

STUDY ON LEGAL LIABILITY – SPECIFIC EXPRESSION OF THE IDEA OF SOCIAL LIABILITY IN THE EUROPEAN CONTEXT*

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Abstract

The aim of my study is to make a conceptual analysis of legal liability as *specific expression of social liability* which ensures the enforcement and compliance of social conduct governed by legal rules established, on the one hand, in order to protect general and particular interests and, on the other part, to punish non-compliant behaviors. We note that liability is an instrument of coercive force of the state in countering irregular behavior, through which ensures the law – the national goal in the context of Romania's integration in the European Union.

Keywords: liability, legal, social, coercion, relation, behavior

Man, as a human being, known as such from Aristotel's paper named “Politica”, is enjoying the authority of law for protecting his rights, this being an essential condition described by The Universal Declaration of the Human Rights and also having the freedom¹ to configure his sphere of activities compared to the subjective rights of those with whom he inevitably interacts. In other words, as it is appreciated in both the Romanian² and foreign doctrine³, the man that is free is the one that has conscience of the consequences of his acts, being held responsible for them.

In configuring the general idea of individual freedom we must underline the fact that it cannot be absolute, as Montesquieu⁴ considers: “freedom is the right to do what the laws allow; and if a citizen could do what the laws prohibit, he would lose his freedom because everyone could do the same”. Anyhow, man has a variety of means to satisfy his interests and the limit of every right is found in the freedom of the others⁵. Continuing

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¹ According to an opinion expressed in juridical literature, *freedom* regards the ability of people to act without hindrance, an important social value that gives the opportunity to exploit legitimate and rational interests of the human beings within the limits allowed by law – see Silviu Gabriel Barbu, *Constitutional dimension of self freedom*, Hamangiu Publishing House, Bucharest, 2011, p. 2.

² See C. Hamangiu, I. Rosetti-Bălănescu, Al. Băicoianu, *Treaty of Romanian civil law*, Volume 2, Edition history of Dumitru Rădescu, All Publishing House, Bucharest, 1998, p. 466.

³ See Philippe Malaurie, *Liberte et responsabilite*, Defrenois, 2004, p. 351. In the same way there was considered that „humans are sentenced to be free. Sentenced because they haven't created themselves and because they are responsible of all their facts” – see Jean-Paul Sartre, *L'existentialisme este un humanisme*, Editions Nagel, Paris, 1946, p. 36-37.

⁴ In the paper entitled *De l'esprit des lois*, 1748, regarding political freedom, but we consider that this affirmations has a general applicability.

⁵ See, in the same way, Ioan Moraru, Elena Simina Tănăsescu (coord), *Romanian Constitution. Comment on articles*, C.H. Beck Publishing House, Bucharest, 2008, p. 560.

this idea, the one who respects this limit is not susceptible of hurting another – *qui suo iure utitur neminem laedit. Per a contrario*, outgrowing one's sphere of activity can damage similar perspectives of partners, which implies the responsibility of the man.

As defined by the doctrine⁶, social responsibility is the social institution which grasps the bundle of attitudes of man compared to the system of values, institutionalized by the society in which the man lives with the purpose of conserving and promoting those values therefore perfecting the human being and conserving life in common and also respecting and maintaining the social order.

Responsibility is not to be confused with the assumption of facts, this being a specific expression of the idea of social responsibility⁷ – social institution and essential condition of freedom⁸, which states that every man must assume and know the effects of his actions, regardless of their nature, act that is appreciated by the grade of aware placing in practicing the social norms⁹.

So, if irresponsibility implies a interaction between the man and group, assumption is a interaction between the authority of the group and the individual, the individual taking this as something implied from the outside while responsibility is something seen as coming from the inside as an act of will¹⁰.

In conclusion, responsibility does not exclude liability, sometimes it presumes it but it's not reduced to it. Those two notions are not complementary, but conjunct¹¹, they interact and influence each other¹², living in common being the point where they collide.

Judging by its universality, the institution of awareness outgrows the sphere of law¹³. Thereby, the problematic of liability is present in every segment of human activity, as a general sanction for violating the norms of conduct, including the rules of law, and respecting these norms of conduct constitutes a vital necessity, known because the grand majority of human actions are susceptible to generate some forms of liability¹⁴, forasmuch individuals will not performer any actions in an indifferent, passive and neutral space but rather in a human ambience, within which their parameter of action is valorized¹⁵. The sphere of social responsibility is widely containing, including moral, political and legal¹⁶ and other methods under which, in a form or another, members of

⁶ See Lidia Barac, *Liability and legal sanction*, Lumina Lex Publishing House, Bucharest, 1997, p. 15.

⁷ Vasile Pătulea, *Correlation between liability and social responsibility*, in Romanian Journal of law no. 1/1984, p. 6-12.

⁸ In French doctrine was considered that an irresponsible human being is a factor of disturbance and degradation, and a free man is one who is aware of the consequences of his acts and responds of them – see Philippe Malaurie, *Liberte et responsabilite*, Defrenois, 2004, p. 351.

⁹ Costică Voicu, *General theory of law. University course*, Revised and updated edition, Universul Juridic Publishing House, Bucharest, 2008, p. 100.

¹⁰ Nicolae Popa, *Legal sociology lectures*, Faculty of law – University of Bucharest, 1983, p. 209.

¹¹ Vasile Pătulea, Stelu Șerban, Gabriel Ion Marconescu, *Liability and legal and social liability*, Scientific and Encyclopedic Publishing House, Bucharest, 1988, p. 40.

¹² Lidia Barac, *op. cit.*, p. 20.

¹³ See Mircea Costin, *An attempt to define the concept of liability*, in Romanian Journal of Law no 1/1970, p. 75.

¹⁴ *Ibidem*, p. 75.

¹⁵ Pavel Apostol, *Ethical and normed activity*, Scientific Publishing House, Bucharest, 1968, p. 52.

¹⁶ We take into consideration, for example, criminal liability of the perpetrator of an offense as well as civil liability, whose specific is to restore as closely as possible the balance destroyed by damage and

society are sanctioned for their behavior in social life. We sustain that all of this is not other than, forms of social control towards individuals with deviant behavior, forms which manifest in their specific elements, featuring own individuality and they all have in common goal to find solutions of the conflicts between individuals and society – as a form of manifestation of the particular interests and the general ones. This can be fully explained because politics as well as morals or rights, like a superstructure phenomenon, being the product of the same base, and exerting the same influence, a conjoined influence, having the same direction¹⁷ – the development and consolidation of order and social value. As a result, we can mention a completion, support, reciprocal influence, interdependence of all the forms of social responsibility, as a superior level of development of the general concept of liability¹⁸ in the process of the integration of humans in society.

If we mention only the juridical responsibilities – tool for restraint and having to appeal to the coercive force of the state, we will withhold, as well as, the diversity under which it can manifest¹⁹. In this context, the juridical responsibility constitutes, without a doubt, the central domain of law, because it fulfills of a guarantee in law realizing, and under this aspect, it represents an important factor in its efficiency²⁰.

Conceived to be a fundamental component of the law system, juridical responsibility is, in its concrete manifestation, a sum of specialized responsibilities forms, regalement by distinct juridical institutions and, because the forms of responsibility (civil, penal, administrative, disciplinary etc.) sensitively differentiate between each other, it's difficult to construct a proper definition which can hold all its common characteristics. That's why, law and juridical practice brought until now only elaboration about the conditions in which a person can be brought in front of justice, the nature and the susceptible sanctions wide range to be applied to the guilty one, the principles and the limits in which the liability will operate²¹. In juridical literature²², even though the problem involving juridical liability was researched quite rarely as a general category of law, it had works consecrated in which juridical responsibility is seen as a branch category of criminal²³,

relocate the victim at the expense of responsible, if that would be found, if the injurious act would have occurred – see Philippe Malaurie, Laurent Aynes, Philippe Stoffel-Munck, *Droit civil: les obligations*, 3eme edition, Defrenois, 2007, p. 10.

¹⁷ See Vasile Pătulea, *Correlation...*, op. cit., p. 8-9.

¹⁸ Pure and simple liability, undifferentiated in its today's known forms, derived from the commission or omission of acts contrary to the general interests of society, was the initial step in the integration of man in society, in a time when society does not yet constitute a coherent system of social norms, much less a system of legal rules – Vasile Pătulea, *Correlation...*, op. cit., p. 9.

¹⁹ See Constantin Stătescu, Corneliu Bîrsan, *Civil law. General theory of obligations*, 8th Edition, All Beck Publishing House, Bucharest, 2002, p. 134.

²⁰ Mircea N. Costin, *Liability in S.R.R.*, Dacia Publishing House, Cluj-Napoca, 1974, p. 7; Ion M. Anghel, Francisc Deak, Marin F. Popa, *Civil liability*, Scientific Publishing House, Bucharest, 1970, p. 5.

²¹ Mircea N. Costin, *op. cit.*, p. 18.

²² See Ioan Gliga, *Considerations regarding the definition of legal liability* in „Studia Universitatis Babeş-Bolyai“, Cluj-Napoca, 1970, p. 100.

²³ Criminal liability is defined as the obligation to suffer the juridical consequences of an criminal offence, meaning criminal punishment. See R. Peanain, *Manuale di diritto penale*, vol. I, Torino, 1962, p. 686; Ion Oancea, *Concept of criminal liability* in University of Bucharest Annals, Social and juridical sciences no 6/1956, p. 133.

civil²⁴ or labor law, as if criminal, civil or labor liability wouldn't be in fact concrete forms of general jurisdictional liability, just as any juridical norm or a determined category of norms, united by the same legal rules, doesn't represent anything other than forms of existence of the law in general²⁵.

It's important to highlight that juridical liability intervenes when a certain conduct can't mold to the established juridical norm, and this conduct is negatively appreciated²⁶. Most of the authors who have dealt with the issue of legal liability have underlined the fact that it can be engaged only if it meets certain conditions regarding the deed and its consequences, the culpability and the causal relationship between the act and its results.

Therefore, legal liability has been defined as *a complex of connected rights and duties, which, according to the law, is born as a consequence of committing an unlawful act and which creates the framework for achieving state constraint by applying legal penalties in order to ensure the stability of the social relationships and the guidance of society members into respecting the legal order*²⁷. Two important consequences²⁸ result from this definition. Firstly, the complex of rights and duties through which the category of legal liability is defined, objectifies the reaction of the society to the persons whose behavior contradicts the legal order, and, secondly, regardless of the form it takes, the legal liability, directly or indirectly, always confronts the state and the author of the unlawful act.

According to another opinion²⁹, the legal liability represents *the form of the social responsibility established by the state as an effect of breaking the law and which provokes bearing the consequences of the person proved guilty, even by using the constraint force of the state in order to reestablish the violated law order*.

In the General Theory of Law³⁰, the legal liability has been defined as the *juridical binding created by the law between the person who violated a disposition and the state, represented by the law enforcement bodies*, the content of this juridical binding consisting on one hand of the right of the state to punish the persons who have

²⁴ Therefore, there was considered that, etiologically the word responsibility comes from latin *spondeo* – which in oral contract form old roman law means the fundamental law of debtor in front of his creditor to execute the obligations assumed by contracting – the meaning that is to be given to the concept of responsibility, in general, and to civil liability, in particular – Henri Lalou, *La responsabilité civile. Principes elementaires et applications pratiques*, Paris, 1928, p. 1-3. Also see Rene Savatier, *Traite de la responsabilite civile en droit francais*, Tome 1, Paris, 1939, p. 1; Mihail Eliescu, *Tort liability*, Academy of S.R.R. Publishing House, Bucharest, 1972, p. 6; Ioan Albu, Victor Ursa, *Civil liability for moral damages*, Dacia Publishing House, Cluj-Napoca, 1979, p. 23-24; Liviu Pop, *Civil law. General theory of obligations. Treaty*, 2nd Edition, Publishing House of „Chemarea” Fundation, Iași, 1996, p. 158; Pompil Drăghici, *Illegal juridical fact causing injury*, Universitaria Publishing House, Craiova, 1999, p. 41.

²⁵ Mircea Costin, *An attempt...*, op. cit., p. 83. Also see Gheorghe Boboș, *General theory of law*, Dacia Publishing House, 1994, p. 258.

²⁶ Dan Țop, *Labour law treaty*, Wolters Kluwer Publishing House, Bucharest, 2008, p. 460. Also see Mircea N. Costin, op. cit., p. 33; Gheorghe Gilescu, *Social importance of juridical norms structure for their analysis*, University of Bucharest Annals, no 13-14, 1960, p. 14.

²⁷ Mircea Costin, *An attempt...*, op. cit., p. 83.

²⁸ *Ibidem*, p. 83.

²⁹ Ioan Șantai, *Introduction in the study of law*, Sibiu, 1994, p. 120.

³⁰ Costică Voicu, *General theory of law. University course*, Revised and updated edition, Juridical Universe Publishing House, Bucharest, 2006, p. 224.

committed unlawful acts, and on the other hand of those persons' obligations to subdue to the legal penalties in order to reestablish the violated law order.

Legal liability is the *specific expression of the social responsibility* which takes care of applying and respecting the social behavior rules regulated by laws, established, on one hand, in order to protect the general and particular interests, and on the other hand in order to punish those guilty of violations. We should keep in mind the fact that legal liability is an instrument of the constraint force of the state used to countervail irregular behaviors, which assures the fulfillment of law.

As a distinctive element from the other forms of the social responsibility, legal liability is 'legal' as it implies rules and orders established through juridical norms, and the rule of law is reestablished through the constraint force of the state, inside of a complex juridical binding which puts against the subject, the state, represented by the specially authorized body that executes state constraint³¹. This force can be tangible or virtual, but always alleged³². In other words, legal liability represents the institutionalized reaction of the state authority triggered by the perpetration of a socially dangerous act, being the last link of the complex process of justice fulfillment.

The legal liability arises only if some conditions are met regarding the substance of liability, and those are: the subjects of the relationship, as a consequence of the birth of this relationship from the social life, the object, the penalty and the content. This way, violating the rules attracts the responsibility of the one who broke the law and meaning that he bears the legal consequences.

Legal liability is practically expressed in some *forms of liability* (criminal, civil and offense liability) separated by the nature of the violated rule. The different forms of legal liability can cumulate as long as the unlawful committed act hurts different social values and meets different legal qualifications (offense, contravention, civil offence, disciplinary deviation).

Regarding the substance of legal liability, juridical doctrine³³ talks about the unlawful conduct as an objective fundament of legal liability and about guilt as a subjective base of legal liability. In the civil right, the foundation of the tort liability is represented by the unlawful act which caused losses, an affirmation that comes from Civil Code³⁴ which synthesizes the civil liability principle for the unlawful acts causing harm, corresponding ethical requests, social justice and even judicial security³⁵. In conclusion, the base of any legal liability is the fact, nonintervention or action against the law, faulty or guilty and socially damaging.

³¹ See Corneliu Bîrsan, Vasile Dobrinioiu, Alexandru Țiclea, Mircea Toma, Constantin Tufan, *Companies*, Revised and updated edition, volume I, Șansa SRL Publishing House, Bucharest 1995, p. 293. Also see Vlad Barbu, Cătălin Vasile, Ștefania Ivan, Mihai Vlad, *Labour law*, Cermaprint Publishing House, Bucharest, 2008, p. 344.

³² Mircea N. Costin, *op. cit.*, p. 31.

³³ Mircea N. Costin, *op. cit.*, p. 58.

³⁴ Civil Code dedicated Chapter IV (articles 1349-1395) of Title II of 5th Part entitled "About obligations" to civil liability.

³⁵ See Mihail Eliescu, *op. cit.*, p. 60-61; Ion M. Anghel, Francisc Deak, Marin F. Popa, *op. cit.*, p. 35 și urm.; T. R. Popescu, P. Anca, *General theory of obligations*, Scientific Publishing House, Bucharest, 1968, p. 161.

We can distinguish many legal liability forms, depending on a series of factors that must be considered independent and overlapping, as the damaged social values, the nature of the broken law, the social hazard this creates and the guilt of the offender. Therefore, in every law branch there have been created specific forms of legal liability, as the disciplinary liability in the Labor Law; patrimonial liability; criminal and contravention liability in order to punish through work legislation the facts considered contraventions or offenses.

The necessary order at the workplace is often achieved through compliance and voluntarily well-behaving of the employees for fear of the penalty. There are, though, a number of cases when the employment contract hurts one of the sides, causing detriment. In this situation, order can be restored only by forcing the offender to compensate for the damage, transforming the conformation binding in a ratio of debt. Thus, to set the responsibility for the caused detriments inside an employment contract we need a ratio of debt with its source in a damaging act, stating the obligations of the offender-employer or employee-to repair the damage and the rights of the victim for compensation. In this context, we say that the opinion stated in the older doctrine³⁶ maintains its full topicality, and that is ‘characteristically for the actual regulations is the fact that legal texts stop at setting a principle: the principle of responsibility for the damaging act. As long as the text is legal, being either from the Civil law or the Labor law, it does not certainly enlist the acts that cause detriments, the actual meeting of the necessary conditions in order to engage legal liability being the responsibility of the courts of law.

The contract of employment – source of legal relations, is by definition an agreement of will, a legal act which is to apply the rules established by the labor legislation, and where these are not established its own rules it appeals to the civil law rules, in light of its role of branch law, namely that of common law in private law³⁷. One such example is represented by art. 1350 of the Civil Code which debuts with express regulation of the principle *pacta sunt servanda*, foreseen by art. 1270 paragraph 1 of The Civil Code. As such, individual labor contract once completed has the force of law between the contracting parties. As noted in the doctrine³⁸, the principle of the binding force of the contract is the central axis of the whole legal construction that puts into motion the mechanism of civil liability, in the case of failure to perform the obligations. Considering the provisions of article 1350 paragraph 2 of the Civil Code, we define the contractual liability as a form of legal liability involving an obligational legal report which has in its content the obligation of reparation of damage caused by failure to perform or improper performance of contractual obligations. In another opinion³⁹ is appreciated that “contractual liability is the debtor's contractual obligation to repair the

³⁶ See Constantin Stătescu, Corneliu Bîrsan, *Civil law. General theory of obligations*, 3rd edition, All Beck Publishing House, Bucharest, 2000, p. 122.

³⁷ See Gheorghe Beleiu, *Romanian civil law. Introductions in the study of civil law. Civil law subjects*, 9th edition seen and updated by Marian Nicolae, Petrică Trușcă, Juridical Universe Publishing House, Bucharest, 2007, p. 16-17.

³⁸ Flavius-Antoniou Baias (coord.), Eugen Chelaru, Rodica Constantinovici, Ioan Macovei, *New Civil Code. Comments on articles*. 1st edition revised, C.H. Beck Publishing House, Bucharest, 2012, p. 1404.

³⁹ Liviu Pop, Ionuț-Florin Popa, Stelian Ion Vidu, *Elementary treaty of civil law. Obligations*, Juridical Universe publishing House, Bucharest, 2012, p. 390.

damage caused to the creditor by his deed, consisting in the illicit execution of services due under the contract concluded with its creditor”.

In accordance with article 253 and article 254 of Labor Code, both employers and employees respond in accordance with the rules and principles of contractual civil liability for damages caused to the other party of the legal relationship of employment, but we emphasize that this responsibility is not purely civil one, but a variety of it, her features being determined by the specifics of the legal labor relations⁴⁰. In conclusion, the acts causing injury while exercising the legal relations of the employers and employees draw legal liability of the doer, labor law provisions that refer to the patrimonial liability being completed, undeniably, with the provisions of the common law regarding civil liability. Instead, we remain exclusively in the realm of civil law if the act causing injury has nothing to do with the exercise of legal relations or gathers criminal elements, the responsibility being this time a civil tort⁴¹.

The patrimonial liability, as well as contractual liability, gravitates around the idea of restoring the civil subjective law violated, but it does not shows the absolute community of elements with the latter, in the sense that the damage is a result of infringing acts in connection with the process of labor. For engaging patrimonial liability an employment contract is necessary. Another specific element of patrimonial liability, worthy of mention in this part of the work is represented by the impossibility to insert in an individual labor contract clauses whereby the responsibility of employees are exacerbated, in accordance with art. 38 of the Labor Code which states, under penalty of nullity, that employees may not renounce the rights recognized to them by law. However, we appreciate that it is perfectly possible to negotiate clauses to reduce employee liability. At the opposite pole lies the employer, in which case it is possible to further about contractual liability as described in doctrine⁴², and not its limitation or exclusion.

The legal liability involves a solution to conflict situations between employer and employee, and this particular purpose combines with the general interest, national provided through the functions of legal liability. Law, as a tool for ordering the development of social relations, meets an educational function through the influence which he exercised over the consciousness of subjects of law, in general, and of the subjects of labor law, in particular. General consciousness cultivation as illicit deed causing injury remains unsanctioned, but attract, according to himself, the State's coercive force intervention is likely to fulfill a social function to prevent the occurrence of acts of such nature. The reparative function comes into action when the preventative function has not proven effective and is materialized in the obligation to repair the damage caused by the doer. We discuss, in the case of liability for the damage caused, the function of defense and restoration of violated rights and interests. To all this we add

⁴⁰ See Ion Traian Ștefănescu, *Theoretical and practical labour law treaty*, 2nd edition, revised and enlarged, Juridical Universe Publishing House, Bucharest, 2012, p. 772. For the view that compensation due to the employer as a result of committing illegal acts generates purely legal civil relations, not labor ones, see Marian Nicolae, *Treaty of extinctive prescription*, Juridical Universe Publishing House, 2010, p. 1159. For the view that patrimonial liability is a distinctive form of legal liability, own employees, as well as disciplinary, see Alexandru Țiclea, *Labour law treaty. Legislation. Doctrine. Jurisprudence*, 7th edition, revised and enlarged, Juridical Universe Publishing House, Bucharest, 2013, p. 862.

⁴¹ See, Alexandru Țiclea, *op. cit.*, p. 863.

⁴² Ion Traian Ștefănescu, *Treaty....*, *op. cit.*, p. 773.

the function of guarantee of the principle of legality in the sphere of liability for damage caused, what constitutes a national sustainability. For all this, from the point of view of the parties involved in a legal relationship, and of the state, it is absolutely necessary for the correct application of the legal provisions for the purpose of carrying on general preventative actions for removal of behaviors causing injury. Therefore, the liability meets the role of guarantee of the law and, in this respect, it represents an important factor of its efficiency⁴³.

It is important to mention that to the difficulties in the judiciary system have contributed and the well-known dynamics of labor legislation and the adoption of new Codes (civil and civil procedure) imposed by the European mutations. In my opinion, in order to secure a place among the European competitive states, Romania needs a reform of the system of justice, repeatedly referred to the issue of the European Commission. One of the basic conditions that enables the reform is represented by streamlining procedures in the field, speed of processes and unify judicial practice in general.

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⁴³ For details, see Mircea N. Costin, *op. cit.*, p. 7.

- Ioan Moraru, Elena Simina Tănăsescu (coord), *Romanian Constitution. Comment on articles*, C.H. Beck Publishing House, Bucharest, 2008.
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