Forms of Legal Liability Which Protect Public Interests

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FORMS OF LEGAL LIABILITY WHICH PROTECT PUBLIC INTERESTS

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Abstract
The liability issue involves conceptually two aspects: compliance and violation of the law.

The respect for the law is an essential and necessary condition for achieving the social functions of the law, and it excludes liability.

The infringement of law penalizes the responsible ones, restores the legal, troubled order, repairs the damages and isolates, if necessary, the dangerous elements for society. The penalty has a strong educational role in relation to the illicit act but also a general educational and preventive role, through the warning addressed to others on the consequences of the illegal acts and on the interests of citizens to observe the requirements of the legal rules.

The interests protected by the infringed legal rules may be of public and private order, therefore there are two categories of liability forms: forms of liability that protect the public interests and forms of liability that protect private interests. In the light of the latest legal rules doctrinal debates and solutions of jurisprudence, in this study we will focus on some of the forms of legal liability that protect the public interest: the constitutional law liability, the administrative, criminal, public international law, financial law liability.

We only outline, for example, their most important features, and the legal specific sciences to further detail the issue.

Keywords:
public interests, legal liability, public finances

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I. THE JUSTIFICATION OF THE STUDY

Among the reasons that justify the elaboration of this study, result of a collective effort, two have priority:

- The opportunity and necessity of approaching the legal liability in the context of the recent regulations adopted, especially in the sphere of civil and criminal law, which brought significant changes concerning the forms of legal liability and their interferences.
- The social importance and usefulness of a careful analysis, thorough, of the way in which the institution of legal liability, under its many manifestations has been restored and re-evaluated to face the imposed present realities by a legal order renewed and by the Romania’s status of European Community member.

It is a very broad topic and one of current interest, in the depth and extension of its coordinates, covers the entire sphere of the legal life. The complexity of the subject and its strict actuality, require first of all some general considerations regarding the institution of legal liability, focusing on the various form in which it behaves in the various fields of the social life.

Regarded in this way, the legal liability is circumscribed to a broader sphere of the social liability, which is nothing else but social sanctioning of the human attitude which deviates from the requirements of social norms. The normal and harmonious development of the human relations with other members of the community requires the adherence to rules of conduct, which have as explanation the fact that no one is allowed that by his conduct to break or disregard the rights and interests of another person. Depending of the inclusion or non-compliance with the rigors of the human behavior in the mentioned social norms, there are involved certain consequences at social level. In this way, the social and individual order is ensured only by respecting the social request exactly, which establish not only the obligations and the interdictions but also the permissions. In the case of deviation from these social rules, the order and social security are disturbed, which is likely to draw a legal liability, religious, political, etc..., which implies the obligation of the author to bear the consequences of the deed which is contrary to social norms.

Seen this way, the liability arises as a mean of insurance, of compliance and defence of the social norms of conduct which guarantees the existence of

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FORMS OF LEGAL LIABILITY WHICH PROTECT PUBLIC INTERESTS

society itself. Meanwhile the liability mechanism triggers the reaction of disapproval and social repression of such conduct.

In summary, social responsibility is nothing else but the social sanctioning of an attitude chosen by individuals, in cases of discrepancy between his behaviour and the sets of social norms.

In the plan of social life, although does not have an unitary content, the legal liability has equally, a multilateral character because it acts within the different forms of manifestation of the phenomena and social relations. In this way emerges a responsibility: moral, political, religious, and legal. For delimitation and detailing of this forms in the specialized literature has been proposed the concept of “responsibility” which expresses the consequences of social action, generally in its sphere: religious responsibility, moral, political, legal in their interference and reciprocity.

This is in the specialized literature, the term of accountability often used having an equal value with the term of liability. This view is not universally accepted, so it was argued the existence of a distinctive note between “liability” and social “accountability”. In this view, liability would be “assumption of the person of those values and acts which are desirable for him and for his community and whose achievement is decided autonomously, to which is adhering freely.”

From assuming of the man of his acts and deeds and of the social consequences, in other words from human responsibility, arises the accountability to the society in which man lives and towards assumption of the behaviour, when this does not harmonize with the social norms of human behaviour. Responsibility is related to the sphere of social normative, by integration or inconsistency of human behaviour patterns imposed by the various social norms, including the legal rules. In social plan “the idea of liability reminds that of warranty and obligation”.

Stopping upon the legal component of our social responsibility, we must emphasize firstly, the features through which is customized from the other forms of liability, imprinted by the fact that interferes in the case of breaking a law norm. “The only basis for liability is represented by breaching a law rule which triggers also the liability attached to them.”

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7 E. Iftime, op. cit. 2013, p.262  
9 E. Iftime, Ibidem  
12 E. Iftime, *Teoria generală a dreptului*, Ed. Didactică şi Pedaagogică, Bucureşti, 2013, pag.263. The author makes express mention that the new *Criminal Code* in the art. 15, al. 2, expressly states that "offense is only ground of criminal liability."
Therefore, legitimately the legal liability has been defined as “the obligation which is for a subject of law, to bear the consequences of his illicit act, stated by the law in force which was detrimental to an individual right”. In essence, this is the definition offered by the explanatory dictionary of the Romanian language, in formulating that in legal terms, the liability means the consequence resulted from the failure to fulfil a legal obligation\(^\text{13}\).

Also as a characteristic, must be noted the fact that legal liability is based not only a social appreciation (public opinion or collective), but an official ascertainment, made usually by specific authorities vested with determined powers. Therefore, the right determination of legal liability could not be fulfilled outside the qualified activity of the state authorities, of which intervention is necessary for “providing guarantees as completely to the citizens and to exclude the possibility of arbitrariness and illegalities\(^\text{14}\).”

In summary, the “interdependence which characterizes the relations between people requires as guaranty for the assertion of law, the existence of liability which accompanies the right, making its presence felt whenever the legal rules are violated, remaining in shadow as long as the right, in its action it is identical to itself”\(^\text{15}\).

II. UNITY AND DIVERSITY OF LEGAL LIABILITY FORMS.

As we shown before, the institution of legal liability is distinguished by its widely applicability, being used in the every spheres of legal life, in other words to all branches of law.

The experience shows that in any of the areas of the activity, performed by man in the society which involves prudence and diligence to prevent and avoid some social disorder and dysfunction, by breaking the rule of law the legal liability realizes its valences no matter of the purpose. This purpose can be reparatory or for sanctioning. Depending of the purpose and the penalties occurred are remedial or punitive. The sanctions aim is to clear the harmful consequences for a natural or legal person, by forcing the offender to cover the material damage caused. The purpose of sanctioning liability (repressive) is to re-educate the offender to support the consequences on his person, imposed by the social danger of the committed crime. These consequences can be economic, (fine, confiscation, etc) or non-property (deprivation of liberty, disciplinary sanctions, various prohibitions or disqualifications).

\(^{13}\) Dicționarul explicativ al limbii române, Edit. ACADEMIA R.S.R, 1975, P. 778. Same dictionary at p. 800 defines human responsibility.

\(^{14}\) Gh. Boboș, Teoria generală a dreptului, Edit. Dacia,Cluj-Napoca,1994, pag.287

\(^{15}\) Gh. Lupu, V. Lupu, Fundamentul și finalitatea răspunderii juridice, in Analele Univ. Iași,1978, pag.51
It may be noted that legal liability presents various forms with different particularities and namely the rules that govern them. Despite the diversity of forms in which it occurs, the legal liability presents in a global vision, a unitary character imprinted by the unique will which expresses the law norms which govern it.

The unity of the legal liability and of these forms is assured by a common set of rules in which are expressed certain indicative ideas or principles, in close connection with the general principles of the law. There are general rules, abstract, which are applicable in all cases where unlawful conduct is imposed in order to restore disrupted order and possibly material or moral damage repairs caused. In the light of regulations in force and the opinions of the legal doctrine are stated: the principle of legal liability, the principle of personal responsibility, the principle of uniqueness responsibility, liability principle of fairness and proportionality, the principle of subjective liability, the principle of celerity and promptness principle of legal liability.

Compared with the general principles which govern the law as a whole, the principles of legal liability are highlighted to be a separately category, because not all the rules into force at a given time have an impact on legal liability\textsuperscript{16}.

In addition, the principles of legal liability don’t have a purely judicial essence, because it supports the moral, political and religious influences.

In the light of these is realized the primary purpose of the legal liability, is to straighten the affected social balance, which had in the end a harmful result. Takes shape thereby the sanctioning function of the legal liability, seen in the broad sense of the notion which includes the isolation of some dangerous elements to society but also the repair of the possibly damage caused. As shown, the sanctioning function absorbs the restorative one of the material damage-determinant function and specific for the material and civil liability.

Having a preventive character in what concerns the committing new crimes, by the same persons or by the others, the reparative-punitive function is completed by the educative function. Through the last function takes place the changing of the sanctioned behaviour by his rehabilitation and reintegration into the existing legal order. Very important for achieving the valences of the educative function, is the proper application correctly, objective, fair, in compliance with the law and its limits. Likewise there must be made the distinction between the private educative function in relation with the guilty one and the general educative function which realize its mission by the warning addressed to every person about the consequences of illegal acts.

Based on the principles mentioned above, applicable to all forms of liability, each branch of science sets principles for the application of the law, in

case of committing illegal crimes: the constitutional law, administrative law, legal law, labour law, civil law, international law, etc.

Starting from the common functions and principles of each area of legal liability, we can identify content and a physiognomy of each form, determined by the specific of law branches. Delimitation forms of legal liability is an operation which involves certain criteria such as the degree of social danger of the illegal act, the nature of the social relations protected (or the harmed values) by the rules of law. This latter criterion is crucial for delimiting the forms of legal liability, because no matter if there are private or general interests protected by legislation, the liability relates to a certain group of social relations of a certain nature and importance, with own role within the norms of social order. These relations are required to be protected by appropriate legal rules through which are defined the conditions or particularities of each form of liability and sets the certain penalties.

What must be noticed is the fact that although the society is not interested in accomplishing of each forms of liability, such an interest is not always the same because within the values protected by the legal order there is a hierarchy in relation to their social importance. Certain forms of liability can be achieved in the interest of the whole society (administrative liability, legal liability) and other forms protect the group or individual interests (material liability, disciplinary, contractual, tort). In the light of the proposed objectives, in the present article we confine to highlight the features of certain forms of legal liability through which are protected the public interests (generally). We envisage the responsibility of: constitutional law, administrative law, criminal law, public international law.

III. FORMS OF LEGAL LIABILITY WHICH PROTECT THE GENERAL INTERESTS

III.1. Administrative responsibility

From the diversity of liability forms of administrative law, we stopped upon liability of public authorities concerning the administrative contracts. The new civil Code provides common law provisions relating to the legal person of private law, namely of public law, being brought although modifications of the contracts concluded by public authorities. Of actuality is the scope of the new civil Code upon the Law no.554/2004. Art. 1166 of the civil Code which states

17 In the old Civil Code this form of indirect liability had its source in the art.1000, par 3. The hypothesis reappears in a slightly modified form in the art.1373 of the new Civil Code, according to which”... is obliged to repair the damage caused by its employees or by any committed act of them, which are connected with the attributions or their individual functions.

that: the contract represents the will agreement between two or more persons with the intention to establish, modify or cancel a legal relationship. The art.874 of the new civil Code for example, covers one of the real rights listed in the art.551 of the new civil Code, namely the right of free use\textsuperscript{18}.

The administrative contract as a type of the contract in generally, involves discussions in what concerns the civil liability triggered in the case of non-fulfilment of the contractual obligations, even more within this category we talk about two types of clauses, the exorbitant and negotiated ones. Without being a contract of adhesion itself, some clauses are established solely by one of the party, the other having the right to accept or to refuse the conclusion of the contract, under the aspect of negotiable clauses, the administrative contract has a mixed judicial nature which can draw the civil liability in the event of non-fulfilling some obligations from the contract negotiations.

In listing of the main categories of contracts, the civil Code includes in a express regulation, the contract of adhesion, the framework contract and the consumer contracts (art. 1175-1777).

However there are categories of contracts which can be classified by adhesion, their content is provided as an annex of some Government decisions. This is the case of the public service contract for water supply and sewerage, of which content is provided in the Appendix 2 of the G.D. no 1591/2002 for approving the Regulation- setting of organization and functioning of the public services of water supply and sewerage\textsuperscript{19}.

As for the unilateral administrative acts, public authority liability in relation to the applicant, person of private law, represents an objective tort liability, without guilt based on the legal obligation of guarantee and the joint liability of the public authority and of the guilty natural person represents a civil tort liability based on guilt which must be proven.

Regarding the administrative contracts, both the sole responsibility of the public authority, and the solidarity one with a natural person, is a civil tort liability based on guilt which is presumed under the Article 1082 of the civil Code, by proving the existence of the contract and of a contractual obligation by the complainant.

The responsibility for damages caused by administrative contracts is based on the principle of respecting the fundamental rights and freedoms of the human, rights and freedoms guaranteed by the Constitution and the other laws. In case when the State produces harm to the rights or interests of a person, likely to cause damage, is obliged to material and moral repairs.


\textsuperscript{19} Published in the Official Gazette no.85 din 11.02.2003.
Based on the provisions of the art.52 of Constitution and reaching to those of the first article of the Organic Law of the administrative procedure, it was stated that any injured person in his rights or a legitimate interest, by a public authority through an unilateral administrative contract or by the failure to solve a legal request in a legal term, can address to the competent administrative court for cancelling right or of the public interest but also public and repairing the damage caused.

Regarding the legal nature of the public authorities liability, in the interwar period\textsuperscript{20}, was circulating the idea of risk responsibility, which starts from the idea that the operation of public services for individual, presents the risk to be injured and that these must be insured by the state against the risks according to the equality principle of all citizens before public duties.

For creating the reparation obligation for damage caused by unilateral administrative acts is necessary to fulfil the general conditions of tort liability: the damage, the illicit act and the causal report between the act and injury. In case of the administrative acts, must be distinguished in what concerns the necessity of proving the guilt between the assumption in which the legal claims are brought only against public authorities and those who request the responsibility individual, of the person who prepared, issued or signed the act which did not solved the request concerning a right or a legitimate interest.

In criminal matters\textsuperscript{21}, the legal person except the state and public authorities, are criminally responsible for the crimes committed in achieving the object of activity or interests in the name of a legal person. The public institutions are not criminally liable for the criminal offenses made to an activity which cannot belong to the private domain, and the criminal liability of the legal person does not exclude the legal liability of a natural person which did not participated to the commission of the same act.

If the request is directed only against the public authority, we talk about a civil liability without guilt, in which is not necessary the proof of guilt, unlike the second case in which is absolutely required proving the guilt. The liability for damages at the conclusion or performance of an administrative contract is in the both situations invoked above, a subjective tort liability based on the guilt which is presumed, in accordance with the art.1082 of the civil Code\textsuperscript{22}. The liability can be triggered both for damages caused during the conclusion or execution of the contract and for damages caused in prior step of its conclusion.

In terms of quality of a person which can be jointly and severally liable with the public authority, from the interpretation of the art.16 of the Law results that this can be both employed (contracted staff), and public servant. In the first

\textsuperscript{20} Constantin Rarinescu, \textit{op. cit.}, p. 85.
\textsuperscript{21} Art. 135 of the new Criminal Code.
case, the liability is engaged in the base of the article 270 of the labour Code, and the second according to Law 188/1999 which establishes a liability for the material damage but also moral.

Giving moral damages in the matter of contractual liability has been established according to certain principles listed in the specialized literature\textsuperscript{23}: the harmful act consists of defective execution or non-execution of the contractual obligations; the injury must be certainly, present and predictable unlike the financial liability where the damage must not have a character of predictability; we don’t talk about deferred interest, but only damages. In the case of the administrative contracts, as a particularity does not function ”ad literam” the relativity principle effects of the contract, since by law the effect of the annulment actions and the granting of moral damage can be introduced by third parties, interested social organisms-governmental structure, unions, associations, foundations and so on.

The liability of public authorities for non-pecuniary damage in the execution of the administrative contracts implies difficulties regarding the compensation awarded to the complainant, not actual compensations but a relief of the sufferings caused to the injured person. We consider with all these that is being imposed in the application of the mixed system of the civil liability field and of the contractual administrative liability, in the meaning of the non-property compensations (corrections, public denials) and the granting of compensations\textsuperscript{24}.

The last article of the enforcement proceeding under the Administrative Litigation Law (art.26), stipulates that the person who is the head of the public authority can direct actions against those guilty for non-fulfilment of the decision, according to common law. If the public authority is solely or jointly liable with the natural person to pay the established amount as penalties for not respecting the court decisions, or to pay material and moral damage, pays the amounts either to the state budget or the injured person, may pursue with recourse action against the person who refused the conclusion of the administrative contract or has committed another act which draws contractual liability.

Corroborating the provisions of the Law no.5542004 with those of the Staff Regulations and those of labour Code, results that the legal person can defend itself only by claiming the supervisor’s order or in any cases those expressly provided by the legislation. We consider that superior’s order is not likely to discard accountable on the offender, neither in the situation in which the official which executed or signed referred in writing upon the contract’s illegality or of any damage, as are stated in the specialized literature\textsuperscript{25}. The action in

\textsuperscript{23} Ioan Albu, Răspunderea civilă contractuală pentru prejudiciile patrimoniale, in Dreptul nr. 8/1992, p. 34.
\textsuperscript{24} In this regard, the Decision no. 2073/1992 of the Supreme Court of Justice, in Law no. 7/1993, p. 95-96.
\textsuperscript{25} D. C. Dragoş, Legea..., pag. 311; Oliviu Puie, Executarea..., p. 214.
recourse is in terms of the legal nature, a civil action of common law, to which are applicable all the rules relating to the fond and form of the liability, legal proceedings and appeals.

III.2. Responsibility under international law

Liability is a specific legal institution specific to any branch of law, being a general principle according to which any violation of an obligation, arising from a legal rule, triggers liability for the infringer and the obligation to repair the created damage. It is a specific institution to the domestic law but also for the international law. In the intensifying of international relations, the main role in regulating them belongs to the international law, which is a necessary tool in managing a contradictory world and therefore unique in the globalization process. The ideologists believe that general principals of the internal legal liability prevails alike the subjects of the international public law regime. One of the purposes of international law and of the international forums is the study and observance of international law, particularly the principle of sovereign equality of the states.

The increasing role of the international law and the diversity of the issues which belong to it, makes more present then never the problem of ensuring the optimal ratio between the theory and practice of international law. The international responsibility of the states cannot be interpreted as affecting the sovereignty of a state, like the main subjects of international law, it constitutes “de facto” the claiming of their international personality. The international responsibility of the states, a vast field and especially important for the international modern law, was bifurcated in two large divisions: the responsibility for prohibited acts by the international law which constitutes a development of the classical liability of the states, and liability for injurious consequences arising from activities that do not violate international law, but cause significant damage on the territory of other states as a new form of liability.

One of the elements which characterize the contemporary international law is the recognition of international responsibility as a stand-alone institution. Concerns for encoding the international legal rules about international liability of the states existed from ancient times. Thus, by examining some aspects of states liability for illicit acts, should be shaped the current developments of an important field of international law, approached by the classics of international law Grotius and Gentilius and continuing to evolve, the topic of international liability of the states, acquiring a complex and comprehensive character, illustrated by the continuous evolution of the state’s practice, of jurisprudence.

and of the doctrine and not the least, of the coding work which is conducted within the International Law Commission.

In the process of developing the norms of contemporary international law, namely the rules concerning the international responsibility, an significant contribution was brought by the international institutions from the years 1924-1930, but without a coherent result of regulations. However, this work resumed under UN since 1949, so a decisive role in this regard was the adoption by the International Law Commission in 2001 of the Draft articles regarding the responsibility of the states for internationally illicit acts (called the Project of articles or Project CDI), project annexed to Resolution 56/83 of the UN General Assembly, although the actual coding work began in 1955. Developing this project lasted about 46 years, at this process taking part a large number of governments, which presented its objections to the written articles by the Commission. Often the Governments positions were diammatically opposed, which made the General Assembly to postpone the adoption of the project during the regular session. This document is the result of a long work of CDI and of many hesitations, where have been developed a number of principals provisions of the international law responsibility as one of the main branches of the positive international law, including the formulation of the principles and its rules. Finally, CDI has decided to deal with the unlawful act and the forms of states liability, and not the violations of various rules and on this basis, the Commission adopted in 1996 a projection of the draft articles, which has been sent to the UN General Assembly to be submitted to the states analysis.

The international society consists of states recognized as sovereign states in their territorial sphere, which means that there are no supranational courts which may influence their internal legal system or can determine their political regime. Under international law, the sovereignty determines the limits in which the state establishes its own constitutional prerogatives and priorities. This rule is consecrated in the UN Charter, which enshrines in the art 2, par 1 the principle of equal sovereignty of the states. This principle is often called the principle of states sovereignty. The UN Charter, art 2 par 1 uses the term “sovereign equality” in the sense that states sovereignty which implies that the intrinsic elements of the state supremacy on international plan and its independence of this one in relation to other states, include equal rights of the states as a complementary principle.

The principle of states responsibility

In international law the accountability of states is as old as that of their equality. Nowadays the international liability law remains to a large extent customary. Intended to reconcile the various interest and sovereign wills of the states, this law is quite controversial. Because the means to compel a state to comply with the international law norms don’t have any coercive force for the intern law, the states are entitled by the virtue of their sovereignty, too ask to other states the repairing of the damage caused by these by the breach of an international obligation.

Individual violations of the international law can range from minor breaches to illicit acts which put in danger the existence of some peoples, their integrity and independence of some states or may concern violation of some international obligations by a state, by several states or by the international community as a whole. Therefore, the norms, rules and principles and the institutions which should govern the international liability of the states, represents a major importance for imposing some norms of international law in the conduct of states. The institution of states responsibility presents the consequences which come for a state from breaching the international obligations. Inside the international community no state should appeal to discretionary actions, because these can develop as a state only in the accepted limits and recommended by the international law.

Constitutive elements of international responsibility

Taken from the theory of general liability from the states intern law, the constitutive elements of the liability are considered to be the following:

• Unlawful conduct- breaching of a rule of international law
• Attributability of the unlawful conduct of a subject of international law, means that international responsibility is triggered by the cumulative meeting of these two elements:
• The damage- is the third added element by the international doctrine and especially by the draft of articles of the International Law Commission, representing an essential condition of triggering the international responsibility of the state\(^{30}\)

According to the articles stipulated in the CDI project, any international act of a state which generates the international responsibility. Such a fact exists from the moment in which a conduct consisting in an action or omission can be attributed to that state according to the norms of international law when this conduct represents a violation of some international obligations of that state. An

\(^{30}\) In Adrian Năstase, Bogdan Aurescu, op. cit., p. 166 și Raluca Miga-Beșteliu, op. cit., p. 36.
act of a state can be regarded as internationally illegal, only by the international law\textsuperscript{31}. The international jurisprudence has recognized the international responsibility as a principle of international law. This qualification of the illicit international act is not affected by that given by the intern law of the respectively state. This provision is also recognized also by the judicial practice. For example, in the approval regarding the treatment of national Polish in Dantzig of 1932 (CPJI, Series A / B, I-44), the Court established that “according to the universally recognized principles, a state in its relations with another state can make reference to the international law. The state cannot refer to its own Constitution, to dodge from the obligations assumed in the base of the international law” \textsuperscript{32}. Another example of qualifying of the international illicit act emerges from Southern Pacific Properties Ltd. Case Against Arab Republic of Egypt, the International Centre for Settlement of Investment Disputes, Case of 1993 which specifies that”.. legal or illegal according to Egyptian law, those documents were acts of the authorities, including of the highest executive authority of leadership... The principle of international law which binds the Court is the one which establishes the international responsibility of the states...” \textsuperscript{33} This rule was reaffirmed by the international Court of Justice (ICJ) of UN and was fixed in the art. 27 by Vienna Convention regarding Law of Treaties of 1969\textsuperscript{34}. From these examples it appears that to be assigned to such an act, the conduct must belong to an authority which is according to the national law and acts inside it, no matter the position of state’s organization if is authorized to exercise the elements of the governmental authority if acting as such in the respectively case.

III.3. The responsibility generated by breaching the rules which govern public finances.

Among the forms of legal liability which protect the public interests( general) an increasing importance is given by liability generated by breaching the rules which govern the public finances.

\textsuperscript{31} The article 3 of the Draft articles on State responsibility for international illicit acts, adopted by the International Law Commission of the 53rd session (2001) states that „the classification of an state’s act as being international illicit is governed by the International Law. Such a characterization is not affected by the characterization of the same act as being illicit, by internal law” – in A. Năstase, B. Aurescu, I. Gâlea, op.cit., p. 391.

\textsuperscript{32} Retrieved from www.icj-cij.org/cij/decissions/serie A/B no.44/01/Traitement_nationaux_polonais_Avis_consultatif

\textsuperscript{33} Details concerning Southern Pacific Properties Ltd. Case Against Arab Republic of Egypt, the International Centre for Settlement of Investment Disputes, Case of 1993 can be seen in Beatrice Onica-Jarka, Catrinel Brumar, Daniela-Anca Deteseanu, Drept internaţional public. Caiet de seminarii, Ed. C.H. Beck, Bucureşti, 2006, p. 179 and next

\textsuperscript{34} A. Năstase, B. Aurescu, I. Gâlea, op.cit., p. 121.
The specific physiognomy of this form of liability can be explained by the variety and complexity of the relations of this area, which are regulated by legal norms of the most various branches of law, involve the accountability provided by these. What should be stressed since the beginning is that in specialized literature is drawn attention upon a form of liability with substance and name specific to the public finance law. However, a thorough and careful of the legislation of the public finances could lead to the idea of a complex form with extensions in other forms of responsibility which should coagulate a system of sanctions which fulfil functions specific to public finances.

Moreover it is widely recognized that in the sphere of public finances is likely to appear the most forms of legal forms that the legal Romanian system knows. Delivering these forms and identify specific penalty is based on the rule of law infringed, by the quality of the subject, the severity of the act made or by the produced effects.

The most serious form of legal liability is of course the criminal contravention liability which competes with the contravention liability interfering when required with the material liability under civil law or labour law. Therefore will make some brief references to criminal liability, contravention and material of the sphere of public finances.

a) The criminal liability is estimated to be the most serious form of legal liability, feature that is kept in concerning the public finances. It involves rights belonging to the society exercised through the competent state authorities to take coercive measures by applying a punishment to a guilty person of committing and offense. Strictly legal criminal liability is a legal constraint configuration generated by an offense. This report is established between the state and the offender having as content the right of the state to punish the offender, to apply the sanction under the criminal law, to constraint him to execute it, as the obligation of the offender to answer for his act and to submit to the penalty imposed.

Specific to the criminal law is the fact that any violation of the law is not punished unless it is incriminated by the criminal law. In the area of our concern, the criminal liability occurs where breaking the provisions relating to the income and expenditure budget collection, meets constitutive elements of the crimes under criminal law or financial law which contains financial provisions.

In the sphere of public finances the most common crimes are: crimes committed in concerning to public expenditure, crimes committed in the...
connection with the local debt\textsuperscript{38}, crimes committed with the accounting\textsuperscript{39}, crimes committed by breaching the regulations of the social insurance\textsuperscript{40}.

As for contravention penalties, these are attracted by the deviations from the financial discipline imposed by the rules of public finances. Financial activity, especially the budgetary activity is an activity of organization and execution of the specific regulatory provisions related to the financial year, achieving revenues and budget expenditures.

Among other things, the mentioned rules require the obligation of a regular examination of the implementation of the state budget and establishing the measures for the full realization of income of the state budget. As for the expenditures, these must be related with the level of fulfilment of the correlative obligations, respecting the law and in conditions of increasing efficiency. In fulfilling of these obligations, the financial bodies have the right to apply contraventions.

The existence of a wide range of violations of public finances, which attract sanctions imposed by grouping them, according to the area in which may occur. As we have outlined there are three large categories of offenses which may be identified in specific subdivisions.

1. In the category of offense committed strictly to the public finances subscribe: the offenses committed in relation to the way in which the public expenditure are conducted by violating the basic principles regarding the conduct of public expenditure; offenses committed to the regulations concerning the payment of the salaries; contraventions concerning public expenditure; contraventions to the regulations concerning the public investments; contraventions to regulations regarding the use or management of state property or public revenue and administrative units; contraventions committed on public debt regulations.

2. A number of contraventions can be committed by breaking the regulations concerning the Treasury regulations. So the performing by a public institution of receipts and payments in other accounts than those established by law constitutes a contravention and is punished by fine. Likewise the using of the

\textsuperscript{38} O.U.G. no. 64/2007 on Public Debt, published in the Of Gazette, Part I no. 439 of 29 June 2007, art. 9 par. 1 and art 10 par. 1
\textsuperscript{40} Law no. 263/2010 on the unitary public pension system of the Of. Gazette no. 852 of 20 December 2010, art. 143; Law no 346/2002 on the insurance against work accidents and occupational diseases, published in the Of. Gazette no.454, of 27 June 2002, the art. 122, 123; Law no.76/2002 on the unemployment insurance system and employment stimulation published in the Of. Gazette no103, of 6 February 2002, art. 111, 112
incomes in the accounts opened at the State Treasury by the economic agents who receive money from the public funds as a result of the goods or services in favour of public institutions in other order than that fixed by law constitutes contravention under the Ordinance no.146/2002. 41

3. A large number of contraventions can be committed by violating the regulations concerning social insurance. The most important are: offenses under Law no.263/2010 regarding the unified public pension system; offenses under Law no.95/2006 on healthcare reform; contraventions under Law no.76/2002 regarding the unemployment insurance system and employment stimulation; offenses under Law no.346/2002 on insurance against accidents at work and professional diseases.

CONCLUSIONS:

The issue of the legal liability forms which protect public interests must be analysed in a more general context, broader of the components of legal liability, globally analysed, in the light of the social functions of the legal liability which are only a projection of the social mission of the law to establish and maintain a legal order. But the legal order is the result of implementing the law provisions in the development and deployment of social relations. Therefore, the legal order circumscribes within a social order founded on the regulation of interpersonal relations with the help of some normative rules: political, moral, religious, legal. Depending on the inclusion or non-compliance with the rigors of the mentioned social norms there are entrained some social consequences, reflected in the forms of social liability shaped according to the nature of the breached rules. Among them, the legal liability occupies a special place, contributing optimally to ensure public order but also individual.

From this perspective by some of its forms, legal liability appears as a mean of insurance, compliance and defence of the social norms which guarantee the existence of the society itself supported by the public interests. Therefore, some forms of legal liability anticipate these public requests. Moreover, the

41 O.U.G. no 146/2002 on the formation and use of the resources via the State Treasury republished in the OG no.295 of 16 April 2008
42 Law no. 263/2010 on the unitary public pension system, published in the OG. no 852 of 20 December 2010, art. 144.
43 Law no. 95/2006 on healthcare reform, published in the OG no. 372 of 28 April 2006, art. 305
44 Law no 76/2002 regarding unemployment insurance system and development of employment stimulation, published in the OG no.103 of 6 February 2002, art. 113
violation of public policy triggers the reaction of social disapproval and repression of the illicit human behaviour through specific mechanisms and procedures.

Since there is a legal liability which can be done in the interest of the whole society, compared to the liability which protects the group or individual interests, this study insisted upon those forms of legal liability which protect through the exercise of their specific functions the public interests. The most important forms of legal liability, of this kind are: liability of constitutional law, liability of administrative law, financial and tax liability law, international law etc.

What has been proposed and succeeded in our opinion, in this study, is to highlight the particularities of each of the forms of legal liability brought into question, of the new elements brought by the newest regulations in these areas. Of course, where appropriate we refer and made known the reactions of the legal doctrine and of jurisprudence towards the reformed elements of the legislation.

REFERENCES


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