

Some considerations regarding the legal responsibility and the social responsibility

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Abstract

The judicial responsibility is acknowledged in the judicial doctrine², as being 'the starting point' of the entire social responsibility, position that continues to have from ancient times until today, thus providing an expression of Law on its most concerted form, which reflect the stage of evolution of the entire social life.

Expressing forms and realities of social life, both values and norms are ideal standards of conduct, perceived as individual requirements by each member of society³.

The human action enforces the compliance of certain rules and its subordination of certain goals and interests, according to a system of principles and criteria; this is because the individual lead his existence in a relational system with others, a system characterized by extensive interactions and interdependencies.

In any society may appear different types of conduct, whose broad includes those conformist, innovative, as well as those non-conformists, escapist or deviant.

As full integration of the individual in society, legal norms are not an exclusive element; these are the foundation of a set of rules for the most various types. The institution of social responsibility arises precisely in this way, representing a higher level of integration of the individual in the society.

Keywords: *legal responsibility, social responsibility, accountability, legal provision.*

JEL Classification: K10, K42

1. Legal responsibility and social responsibility. Preliminary considerations

Expressing forms and realities of social life, both values and norms are ideal standards of conduct, perceived as individual requirements by each member of society⁴.

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² Liviu Pop, *General Theory of Obligations*, Lumina Lex Publishing, Bucharest, 1993, p. 163

³ Sorin M. Rădulescu, *Homo sociologicus. Rationality and irrationality in the Human activity*, Publishing House and Press ”The Chance” SRL, Bucharest, 1994, p. 53

⁴ *Ibidem*

In any society may appear different types of conduct, whose broad includes those conformist, innovative, as well as those non-conformists, escapist or deviant.

Whereas any society accepts within it behaviors, different from those as defined in the institutional framework, social norms acting as instruments of pressure and moral restraint, represents an area within which are permitted a number of variations. In this context, it is considered 'social', any conduct which is not due to chance, but is regulated by rules and expectations established and unavoidable and is seen as 'deviant' behavior that does not fit within the institutional framework and socially acceptable by society, appreciate as a 'moral environment'⁵.

Any society evaluates the behavior of its members in terms of their compliance to the norms and values recognized and accepted by most people; by not following this norms and values is drawn a social reaction. This reaction results in a series of sanctions that society exercises against irregular or deviant behaviors, thus forcing the individual to be within the limits of social normatively.

Therefore, the responsibility appears as a report externally imposed, based on the official standards authority and on the mandatory subordination of the individual towards the community to which he belongs. For this reason, the individual will perceive and feel the norms, as rules imposed from outside by an authority which belongs to the group or society⁶.

Given the need of the cohabitation in common, the individual may perceive the true content of the norm, can choose to accept it as being in line with its interests, so that the legal norm should no longer look like only an external obligation.

As full integration of the individual in society, legal norms are not an exclusive element; these are the foundation of a set of rules for the most various types. The institution of social responsibility arises precisely in this way, representing a higher level of integration of the individual in the society.

With this in mind, we can argue that social responsibility refers to the behavior elected by the members of the society, in the multiple possible variations, within the social determinism, related to the general interests of society and the objective requirements of social development.

The existence of rules of conduct and by ensuring their compliance, represents a vital necessity for society; for this reason, actions and inactions of the society members generates responsibility.

Social responsibility implies a conscious attitude embodied in a behavior that corresponds to the highest degree requirements, (objective needs) and attitude resulting from a decision, act of conscience and will of the individual⁷.

⁵ Émile Durkheim, *Tratat de sociologie*, Humanitas Publishing House, Bucharest, 1997, p. 121

⁶ Ioana Petre, Ecaterina Balica, Dana Banciu, *Tineret, norme și valori. Repere pentru o sociologie a tineretului*, Lumina Lex Publishing House, Bucharest, 2002, p. 172

⁷ Gheorghe Boboș, *Teoria generală a statului și dreptului*, Didactic and Pedagogical Publishing House, Bucharest, 1983, p. 261

Social responsibility exists only by one of its concrete forms of expression: political responsibility, moral, ethical, legal, etc., each having the common general features and its own characteristics.

Each form of social responsibility acts on all other forms, and as a result of their mutual action, forms the general level of social responsibility⁸.

Even though, the legal responsibility has some peculiarities, it is found in a permanent interdependence and mutual influence with other forms of social responsibility⁹ in order to find common social compliance.

In contrast to the other forms of social responsibility, the specific of the legal responsibility is that it refers to the obligation to respond for the breach of law, which means that the infringement involves the legal responsibility attached to them¹⁰.

2. Definitions given in the doctrine to the legal responsibility

In the specialized literature, there have been several attempts to define the institution of legal responsibility.

In the first opinion¹¹, the concept of 'responsibility' was considered to describe the reaction of repression made by society, to a particular human action, attributable, mainly individual (the social reaction represents in case of legal responsibility distinct features) or, as Professor Nicolae Popa appreciates, it is an institutional response, caused by a reprehensible act, reaction organized by law and limited by law.

In another opinion¹², 'the responsibility' was defined through the categories of obligations: either requirement to support a privation or to repair some damage.

In the same idea, M. Costin¹³, appreciated that, 'the common meaning of the concept of responsibility, regardless of the form in which it occurs, is an obligation to bear the consequences of non-compliance of some rules of conduct, which rests on the author's obligation to act contrary to these rules, and bearing always the mark of social disapproval of such conduct.

Criticizing these views that see the responsibility as an obligation to support a legal sanction, George Boboș¹⁴, thinks that: these definitions confuse the

⁸ L. Lorictz, M. Străuanu: *Răspunderea juridică parte integrantă a răspunderii sociale* in „Studii și cercetări juridice”, No.1/1970, p. 9

⁹ Șerban Beligrădeanu, *Răspunderea materială a persoanelor încadrate în muncă*, Scientific Publishing House, Bucharest, 1973, p. 11

¹⁰ Gheorghe Boboș, *cited work*, p. 261

¹¹ Nicolae Popa, *Teoria generală a dreptului*, Actami Publishing House, Bucharest, 1998, p. 323 and following; Genoveva Vrabie, Sofia Popescu, *Teoria generală a dreptului*, „Ștefan Procopiu” Publishing House, Iași, 1993, p. 142

¹² Antonie Iorgovan, *Drept administrativ și știința administrației*, Vol III, Lumina Lex Publishing House, Bucharest, 1994, p. 149

¹³ Mircea Costin, *Răspunderea juridică în dreptul Republicii Socialiste România*, „Dacia” Publishing House, Cluj Napoca, 1974, p. 7

¹⁴ Gheorghe Boboș, *cited work*, p. 264

responsibility with legal sanction itself, and ignoring the fact that the sanction is only the instrument to achieve legal responsibility, that the legal responsibility and legal sanction are different concepts that should not be confused, the first representing the legal framework for the realization of the second one.

Professor Mihai Eliescu¹⁵, by highlighting the link between responsibility and sanction in the Civil Law show that: at the origin, the collective reaction, which represents the defining feature of liability pursued both punishing the perpetrator, and, restoring the previous situation for the benefit of producing damage to the victim, saying that: 'the compensation still suffers some issues that are related to the notion of punishment, there are cases in which the compensation it is not seek for damage, but repression of fraud or misconduct'.

Even though the idea of punishment is no stranger to any of the forms of legal responsibility, in the most striking way, this is highlighted in the criminal law.

The criminal liability was defined as an obligation of the person who committed an unlawful act, to support legal sanction¹⁶.

In a third opinion, it is estimated that in order to properly define the legal responsibility must be taken into account its place and role in the complex process of achieving positive law. This is because, the appearance of legal liabilities in the process of making law, occurs only when the infringement with culpability of the rules of law and if followed by application of state coercion by appropriate means degree of social danger of illicit deed committed¹⁷.

Another view supported by others and Gheorghe Boboș and Constantin Bulai, it is estimated the legal responsibility as being a judicial relation. It is considered that the legal responsibility cannot be conceived only as a legally constraining the contents on which is formed, on the one hand, the right of a state to excoriate the person who has violated a rule of law and apply the penalties provided by the legal rule violated, and on the other hand, correlative obligation of the guilty person of violating rule, percept to respond to the state for the conduct had. At the same time, is subject to the penalty imposed on the basis of the rule breached¹⁸.

Likewise, the Italian theorist Alessandro Levi¹⁹ have defined the legal responsibility as being the derived situation from a previous legal relationship, as a new legal relationship which finds its source in an unlawful act, which consists of the voluntary failure of a benefit required by law, within an original report.

¹⁵ Mihail Eliescu, *Răspunderea civilă delictuală*, Academy Publishing House, Bucharest, 1972, p. 6 and following

¹⁶ Ion Oancea, *Noțiunea răspunderii penale*, in „Analele Universității București”, Social and Legal Sciences Series, no. 6/1956, p. 133

¹⁷ Ioan Gliga, *Considerații privind definiția răspunderii juridice*, in „Studia Universitatis Babeș-Bolyai”, Series Jurisprudenția, Cluj, 1970, p. 98

¹⁸ Constantin Bulai, *Drept penal român*, vol II, „Șansa” SRL, Bucharest, 1992, p. 34

¹⁹ Alessandro Levi, *Teoria generale del diritto*, Cedam, Padova, 1967, p. 389

There is another opinion saying that the legal responsibility can be repaired by requiring that the persons involved, directly or indirectly causing unjust damage to another²⁰.

Mircea Constantin, trying to synthesize these doctrinal tendencies, appreciated that the legal responsibility, by having its basis in the illegal fact, and the consequence in the implementation of the legal sanction, is a complex of rights and obligations, which form the legal content that link between the state as the only active subject, and the author of the illegal act, the passive subject of that particular legal relationship; the scope of this legal relationship, is the legal sanction, which the author of the illegal act supports in order to restore the rule of law²¹.

An interesting definition is formulated by Lidia Barac, according to who, the legal responsibility, is the legal institution which includes all legal norms, aiming at legal relationship that arise within a specific activity undertaken by public authorities under the law, against all of those who infringes and ignore the rule of law, in order to ensure, respect and promote the legal order and the public good²².

Given the common features, of all its practical manifestations, in the specialized literature are stated that: the legal responsibility is the complex of related rights and duties, which by law is born as a result of committing an act that constitutes unlawful coercion to achieve the state through the application of legal sanctions, in order to ensure the stability of social relations in society and of the guidance of the society members to respect the rule of law²³.

3. Legal responsibility forms

Each branch of law by dealing with conditions of responsibility is known as a specific form of legal responsibility.

The comparison and delimitation of legal responsibility forms have a special theoretical importance, but especially practical, establishing the legal nature of liability in each particular case, determining the legal classification of facts.

In legal literature, there have been many controversies, in order to establish concrete forms of legal responsibility.

For their identification, the doctrine has proposed a set of criteria of classification.

A first²⁴ proposal took into consideration 'interdependence and interference' factors such as: prejudiced social values, type of legal norm whose

²⁰ Sache Neculaescu: *Drept civil. Teoria generală a obligațiilor. Curs universitar*, Lumina Lex Publishing House, Bucharest, 2001, p. 185

²¹ Mircea Costin, *cited work*, p.27.

²² Lidia Barac, *Răspunderea și sancțiunea juridică*, Lumina Lex Publishing House, Bucharest, 1997, p.40

²³ Mircea Costin, *O încercare de definire a noțiunii de răspundere juridică*, in RRD. Nr.5/1979, p. 83 cited by Liviu Pop in *Teoria generală a obligațiilor*, Lumina Lex Publishing House, 1993, p. 164

²⁴ Ion Craioveanu, *Teoria generală a dreptului*, Military Publishing House, Bucharest, 1997, p. 261

violation has occurred, the degree of social danger of the illicit act committed, the perpetrator's guilt.

Another proposal²⁵ concerns the application of two cumulative classes: the nature and social importance of the interest harmed by the illegal act, and defining characteristics of the illicit act.

Considering the above, we can identify the following types of classification:

- a) **Based on the criterion of the nature of the infringed interest:**
 - The responsibility to the society, which includes only criminal responsibility.
 - The responsibility towards a certain state authority, meaning the administrative responsibility.
 - The responsibility towards a smaller community of individuals, including the responsibility from the labor law.
 - The responsibility towards the person injured in its legitimate rights, including civil liability.
- b) **Depending on the defining particularities of conduct:**
 - The civil liability.
 - The criminal liability.
 - The administrative liability.
 - The disciplinary liability.
 - The pecuniary liability.
- c) **Following the affiliation to the branch of law, V. Lazarev, distinguishes the following types of liability:**
 - The responsibility of civil law.
 - The responsibility of criminal law.
 - The responsibility of administrative law.
 - The disciplinary liability.
 - And others.
- d) **Following the nature of legal sanction:**
 - Pecuniary liability.
 - Extra pecuniary liability.
- e) **Depending on the subject to whom the responsibility rests:**
 - The legal liability of individual.
 - The liability of the legal person.
- f) **Following the relationship between the two major branches of law:**
 - The responsibility for public law.
 - The responsibility of private law.

Regardless of the varying nuances, it is considered²⁶ that such liability (civil, criminal and administrative) is given by the legal provision violated.

²⁵ Sofia Popescu, *Teoria generală a dreptului*, Lumina Lex Publishing House, Bucharest, 2000, p. 324

²⁶ Sofia Popescu, *cited work*, p. 324

Between the forms of legal responsibility, established by any of the mentioned criteria, there are some similarities and some differences.

The main similarity is that, the state is the only holder of the prerogative to reestablish the order in the modern society, without being accepted a form of private accountability.

Are established similarities between the forms of each branch, such as the existence of contractual liability and tort liability is subject to the existence of a loss of property, an illegal act and a causal connection between the injury and act committed²⁷.

4. The accountability and the responsibility

The definition of the responsibility was not made through a legal text, through a general rule or a standard definition, which is likely to limit this phenomenon more research horizon.

In these circumstances, was discussed as being imperative to create a general theory of legal liability. In the doctrine²⁸, was considered that the task of developing a theory must belong to The General Theory of Law, whereas, only this science, which is the core of the legal system sciences, aims to highlight the common elements to define law.

Therefore, as I said before, even though there are many legal standards which regulate various forms of legal responsibility, the law does not give a general definition of legal responsibility or of the any of its concrete forms.

Both, the law and especially in the legal literature, we encounter two terms with approximately the same value: the notion of responsibility and that of accountability.

Etymologically speaking, 'responsibility' term is derived from the Latin word '*spondeo*' which means in the Roman law, the solemn obligation of the borrower to the lender, to fulfill its performance undertaken in the contract.

Having regard to the etymological sense, in theory²⁹, the meaning attributed to the notion of responsibility is that of obligation to repair, duty resulting from an offense or *quasi* offense.

In Greek or Latin language, the native meaning for 'responsibility' term was according to the philosopher H.L.A Hart, to respond to allegations or charges, after which, if shown to be valid, the person accused, failing to remove them, became liable to punishment³⁰.

Very often, the term 'accountability' was defined through the term 'responsibility'. Between these two terms there is a linguistic equivalent; in

²⁷ *Idem*, p. 329

²⁸ Mircea Costin, *cited work*, (1974), p. 10 and following..

²⁹ H. Lalou, *La responsabilité civile. Principes elementaires et applications pratique*, Paris, 1928, p. 1

³⁰ H.L.A.Hart, *Punishment and responsibility, Essay in the Philosophy of Law*, Clarendon Press, Oxford, 1968, p. 215

Romanian language existing two synonymous- accountability and responsibility- which are explained through their Latin and French etymology.

The explanations of the etymological meaning of the two terms are sufficient to understand how they can be expressed through the same content, which may explain why, on the one hand, always can be substituted with one. On the other hand, why, in another case, the terms expressing different meanings are used in a sense of another.

The Dictionary of the Romanian language³¹ establish the equivalence of the two terms by defining the accountability as ‘the respond to, responsibility’ and the responsibility as ‘an obligation to make something, to respond, the content to give something responsibility’.

Larouse Dictionary³², defines responsibility (the word ‘responsibility’ does not exist in French language) as ‘an obligation to compensate damages caused to others by his own act or by a person who depends on it, or by an animal or thing found in his guard’ obligation to the punishment prescribed for an offense committed ‘.

It is specific to Romanian law³³, the notion of responsibility, seen as a legal obligation according to a normative legal act; the term responsibility brings into question the fact that, by virtue of a law and under normal mental capacity, one can be liable for an act committed by him.

It should be noted, that the concept of ‘responsibility’ is broader than that of ‘accountability’, otherwise including it. While the notion of ‘accountability’ means the fulfillment of obligations or restrictions compliance (taking into account the defined behavior, especially towards social norms³⁴), the notion of ‘responsibility’, has a much broader nature, these in relation to the activity held by the individual on his own initiative, based on free choice of objectives, among more are possible.

5. Conclusions

Responsibility does not exclude accountability, but, somehow involved, is not limited to it; the field of development responsibilities exceeding by far, the sphere of liability, regardless of its nature³⁵.

After that, in starting, the concept of responsibility was placed only on moral ground, newer research revealed the emerging need for accountability in the law field. In this sense, the doctrine³⁶, explained that: ‘through a reductionist

³¹ *Dicționarul Limbii Române Moderne*, Publishing Socialist Republic of Romania, Bucharest, 1958, p. 695 și 713

³² *Nouveau petit Larousse*, Librairie Larousse, Paris, 1971, p. 802

³³ Mihai Bădescu, *Teoria răspunderii și sancțiunii juridice*, Lumina Lex Publishing House, Bucharest, 2001, p. 114

³⁴ A. Hlavek, *Problema responsabilității* in „Revista de filosofie”, no. 2/1975, p. 161

³⁵ Mihai Florea, *Responsabilitatea acțiunii sociale*, Scientific and encyclopedic Publishing House, Bucharest, 1976, p. 30

³⁶ Nicolae Popa, *Teoria generală a dreptului*, Proarcadia Publishing House, Bucharest, 1993, p. 316

thinking, it was considered that the law would not be characteristic only to the category of liability, that the law norms could not act until after the dangerous deed was committed and must return faith that the law can create, the consciousness of its recipients, the sense of responsibility³⁷.

Returning to the notion of legal responsibility, in the doctrine³⁷ was shown that it cannot be understood and defined only from its concrete forms: civil responsibility, criminal responsibility, disciplinary or administrative, etc. Among these forms are both differences and similarities, common elements that would allow the development of a general definition valid for all forms of legal responsibility.

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³⁷ Mircea Costin, *cited work*, (1974), p. 7 and following.