsibility. As a social phenomenon that expresses an act of employment of the individual who assumes the social consequences of its action and is assessed according to the extent and content of the transposition in practice of conscious social norms and the principle of responsibility is the right size².

Responsibility expresses that man as an individual and human communities are fully aware of the rules of law. Compared to this, both individual and community assumes responsibility for the legal system to operate according to the rules of conduct³.

Social life is conducted in an organized manner based on societal norms or rules due course of human activities in various sectors. These rules establish certain conduct which subjects must comply with in between them. Violation of rules predetermined by misconduct involves social responsibility - in a variety of forms - from the guilty, forcing him to bear the consequences of his act different⁴.

Responsibility designate human conscious subordination to the law. Social responsibility can be defined as the human capacity -based on knowledge and foresight - accountability for the consequences of his acts⁵.

The base of responsibility can we find it inside the freedom they acquire knowledge and mastery man the way the laws of society and nature, to act and participate in social life as a creative subject.

Every action of man's conscious menus into deliberation, a choice, a decision. Responsibility is both action earlier, when the individual assumes tasks and duties, and its rear by taking responsibility for the consequences of that action. Responsibility is a phenomenon with deep social roots, conditioned expressed commitment and accountability act which he assumes to man. self, to

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² Ion Craiovan, *Treaty of General Theory of Law*, 2nd edition revised and added, Universul Juridic, Bucharest, 2009, p.349.

³ Costica Voicu, *General Theory of Law*, undergraduate course, revised and updated edition, Universul Juridic, Bucharest, 2006, p.89.

⁴ C.Șerban, R.Duminiță, *Elements of law*, Sitech, Craiova, 2008, p.313-344.

⁵ Costica Voicu, *op. cit.*, p.89.

nature and society, and the consequences of his acts⁶. The company itself will not remain indifferent to behaviors that violate social rules.

Social responsibility has various manifestations: the responsibility moral, religious, political, cultural, legal. Although the traditional concept of accountability was placed on the ground in absolute morality, the latest research highlight the need of outlining the concept and in the plan of justice. Through a reductionist thinking (consisting mainly in reducing the rights of criminal law, only by understanding its role in a protective frame - repressive) was long considered the law would not be characteristic than the category of liability. The justice could act only after he committed the act dangerous⁷.

2. The peculiarities of the legal liability conditions

By regulating social relations by rules of law, the legislature has always regard the conditions in which the rule can and should be done, the normal capability to model behaviors, directing them on a track considered socially useful at the same time, however, the legislature has always attention and opportunity by misconduct on rule violations. Those who break the rules can not be right than men, and their conduct unlawful taking place in a social setting determined, knows multiple manifestations and has complex causes. By his action, which violates the legal norms prejudicing the order of law, and good disturb normal development of social relationships affect the rights and legitimate interests of its neighbors, jeopardize the coexistence of freedoms and social balance. The starting of legal liability and the establish of concrete form of responsibility belong forever, social courts special abilities⁸.

Human behavior can be consistent legal rules or, conversely, to contravene them. In the first case, the conduct is lawful, legal, and in the latter case, it is unlawful or illegal. Lawful conduct is given by the actions or inactions meet or determined by legal rules. From a broader perspective we can say that liability is a specific expression of the idea of social responsibility under which every man must take and to bear the consequences of his actions⁹. The basis for this release and extent of liability is the law. Liability is always lawful, nobody can do yourself justice, no one can be judge in his own case. The notion of responsibility is quite difficult to analyze. Also, the institution of juridical responsibility and legal science is studied widely known as the general theory of law, which is a very large institution. Perhaps, in our view, it is the most fascinating part of science right. Juridical responsibility is one of the basic institutions of law, as required by Article 10 of the European Convention on Human Rights¹⁰.

The notion of responsibility reveals different fields: political, legal, moral, philosophical; a variety of legal rules governing the various forms of juridical responsibility: civil, criminal, administrative, disciplinary, administrative, etc. The responsibility means the obligation to answer for the performance of an action. There are also juridical responsibility in case of inaction. By juridical responsibility *lato sensu* we understand their need to bear the consequences of breaching the rules of conduct. The juridical responsibility implies the idea of culpability (intent or negligence in their various forms) and of behavior contrary to the law¹¹.

In the spirit of this summary we consider essential notes defining legal liability may be: legal institution which includes all related rights and obligations that arise by committing illegal acts causing - according to law - those who violate legal constraint. The juridical responsibility is analyzed in terms of the conditions to be met, forms or ways in which it occurs and the principles underlying the intervention of state bodies and its limits¹². Depending on how rule of law infringed and the

⁶ *Ibidem*, p.90.

⁷ Nicolae Popa, *General Theory of Law*, C.H. Beck, Bucharest, 2002, p.280.

⁸ *Ibidem*, p.280-281

⁹ Nicolae Popa, *General Theory of Law, Bucharest, Actami 1999, Bucharest, p.202*

¹⁰ Ion Flamanzeanu, *Juridical responsibility. Preliminary trials* in „Romanian law”, new series, year 17 (50), 1-2, January-June, Romanian Institute of Legal Research, 2005, p.223-227.

¹¹ Dănișor DC, Ion Dogaru, Dănișor Gh., *General Theory of Law*, 2nd edition, CH Beck, Bucharest, 2008, p.537

¹² C.Șerban, R.Duminiță, *Elements of law*, Sitech, Craiova, 2008, p. 313-344.

seriousness of the conduct illicit, illegal acts can be distinguished civil, criminal, administrative, financial, labor law, etc., which, in turn, form the basis of a certain kind of responsibility and legal sanction.

Whatever the legal field (civil, criminal, administrative, financial, labor, family, etc.) occurs, liability arises only when certain conditions are met: unlawful conduct, the causal link between the unlawful conduct and outcome of product, the existence of guilt, the absence of circumstances excluding responsibility¹³. The unlawful nature of human behavior is the first condition for the emergence of juridical responsibility.

The basis of liability is to always some concrete human behavior. Human behavior is its all concrete facts, the direct human acts under the control of his will and reason¹⁴. Constitutes unlawful conduct pursuant to punish the person responsible, the application of state coercion, consisting of deprivation of personal and patrimonial. Unlawfulness of conduct is established in direct connection with a prescription contained in a legal norm. When legal rule requires a certain behavior and by his act violates this provision topic (showing contempt for the legal regulation), penalty kicks in the legal norm. For example, ends an act without respect the conditions provided by law, are delivered a product incorrectly or hidden defects, an employee meets inappropriate tasks, missing unmotivated, a man threatens the honor, the honor, the physical condition of a Another man etc. In such cases, it may occur is a legal constraint and trigger a form of legal liability (civil, disciplinary, administrative, criminal). Failure to comply and breach of limitation contained in a legal norm violates the rule of law, balance of social and legal endanger the safety circuit¹⁵.

The unlawful conduct is conduct (action or inaction) that a person actually violates the law. Illegal character is determined only in relation to the limitation contained in the legal norm. The sanction legal norm comes into action when the subject violates the conduct required by law¹⁶. Unlawful behavior can take different forms: as crime, misdemeanor shape, form and shape disciplinary offense of causing harm and the seriousness distinguishing criterion between legal illicit forms: criminal, administrative, civil etc¹⁷.

Inaction - committing a concrete action by one person - can only be considered unlawful justice when this person had a legal obligation to act in a certain way and it did not act as such. This obligation may arise directly from the law, a contact, professional or service immediately etc. The law may establish such an obligation, in order to prevent a hazardous situation and harmful. If the dangerous situation in which the law may force from acts in order to remove its consequences. According to our legislation, certain facts, although their illegal nature is established by law, may not constitute violations of law and does not lead to liability only when committed in exceptional conditions¹⁸. They are provided in our criminal law, namely self-defense and state of necessity.

In civil law, responsibility arises only when there has been illicit result - injury, criminal law and administrative staff, although the illegal nature of a behavior is closely linked to its outcome harmful, the law establishes in some cases legal liability even if the result no harmful product, but created a threat of it. In criminal law, between such illegal acts, no concrete results harmful is attempted.

A second condition of legal liability that we analyze is a causal link between the unlawful behavior and outcome of product.

This is an objective condition of juridical responsibility, it is the bond of determination based on the prejudice is the direct consequence of the unlawful conduct of the action or inaction unlawful. The liability exists only to the extent that such a causal link can be established¹⁹.

¹³ Luburici M., *General Theory of Law*, University "Dimitrie Cantemir", Bucharest, 1994, p.222.

¹⁴ *Ibidem*, p.223

¹⁵ Nicolae Popa, *General Theory of Law, university course*, CH.Beck, Bucharest, 2002, p.285.

¹⁶ Costică. Voicu, *General Theory of Law*, undergraduate course, revised and updated edition, Universul Juridic, Bucharest, 2006, p.225

¹⁷ Dănișor DC, Ion Dogaru, Dănișor Gh., *General Theory of Law*, 2nd Edition, Bucharest, CH Beck,2008,p.542.

¹⁸ Ion Craiovan, *elementary Treaty of General Theory of Law*, Bucharest, All Beck, 2001, p.438.

¹⁹ Dănișor DC, Ion Dogaru, Dănișor Gh., *op. cit.*, p.543.

Illegal acts causing damage to state material and personal harm citizens have negative consequences for the normal activity of state bodies, social organizations and citizens. Social danger of these facts, in most cases must be assessed and their harmful consequences, of their outcome. The state body in charge of legal classification of violations of law that has the task of finding not only the existence of an act or omission unlawful, but also the consequences produced by the action or inaction unlawful according to its findings will be determined juridical responsibility and the penalty for the offense committed²⁰.

State body empowered to establish some form of liability (trigger is a legal constraint) shall establish with all precision the causal link, retaining the precise circumstances of the case, the necessary elements of the production action, its consequences and to remove items accidental conditions overlapped and the causal chain that could accelerate or delay effect, aggravate or mitigate the consequences²¹.

Therefore it notes that the state body is placed to answer precisely whether a product result (killing a person, theft of property, destruction of property, disturbing public order, etc.) is the direct consequence of the illicit activities of a particular person.

To establish causation must know the exact circumstances of the case, the manner of producing concrete action subject consequences, analysis of the factors and conditions that influenced production outcome etc²².

Each field of scientific research is artificial separation approaches and interactions of all universal at least two phenomena, cause and effect. In science as the cause is within the responsibility attitude voluntary, conscious human behavior to it has the effect of state of danger or threat caused by touching, damage or injury of social relations regulated by law, so, ultimately, a social insecurity created by violations²³.

Talking about causality, we have carefully considered set of phenomena or at least related phenomena such as the existence of a phenomenon among them is crucial, conditioned by another phenomenon.

Sometimes causality is simple, when in determining cause and effect relationship is direct, immediate, without other determinations or interposition. Sometimes causality is complex when the report is presented as a causal chain that in turn determining causes and effects are multiple enhancer conditions²⁴.

The third condition of juridical responsibility is guilty.

The existence of guilt implies some capacity - the ability to respond - which was defined as the ability of individuals to account to society for the infringements committed by it, to properly assess the significance sanction appropriate legal those facts and the consequences negative constraint on the exercise of state during application and enforcement of the sanctions involved as necessary and inevitable²⁵.

Guilty is expressed as intent or negligence.

Violation is considered willful if the person who committed it knew the unlawful nature of its action or inaction, foresaw its consequences illicit wished or were successful. When these unlawful consequences were pursued by the person who caused them had to do with a direct intent, and when production was only allowed consequences intention is indirect²⁶.

The intention that two forms (direct intent and intent indirect), taken as a form of guilt when the subject acts deliberately, aware, aiming to produce the desired effect, knowing and assuming the risks of the offense in question or easily accept producing effect²⁷.

²⁰ Luburici M., *General Theory of Law*, University "Dimitrie Cantemir", Bucharest, 1994, p.225.

²¹ Nicolae Popa, *General Theory of Law*, university course, Bucharest, CH.Beck, 2002, p.287.

²² Costică. Voicu, *op. cit.*, p.226.

²³ C.Șerban, R.Duminică, *Elements of law*, Craiova, Sitech, 2008, p.313-344.

²⁴ *Ibidem*, p.313-344.

²⁵ Ion Craiovan, *Elementary Treaty of General Theory of Law*, Bucharest, All Beck, 2001, p.439.

²⁶ *Ibidem*, p.439.

²⁷ Costică. Voicu, *op.cit.*, p.225.

Culpa is a form of guilt wherein the subject does not foresee the consequences of his act, though had to provide, or providing for them, we hope not occur²⁸. Culpa dress, two forms: imprudence (when the author provides the unlawful nature of the act and its consequences, does not want, does not support, but hopes that easily will not occur) and negligence (when the author does not provide and therefore he does not want or accept the consequences of the act, but should be able to provide)²⁹.

3. Conclusions

Classification forms of guilt and their degree of particular importance in determining legal liability and the extent or limits its liability for the acts as unintentional is less severe³⁰.

Taking as a basis the criteria set in Moldova doctrine, we consider that legal liability following steps known in its evolution³¹:

- 1) the appearance of juridical responsibility;
- 2) the disclosure of juridical responsibility;
- 3) the qualification and concretization of juridical responsibility unlawful act;
- 4) the achievement of juridical responsibility.

The starting point in determining legal liability stages is the timing of appearance of juridical responsibility reference and timing of its termination.

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²⁸ Nicolae Popa, *General Theory of Law*, university course, Bucharest, CH.Beck, 2002, p.287.

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³⁰ C.Șerban, R.Duminiță, *Elements of law*, Craiova, Sitech, 2008, p.313-344.

³¹ Baltag Dumitru, *Characteristic stages of legal liability*, scientific-practical publication "Law and Life", No.10(109), Chisinau, 2007.