THEORETICAL ASPECTS REGARDING LEGAL RESPONSIBILITY IN ADMINISTRATIVE LAW

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Abstract
Currently, in specialized studies, the idea of responsibility and legal liability of the state to the citizen is increasingly addressed as an inherent condition of the rule of law. By essence, this implies the responsibility of public authorities for the way in which state power is exercised. Despite its importance and actuality, the given problem is little studied at the scientific level, especially in our country.
Over time, the responsibility, initially non-existent, of the state for the mistakes of its agents, became primary, and their responsibility became secondary. It is clearly preferable to hold the state responsible more and more, because it offers a much faster and safer guarantee of recovery of the damage, and the liability for errors is a patrimonial one. At the same time, the state is responsible for the training of people, its agents who represent it, so that, through this training, the existence of any deficiencies in their training must be avoided.
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Responsibility and liability. Conceptual clarifications

Legal liability represents the concrete liability of the legal or natural person, established by a competent authority (administrative or judicial) within a procedure established by law, by applying a sanction (civil, disciplinary, contraventional or criminal) and by canceling the illegal act, removing the illegal state of facts, the restoration of the previous state of facts and the establishment of compensations for the repair of the damage caused by the illegal fact. It should not be confused with the sanction; the non-concrete sanction has a generic, hypothetical character as an element of the legal norm and is only materialized when the legal relationship generated by the illegal act or fact committed by a natural or legal person, act or fact causing damage is born.

Legal responsibility and liability under administrative law are governed by the specific principles of these institutions: hierarchical subordination, the supremacy of the

public interest, the unconditional fulfillment of the public service, the swiftness of the administrative act, the concordance between competence and responsibility, the exhaustion of administrative ways to reach the transformation of responsibility into legal liability. The conditions of legal responsibility and liability under administrative law are set unilaterally, based on and in execution of the law.

In the absence of a general theory on responsibility, as well as the ambiguous use of the notions of "responsibility", "responsibility" and "compulsion", we will make some considerations, trying to clarify the content of these concepts to check if they have the same meaning, and if not what would be the meanings and usefulness of each of them.

In fact, the term "responsibility" includes two Latin words: the verb "spondeo", which means to solemnly promise, to guarantee, to answer for someone, and the noun "res", which means thing, reason, cause, reality, business, matter, interest, advantage, etc. We draw the conclusion from here that the notion of legal responsibility means the bond established by a solemn promise or by law to do or not do something, or to bear something in a business, matter, work, reality, etc., as a result of violation of previous obligations.

In the specialized literature, opinions regarding legal responsibility are different. Alessandra Levi shows that legal responsibility is nothing more than the obligation of the subject to fulfill a duty (an obligation) that replaces a previous obligation that was not fulfilled [1].

Decenciaere-Ferrandiere shows that "responsibility can be defined as a set of obligations that are born in the charge of a subject due to the fact, action or omission of the one to whom it is imputable. When these obligations are sanctioned by positive existing law, the responsibility is legal, and in the other cases the responsibility is only moral". [2]

In another opinion, responsibility would be a coercive legal relationship with legal sanction as its object. [3]

According to other authors, responsibility is a form of social reaction, of repression, coming from society for some reprehensible actions imputable to the person. Of course, it is a reaction institutionalized and organized only by a law within the limits and for the facts or acts provided for by the law. [4]

In conclusion, compared to the above, we believe that a precise use of the concepts of responsibility and liability is required, both in positive law, in judicial practice, and in legal doctrine. However, the implementation of the constitutional concepts of "guarantee-protection" is closely related to the way of regulating responsibility, liability and legal constraint, as well as to the way of their implementation.

Fundamentals of legal liability

In the doctrine, a fairly large number of different ways of interpreting legal liability have been formed. Among the most widespread, we could name the following: legal liability is a sanction, a punishment that provides a measure of coercion of the delinquent by the state; the legal obligation of the person guilty of committing a crime to bear the punishment; legal relationship in which the delinquent endures a coercive measure applied by the state.

Something more general than the previously mentioned conceptions is the conception of legal responsibility as a complex phenomenon that includes retrospective and positive aspects. In law, there are other explanations of legal liability, but, in one way or another, they all come down to one of the four mentioned above.

We will start with the first interpretation – legal liability is a sanction (a punishment). The admissibility and validity of the understanding of legal liability as a sanction that provides for a repressive measure, a punishment applied by the state on the delinquent, as a rule, are related to the fact that sanctions constitute a mandatory element of the institution of legal liability. [5]

Most authors link the notion of legal liability with state coercion, based on the legal assessment of the behavior of the subject of the violation and which is expressed by establishing negative consequences for the subject of the illegality, consequences in the form of limitations of a subjective, personal or patrimonial nature. Only the tandem of these three elements gives rise to legal liability.

In specialized literature, we have various theoretical approaches to the phenomenon of legal liability, which basically keep the same essence, liability is a constraint and a sanction. For example, Prof. Gh. Avornic, presenting various approaches to the concept of legal liability, mentions, in particular, that "legal liability is a coercive measure applied

by the state for the commission of an illegal act, expressed through the application of material sanctions, organizational or patrimonial". [6]

A. Băiesu also defines civil liability as a form of state coercion that consists in delegating any person to repair the damage caused to another by his illegal act provided by law or contract. [7]

Professor I.Craiovan comes up with another way to express the essence of the notion, invoking the repressive and educational character of the law which aims to highlight "its capacity to induce a compelling collective reaction towards the one who violates the rule of law and whose anticipation is in a position to induce respect and compliance on the part of society members who do not want to incur legal sanctions". [8]

C.Stătescu and C.Bârsan believe that legal liability has an essential characteristic through the possibility of applying, in case of need, state coercion. [9]

Generalizing the opinions presented, we highlight three important points regarding legal liability: first, liability is inextricably linked to illegality; secondly, it is expressed through the application of state coercive measures to the subject of the illegality; thirdly, the very act of application of coercive force contains the condemnation of the principal's actions. This is the distinctive feature of this approach and this, in the final analysis, explains the specific character and the extent to which legal liability is included in the process of regulating social relations.

If legal liability as a sanction is a domain of objective law, then liability understood through the lens of legal obligations is already the domain of subjective law. That is why, in the latter case, it is researched mainly in the system of subjective law categories and is expressed by the notion of legal obligation.

Generalizing the opinions expressed regarding the two approaches to legal responsibility, we could apply the following logic: if it is true that the objective right cannot be realized without the subjective right, because then it loses the meaning of its existence, then we must recognize that the importance of the responsibility legal as a punishment will be reduced to zero if it lacks the form of legal obligation to bear the respective measure of coercion by the state for the crime committed. [10]

Therefore, it can be stated that the variants, presented previously, of the perception of legal responsibility are not mutually exclusive, but on the contrary, they complement

each other, presenting an important direction and step in its knowledge. These two variants reflect nothing but the levels of the actual manifestation of legal liability as a legal way of regulating people's behavior in the field of law.

Legal liability in administrative law

The rule of law, par excellence, represents a rule of conduct, so a set of correlative rights and obligations, which may be respected or may be violated. Violation of the rights of other subjects of law, non-compliance with the obligations incumbent on a subject of law, naturally raises the problem of the consequences of such conduct.

As shown in the doctrine, the culpable violation of official duties by civil servants attracts disciplinary, contraventional, civil or criminal liability, as the case may be. The four forms of liability are not mutually exclusive, they may be applicable simultaneously, if the deed meets the conditions of some forms of legal liability at the same time. [11]

For a long time, the liability specific to administrative law was traditionally interpreted by referring to notions and institutions specific to civil law, or, as the case may be, criminal law. For example, the patrimonial liability of the public administration was qualified by referring to tortious civil liability, the administrative violations committed by the administration staff represented violations of labor law, sanctioned as such.

Practically, the forms of liability specific to administrative law have not defined their identity for a long time, there are even now authors who challenge them and controversies, at the doctrinal level, but sometimes also legislatively and jurisprudentially, regarding their existence and the legal regime that governs them .

Administrative legal liability is explained by some theorists of public law starting from the concept of coercion. Thus, administrative coercion represents the set of measures taken by the public administration authorities under the law, with the use of state power and, if necessary, against the will of some people, in order to prevent the commission of antisocial acts, to defend the rights of citizens, as well as for to sanction the violation of the rules of administrative law. [12]

If administrative coercion aims at self-regulation of the social system, liability aims at restoring the violated normative order, as well as condemning the negative act and its author.

Legal liability is defined in Romanian legal literature as a complex of rights and obligations which, according to the law, arise as a result of the commission of illegal acts and which constitute the framework for the implementation of state coercion, through the application of legal sanctions in order to ensure stability social relations and guiding the members of society in spiritual respect for the rule of law. [13]

Depending on the type of legal rule violated, a distinction is made between illegal acts that constitute the basis of a certain type of liability and legal sanction. So, the violation of a legal norm of administrative law attracts administrative liability for the author of the illegal act.

In the current legislative regulation, we can speak of three large categories of administrative illegality: the actual administrative illegality, the contraventional illegality and the illegality causing material and moral damages.

According to them, there are two forms of liability characterized by repressive sanctions - administrative liability in the narrow sense and contraventional liability as well as a form of liability characterized by reparative actions - the liability of public administration bodies for the damages caused by their illegal acts or administrative-property liability.

By *administrative liability in the narrow sense*, we understand the legal situation that consists of the complex of related rights and obligations, content of the sanctioning legal relations, established, as a rule, between a public administration body or, as the case may be, a public official and the author of an administrative offense (state body, civil servant, non-state structure, natural person) which does not constitute a contravention. [14]

We are still in the situation of administrative liability in case of violations of the criminal law norms, which by their concretely reduced social danger justify the application of administrative sanctions, provided by the criminal code.

When in the sanctioning legal report the active subject and the passive subject are in the sphere of public authorities, civil servants, dignitaries, as the case may be, we are in the case of *administrative-disciplinary liability* or *disciplinary liability*, which has its objective foundation in the violation by a legal subject of a administrative disciplines, in

general of the state discipline, respectively of the discipline in the administrative apparatus of the local community. [15]

The name of the administrative-disciplinary sanctions is diverse, it can be *fine, reprimand, warning, salary reduction, demotion, dismissal, termination of mandate*, etc.

The administrative-disciplinary liability is distinct from the liability arising from the conclusion of an employment contract, even if some sanctions have the same name in labor law. [16]

In the doctrine, the sanction is defined as a consequence of violating a rule of conduct prescribed or sanctioned by the state. All measures taken in the event of violation of the norm, regardless of whether they have a punitive, preventive or reparative character, bear the generic name of "sanctions".

The importance of the nature of the measure, in the case of administrative liability, is related to guilt and the personal nature of liability. Punitive sanctions (such as a fine) are applied only in the case of illegal conduct committed with guilt (intention or fault) and must be considered as having a personal character, so that they cannot be transmitted according to the model of civil obligations. Sanctions of a reparative nature (payment of the amount due and penalties, restoration of the land to its original state, etc.) are also applied in the case of committing a culpable violation of the rules, but they are transmissible according to the model of civil obligations if it is a matter of repairing a damage. Sanctions of a preventive nature (obligation for medical treatment, application of customs seals, etc.) are usually objective in nature, so they can be applied in the absence of any fault and cannot be transmitted to other people since their purpose is to stop the person to which the sanction was applied from the exercise of a certain dangerous behavior for others. [17]

Administrative sanctions, other than contraventional ones, must respect the principle of legality, a fundamental principle of the entire activity of the public administration. The sanctions, the violations of the rules for which they apply, the competent authority to apply the sanction as well as the procedure for applying the sanction and the possibilities of challenging the applied sanction must be expressly mentioned in the normative acts.

Examples of administrative sanctions are administrative fines, penalties or increases, withdrawal of an advantage obtained illegally or an advantage obtained without having met certain requirements, stopping the manufacture of certain products, unavailability of certain vehicles, etc.

The administrative sanction is applied through an administrative act issued in compliance with all conditions regarding legality, competence, procedure, form. The procedure for contesting in court the sanctioning administrative acts is the one described by Law no. 554/2004 of administrative litigation, if no other procedure is expressly specified in special normative acts.

Aspects regarding the deontology of the civil servant

The phrase "deontology" comes from the Greek words „deon", „deontos" which means „what is right" and „logos" which means „science". Initially, it was identified with morality and we find it in the work Deontology or the science of morality by the philosopher and jurist Jeremy Bentham.

Deontology, by the specificity of its research object, is at the interference between law and morality. It can be defined as representing *the set of norms that outline a certain type of private professional behavior*.

The deontology of the civil servant can be defined as representing *the totality of the norms that govern the professional and private behavior of the civil servant, by virtue of his status as holder of public authority*. [18]

The exercise of a public office falls into the category of those professions that present the greatest potential risk that, by the way they take place, affect those with whom its holder comes into contact. Most of the public functions assume a direct, continuous and immediate relationship with the beneficiaries of public services.

In his activity, the civil servant carries out the provisions of the law, which are not always properly understood by those who fall under them. From here arises a first problem, which concerns the different way in which the law is perceived by those who implement it and those in whose consideration it is implemented.

Thus, as far as the liability of the civil servant is concerned, it intervenes both for the violation of the professional obligations deduced from the public office report, but also for

the violation of the norms of behavior, inside and outside the institution. Disciplinary misconduct is conceived as an act committed with guilt, which violates both professional obligations and obligations that are directly or indirectly related to them, aimed at his socio-professional and moral status.

The norms that govern the professional and private behavior of civil servants are in turn structured according to the social relations that are taken into account, as follows: [19]

1) relations within the public service (with hierarchical heads, with other civil servants, with the entire staff and with subordinates);

2) relations with the other legal subjects, outside the public institution, beneficiaries of the civil servant's action;

3) relations with the staff of public institutions and other legal entities with which the institution where the civil servant is employed collaborates;

4) relations with civil society, as a whole;

5) relations with other state institutions

Addressing the matter of responsibility, the interwar authors analyzed the responsibility of the state and its officials as one of the forms of manifestation of responsibility in administrative law. It started from the thesis that the activity of the administration can often be a cause of damage for individuals who come into contact with it, which determines the intervention of their material liability alongside the disciplinary one, which is attracted by the violation of some norms of professional behavior , of order and discipline in a public service.

The administration bases its entire activity on the application and observance of the law, the principle of legality being a basic one in the administration.

Liability, in each of the forms it takes, is determined by the commission of an illegal act, by the violation of the value system established by the city and legally consecrated, and it is natural that the one who violates the right should answer for his act because the right is the representative of a sacred ideal , is the bearer of the highest aspiration that society possesses, that of justice and morality.

The legal regime of the public office also includes the issue of its liability, the purpose of which is to repress the mistakes committed by public agents. But this is only one of the purposes of liability.

We retain the thesis expressed by the current doctrine of public law [20], that in whatever branch of law we place ourselves, liability has two purposes:

a) to restore the violated legal order, determining the return to the state of equality, disturbed as a result of the commission of an illegal form;

b) to express a negative reaction from the authority towards the author of the illegal act, with the aim of making him aware of the meaning of the act, to regret it and not to repeat it in the future, to eliminate it from his behavior.

Thus said, through liability, both the preventive and the punitive purpose is achieved.

The legal status of the official is established in a general and impersonal manner by laws and regulations. [21] If every subject of law must show responsibility in what he does, the official must be fundamentally responsible in fulfilling his prerogatives. Liability precedes liability and can eliminate it.

The civil servant must make him receive, in his behavior, responsibility. For him, there is no more important value than the fulfillment, with a conviction resulting from a rational understanding of the phenomena, of his tasks. He must complete his duties, not because he is required to do so, but because he is convinced that they represent his professional purpose. [22]

As for the civil servant's liability, it intervenes exclusively when an antisocial act has been committed, but it must be distinguished between two categories of antisocial acts: [23]

a) those committed as a simple citizen, which are not related to the service and which attract the common right of liability;

b) those committed in the exercise of the prerogatives of the service and/or in connection with it, as an employee or civil servant, which determine the intervention of the forms of liability specific to the employee and civil servant.

In order to identify the forms of liability of the civil servant, the first element that must be taken into account concerns the source of the obligations violated by the act committed, being:

1) about obligations arising from the job report;

2) about obligations that exceed the public office report.

The main element that distinguishes the liability of the civil servant from the liability of the employee is the following: the liability of the employee intervenes exclusively for acts that are committed during the service or in connection with the service, by violating some obligations arising from the individual employment contract.

Specific to the facts that attract the intervention of the civil servant is their cause, the fact that they can intervene:

1) during the exercise of public office;

2) in connection with the exercise of the public function;

3) by moving away from certain norms that do not have a direct, immediate connection with the function, but which affect the image and prestige of the respective civil servant.

Any legal liability intervenes, as I have already specified, when a certain form of illegality has been committed, that is, when an act has been committed that violates a rule of law.

Since we are talking about the branch of administrative law, this act bears the generic name of administrative illegality.

Depending on the committed deed and its consequences, in doctrine [24] three major forms of liability specific to administrative law were identified.

A. The commission of the actual administrative offense, which is called disciplinary misconduct, determines the intervention of the first form of liability from administrative law, namely disciplinary liability.

B. The second form of administrative illegality is called contravention and determines the intervention of the second form of liability specific to administrative law, namely contraventional liability.

C. The last form of illegality is the illegality causing material or moral damages, the commission of which also attracts the last form of liability belonging to the branch of administrative law, namely administrative patrimonial liability.

We say „material and moral damages” because Administrative Litigation Law no. 554/2004 provides for the first time in Romanian legislation the possibility that the

plaintiff's action may aim, equally, both at the request of compensation for the material damages suffered, and at the repair of the moral damages suffered by the plaintiff. Thus, art. 18 paragraph (3) provides: "In the case of settling the claim, the court will also decide on the compensations for the material and moral damages caused, if the plaintiff requested this".

We specify that not all contemporary authors recognize the three forms of liability, whose existence, in the current doctrine, was substantiated by Professor Iorgovan, and whose conception we rely on. Thus, professor Rodica Narcisa Petrescu, analyzes only two forms of liability, contraventional liability and patrimonial liability of public administration authorities, in order to recognize, within the liability of civil servants, the existence of a disciplinary liability specific to them. [25]

Conclusions

The legal-administrative relationship is a social relationship regulated by the rules of the administrative law that takes place in connection with the executive function of the state. It is characterized by the fact that at least one of the subjects of the legal relationship is a public authority having a superior position to the other subject of the legal relationship, based on the exercise of public power. Due to the lack of equality of positions between the subjects of the administrative legal report, it differs essentially from the private law (civil law) legal report.

Legal liability is a constantly evolving phenomenon. Analyzing the forms of legal liability, we can capture the trend regarding the analysis of legal liability: currently, the modern conception of legal liability consists in recognizing the liability before the law not only of the person but also of the state, its organs, and civil servants.

According to the provisions of art. 52 of the Constitution "the person harmed in his right or in a legitimate interest, by a public authority, through an administrative act or by the non-resolution of a request within the legal term, is entitled to obtain recognition of the claimed right or legitimate interest , canceling the act and repairing the damage (...)". This represents the constitutional basis for the liability of public authorities for the injuries caused to citizens by violating their rights or legitimate interests, in conjunction with art. 21 of the Constitution regarding free access to justice.

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