Legal liability through the prism of the new conceptual mutations

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Abstract

The concept of legal liability is traditionally approached, first in the General Theory of Law, then in each branch legal discipline. From this perspective the role of this fundamental concept of law is emphasized, the legal liability is defined and classified in its main forms (disciplinary, civil, administrative, criminal), the conditions for engaging in any form of legal liability are highlighted. The present study does not aim to analyze what is known, which is not lacking in any academic course of law theory, which has been the subject of numerous writings in the field, including within national doctoral research and not only. Through this study, we aim to highlight the fact that at present there are serious reasons to believe that, compared to the traditional coordinates of the legal liability analysis, we are in the presence of changes, conceptual mutations that play a role within it as a reflection of either the phenomenon well known as legal inflation, or the need to adopt the norms of the right to new social coordinates, to the mutations that take place - thanks to the celerity with which social relations unfold - in social life. In other words, in addition to the branches of law that conventionally analyze the concept of legal liability, it is necessary to emphasize also the appearance of other branches with their specificity, including from the point of view of the legal liability that is committed. We come up with these considerations to analyze a new concept, legal parthenogenesis, a consequence and effect of these social mutations on forms of legal liability. Therefore, the present study has as a major objective the disclosure of other forms of legal liability alongside those already known. The research methods used are the epistemological, historical, comparative, and teleological methods. The results of the study can be used in the new doctrinal approaches in the field, within the three levels of higher education: BA, MA, and PhD.

Keywords*: law, concept, conceptual mutations, legal liability, responsibility,legal parthenogenesis.*

JEL Classification*:* K10, K42.

1. Considerations on the concept of legal liability

The specialized doctrine includes, through the most representative of the works in the field, approaches of maximum generality regarding the legal institution subject to the analysis. In the following, we will try to synthesize, we believe, the most relevant approaches.

Firstly, **Nicolae Popa** acknowledges that liability in general is an essential component of any form of social organization. Liability is a social fact that is limited to the organized, institutionalized reaction triggered by a convicted offense[2].

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[2] Nicolae Popa, *Teoria generală a dreptului*, C.H. Beck Publishing House, Bucharest, 2014, p. 241.

"The frequent meaning of the notion of accountability, regardless of the form under which it manifests itself, is the obligation to bear the consequences of non-observance of rules of conduct, an obligation incumbent on the author of the act contrary to these rules and always bearing the mark of social disapproval of such an act"[3].

The notion of "legal liability" is a category of maximum generality and, from this perspective, it belongs to the theory of law[4] and because only this science is meant to highlight the common elements of defining the law, the foundations of law, its implementation, therefore, the proper realization of the right, either jointly or through the legal sanction, is indissolubly linked to the finalities of the law[5].

The legal order imposed, even by constraint, takes place in a determined legal framework: within legal constraints. The legal constraint, i.e. the application of the sanction as one way of achieving the rule of law, takes place not directly, but indirectly, mediated, namely through legal norms[6].

Consequently, we agree with the view that legal responsibility is a functional, irreplaceable institution in the system of regulation and protection of the law, the efficiency of the functioning of the mechanism for regulating legal liability depends to a great extent on the status of the lawfulness and order of law in a society[7].

Until recently, from the epistemological point of view, the task of developing a theory of legal liability and sanction was divided between the branches of legal sciences, whose concerns led to the shaping of the forms of legal liability and the highlighting of some types of legal sanctions[8], especially in the applicative dimension of the case-law. If at present the issue of legal liability has an obvious methodological character, in doctrine it is appreciated that in the future it will have a conceptual character, outlining new aspects, valences and correlations[9].

2. The epistemological status of legal liability in the theory of law

From an epistemological point of view, the concept of legal responsibility has been scientifically studied and researched in many specialized papers. In the following we will try to evoke the most relevant analyzes of the concept under discussion. Thus:

- for Prof. **Nicolae Popa**, legal responsibility is an essential component of every form of social organization, which is engaged when the order of law is affected,

[3] Mircea Costin, *Răspunderea în dreptul R.S.R.*, Dacia Publishing House, Cluj-Napoca, 1974, p. 19.
[4] Gheorghe Mihai, *Teoria dreptului*, 2nd edition, All Beck Publishing House, Bucharest, 2004, p. 141.
[5] Lidia Barac, *Răspunderea și sancțiunea juridică*, Lumina Lex Publishing House, Bucharest, 1997, p. 3.
[6] Mihai Bădescu, *Teoria generală a dreptului*, Sitech Publishing House, Craiova, 2013, p. 296.
[7] Dumitru Baltag, *Teoria răspunderii juridice: aspecte doctrinare, metodologice și practice*, ULIM Publishing House, Chișinău, 2007, p. 3.
[8] Lidia Barac, *op. cit.*, p. 3.
[9] Dumitru Baltag, *op. cit.*, p. 3.

when damage is caused to the general and particular interests of a natural or moral person or property thereof as a result of the commission of an illicit deed[10];

- Prof. **Ion Craiovan** considers that legal responsibility is dealt with at the level of the legal concept ,,*as a report established by law, of the legal norm, between the perpetrator of the violation of the legal norms and the state, represented by the agents of the authority, which may be courts, state officials or other agents of public power*''[11];
- the need to qualify legal liability as a legal institution with systemic organization and its own principles, the determination of the objectives of respecting the institution in relation to the exigencies and imperatives of public order and the public good compete in defining, in another opinion[12], of legal liability as the legal institution that encompasses all the legal norms applicable to those who violate the law or ignores the order of law;
- prof. **Gheorghe Boboş** admits, in his turn, that the epistemological level of legal liability can only be that of a general *category* of law. The execution of legal sanctions involves a conviction by society against the guilty person to which is attached a personal, pecuniary or rights-based deprivation; since the application of such deprivations is contrary to the will of the perpetrator, it is necessary to have the existence and implicitly the help given by the specialized bodies of the state with competences in this respect[13];
- the opinion of prof. **Sofia Popescu** is for the examination of legal liability through the prism of theory, philosophy and legal sociology[14]; *the investigation* of legal liability must be interdisciplinary, of a sociological and legal nature, as a consequence of the extent to which *"law can not exercise its influence in society, except to the extent that it manages to identify the responsible person and establish its liability and, in finally, the effectiveness of liability conditions, in a greater or lesser establishment, restoration or the survival of the rule of law[15]"*;
- the examination of the basis of legal liability in terms of theory and sociology of the right to widen the scope of the notion of legal liability beyond the strict and necessary limits of the acceptance in which it is used in the legal disciplines of the branch[16];
- the theoretical (scientific) approach to the category of legal liability can not differ according to the philosophical horizon in which it operates, and this is due to the fact that *"in a way, legal liability is crystallized on the Tomist idea of the*

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[10] Nicolae Popa, *op. cit*., p. 288.
[11] Ion Craiovan, *Tratat de teoria generală a dreptului*, Universul Juridicv Publishing House, Bucharest, 2015, p. 433.
[12] Lidia Barac, *op. cit*., p..
[13] Gheorghe Boboş, *Teoria generală a dreptului*, Dacia Publishing House, Cluj-Napoca, 1994, p. 259.
[14] Sofia Popescu, *Teoria generală a dreptului*, Lumina Lex Publishing House, Bucharest, 2000, p. 300.
[15] Ibidem.
[16] Sofia Popescu, Maria-Luiza Hrestic, Alexandrina Şerban, Radu Stancu, Mădălina Viziteu, *Teoria generală a dreptului. Curs universitar*, Prouniversitaria Publishing House, Bucharest, 2016, p. 329.

absolute mark of external law, in another way, in the case of the Kantian vision, on liability based on self-determination, on the purely practical reason and the categorical imperative[17]";

- the above opinion is not the only one; it can be considered as an expression of a contemporary interaction between philosophy and epistemology, in which the latter *"is today practiced and understood in extremely varied ways depending on the intellectual, scientific and ideological climate, the philosophical tradition, the schools and the trends more or less defined, to which it adheres or against which they react critically and operate the great delimitations, depending on the disciplines or levels of activity and scientific construction they carry, according to their own resources of tools, methods of research, theorization and control (cutting of the investigated territory, ideotechnical objectivity and styling etc.)"*[18].

In view of the above, we make the following clarifications:

- legal liability is conceived as a legal relationship, a legal relationship of constraint, having as its object the legal sanction, legal liability appears as a complex of rights and obligations (to bring into question here the opinion of Alessandro Levi for whom the legal responsibility is nothing but the obligation of the subject to fulfill a debt that replaces a previous debt that has not been fulfilled[19]);
- legal responsibility is defined in relation to social and legal responsibility, in relation to human values and action in society, with which it develops an axiological relationship with man - as a *personality* and a *person* - in *law* and his freedom[20]; it is also defined in relation to the positive law by which its normative structure is revealed, its fixed or rigid structure[21];
- from an epistemological point of view, legal responsibility has the meaning of a structural concept that belongs to *"a different type of discourse - epistemological or metatheoretic"*[22].

3. Multiplying the forms of legal liability as a result of legislative inflation and social dynamics

The multiplication of forms of legal liability signify the detachment from the traditional concept of legal liability, specifically from the general law of liability, of particular forms by which the illicit conduct is legally sanctioned.

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[17] Ioan Humă, *Cunoaștere și interpretare în drept. Accente axiologice*, Academiei Române Publishing House, Bucharest, 2005, p. 17.

[18] Vasile Tonoiu, *Orientări și metode în epistemologia modernă*, in Angela Botez, *Euristică și structură în știință*, Academiei Publishing House, Bucharest, 1978, p. 13.

[19] Alessandro Levi, *Teoria generale del diritto*, Padova, Cedam, 1967, p. 392.

[20] Lucian-Sorin Stănescu, *Răspunderea juridică – evoluție și tendințe contemporane* (teză de doctorat), The Romanian Academy, The Legal Research Institute „Acad. Andrei Rădulescu'', Bucharest, 2017, p. 43.

[21] Ibidem.

[22] Vasile Tonoiu, *op. cit*., p. 15.

Under the pressure of social dynamics, we are witnessing the need to create new bodies of legal norms, to identify *sui generis* forms of illicit deeds that are sanctioned in a specific way. It is no less true that the dismantling of legal liability in new forms requires the identification of new procedural mechanisms through which those concerned can be held accountable.

The basis of legal liability on the new coordinates comes in full agreement with the expression of the real ends of the law, such as: sanctioning / preventing the unlawful conduct, repairing the damage in order to restore the previous situation, all these as an expression of the necessary social authority.

The emergence of other forms of legal liability is explained by the typological plurality of all e*ntitled persons* under which the personality of the person can be illustrated, that is to say the *natural person* in the civil legal relations, the *offender* in the criminal relations, the *citizen* in the constitutional ones etc[23].

The consequence of the guilty breach of valid legal rules can only attract a correspondent to one of the forms of legal liability of the positive right, linked to the nature of the respective legal relationship, which will determine the nature of the trial as well, authorities in front of which the deed and the corresponding e*ntitled person* will be compared, but also identified by its individual personality and corporability[24].

The relationship between personality and responsibility, as a whole, and relationships between legal persons and forms of liability, determines the existence of multiplication ratios present in the analyzed circumstances.

Responsibility belongs to the personality of human individuality by assuming the *"value of those acts, whether of their own or of others, the consequences of which they appreciate knowingly as being desirable and whose realization they freely decide upon*"[25].

As an intrinsic attribute of the human personality, responsibility manifests itself above all as a free human presence as the presence of the will of the personality and the agent's choice as an expression of the individual's own requirements to the society[26]. In current social action, responsibility is manifested *"above all as an active presence of society as an expression of certain requirements that society imposes on the agent"*[27].

In this way, responsibility becomes the indispensable prerequisite of the *entitled person,* under the various normative aspects with which he presents himself in the legal relations. Consequently, this relationship is verified in the following statement: *"about responsibility – the quality of personality – are revealed a number of levels in one aspect, or species (moral, political, juridical) in*

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[23] Gheorghe Mihai, *Fundamentele dreptului...*, p. 28.
[24] Lucian-Sorin Stănescu, *op.cit.*, p. 189.
[25] Gheorghe Mihai, *Fundamentele dreptului...*, p. 35.
[26] Mihai Florea, *Conceptul de responsabilitate*, în Tudosescu I, Popa, C., Florea, M., *Acțiune, decizie, responsabilitate*, Academiei R.S.R. Publishing House, Bucharest, 1976.
[27] Ibidem.

another aspect"[28] and, therefore, *"the autonomous personality is free to express itself cas a moral person, as an entitled person, as a religious person etc"*.[29].

The dynamics of the branches of law in the system of Roman positive law represent the systemic and methodological framework of multiplication of forms of legal liability.

Legislative positive creation is not excluded from the determinant causes of the legal phenomenon in our research. As is well known, the right is a voluntary, identical and flexible creation, that is why *"an intervention of will is possible, intended to give the right rather a certain direction than another. This intervention may emerge from the legislator, just as it can be from the interpreters; it can therefore be done by voting a law or interpreting it with the help of legal technique"*[30].

Accordingly, the mechanism also applies to the legal creation of forms of legal liability, the argument based on the variety of forms of illicit conduct: criminal, administrative, commercial, disciplinary, etc., each of which has a certain social danger and thus, a form of private legal liability[31].

It is necessary to establish the forms of legal liability that take into account the generic social danger of the illicit deed and the nature of the sanctions specified by the violated legal norms. Therefore, *"depending on the criterion of generic social danger, the legislator sets out the forms of legal liability"*[32]. Thus, the concept of *"legal normative construction of legal liability"* is brought into discussion, understood as *"a mutual position and ordering of the norms of law, regulating legal liability"*[33].

In the view of the same author, this concept represents *"a stable juridical construction of the normative material by special types of links of its elements, schemes, its typical models, which encompass the legal material (...) and includes in itself not only the norms set in the legislation, but also the principles of legal responsibility, opinions on the foundations and limits of legal liability and the ways of using the possibilities of legal sciences in the fight against illicit deeds"*[34]. This strict normalization is specific to the types of legal liability belonging to the branches of public law, where the principle of the lawfulness of incrimination and punishment cannot be overcome.

In branches of civil law, such as *environmental law and medical law*, where liability is based on damaging facts, and these facts must be identified and qualified, the law provides only the procedural framework the form of legal liability to be set up in the future by the legal and case law doctrine.

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[28] Gheorghe Mihai, *Fundamentele dreptului...*, p. 35.
[29] Ibidem, p. 38.
[30] Nicolae Titulescu, *Eseu despre o teorie generală a drepturilor eventuale*, C.H. Beck Publishing House, Bucharest, 2008, p. IX.
[31] Gheorghe Mihai, *Fundamentele dreptului...*, p. 175.
[32] Ibidem.
[33] Dumitru Baltag, *op.cit.*, p. 216.
[34] Ibidem, p. 217.

The division of law in branches is a constant of its evolution, which, on the one hand, validates Mircea Manolescu's perception of the appropriation of adaptability of law and, on the other hand, the objective reality of this tendency and its relationship with the emergence of social relations , imposed it as an object of legal epistemology[35]. Therefore, the sharp division and emergence of new branches of law appears as an objective phenomenon, determined by the cyclical and ever faster change of social relations, and irreversible, until it encounters another contemporary phenomenon, namely, legal syncretism[36], of exogenous order (between the world legal systems) and endogenous (between branches of the same legal system). In equal measure, we observe the manifestation of some tendencies of resettlement as well as the emergence of new legal branches, due to the needs of the development of contemporary society (for example, ecological law)[37].

4. What are the stages of the process of multiplying the forms of liability?

When the logical distortions occur in the structure of the institutional category of legal structure, two phases of this multiplication process can be identified: the first, static (fixed), the second, mobile in nature, dynamic[38].

The first phase involves the separation of new forms of legal liability from traditional, already existing and functional forms, which include the loan or the acquisition of general principles, functions, general conditions of existence and involvement in legal liability, the exculpatory causes of legal liability, the limitation of legal liability, and the possibility that the new form may manifest itself within a pre-existing branch of law, by interfering with legal or legal institutions that are complementary and compatible in order to solve new legal situations[39].

The second phase, the dynamic one, is therefore of a mobile nature, which makes the transition from general to particular in the manifestation of legal responsibility through its specialized forms. Having a technical, procedural and practical character, this phase is dependent on the legal technique of positive law, either through legislative activity or through the case-law of the courts, or by the action of legal doctrines of conceptual configuration of new legal realities[40].

In terms of the first phase – the static phase of multiplying the forms of legal liability – the theory of law bases the constancy of responsibility on a series of common principles and functions, such as the principle of legal liability, personal liability, imputability principle, uniqueness of liability, of its celerity etc.

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[35] Ion Craiovan, *Filosofia dreptului sau dreptul ca filosofie*, Universul Juridic Publishing House, Bucharest, 2010, p. 322.
[36] Ibidem.
[37] Ion Craiovan, *Tratat de teoria generală...,* p. 422.
[38] Lucian-Sorin Stănescu, *op.cit.*, p. 214.
[39] Ibidem.
[40] Ibidem.

The dynamic phase, of a morphological nature, consists of a series of processes involving the separation from the common law and the creation of a new legal form, of a new creation of law (M. Manolescu) either by sliding, division, imitation, adaptation, interference, completion, etc.[41].

Specifically, the dynamic phase implies:

- the liberation and establishment of particular principles;
- the establishment of forms of legal illicit *sui generis;*
- the adoption of special normative acts regulating new forms of illicit activity and their identification as positive sources of new forms of legal liability;
- new regulatory methods;
- specific procedures for achieving these forms;
- the establishment and enforcement of new legal sanctions[42].

5. Conclusions

In the above presented we tried to bring into the analysis an obvious social reality: the new human relationships that must find their natural legal coordinates, including from the point of view of legal liability.

Novelty in the subject can be circumscribed to a number of four systemic properties of forms of liability[43]:

- *the duration of legal liability* – determined according to the law in time, from the date when the offense was committed and the limitation period or between the date of the offense and the exhaustion of the effects of the criminal conviction and the lawful rehabilitation of the convict;
- *the organicity* of legal liability, more specifically its organization and functioning according to the principles of law, adapted to the principles of the branch in which it acts;
- *the complementarity*, as a systemic property of legal liability. It translates into the legal space through the action of the components of the legal liability subsystem in a cumulative way;
- *the transversality*, means the process of adapting to change; it implies the capacity and tendency of forms of legal responsibility to break the patterns and limits of the branches of the right, and to develop rather horizontally, perpendicular to their topology within the system.

The results of this study can be considered positive, in our capacity to contribute to the development of the specialized doctrine, to the opening to new ontological horizons, the natural consequence of the new social and conceptual mutations registered in the contemporary society.

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[41] Ibidem.
[42] Ibidem, p. 215.
[43] Ibidem, p. 343.

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