



Considerations on the Need to Reaffirm the Notion of Responsibility and Legal Liability

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Abstract: Objectives: The objectives of our study are to establish the real and modern sense of the concepts responsibility and accountability and the role of this concepts from the juridical and social point of view, to draw a warning about the lack of a proper procedure likely to find and punish the situations of breach of duties that can imply lack of responsibility or accountability. **Prior Work:** We are trying to build a juridical concept of responsibility and accountability taking into considerations the real and complete sense of this concept and this is way our study include materials that are not only from the legal field creating a multidisciplinary article. **Approach:** Our approach is consisting on observations, analysis, doctrinal research and cases studies. **Results:** The results of this study have both practical and theoretical applications. The theoretical application is representing by the fact that we establish the real and modern sense of terms as responsibility and accountability, including the relation between this concepts and the states and the practical one is representing by the conclusions concerning the implications of lack of responsibility or lack of accountability expressed into court orders. **Implications:** The implications of the study area include academics, researchers, institutions and state. **Value:** This study establishing the theoretical and practical meanings of concepts as responsibility and liability, is underlining the subjects of this concepts and the legal need to have a simple and clear procedure in order to ask and to obtain the responsibility or for the accountability of a juridical subject.

Keywords: responsibility; accountability; state; national; state body

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1. The Importance of Notions of Responsibility and Accountability

Partners in the social contract¹, state and citizen is a bi-univocal relationship which implies a responsible attitude coupled with accountability, to maintain socioeconomic balance. The state, through its organs, should be manifested in the parameters of good faith and a high degree of professionalism² and in this respect, even national security strategy implementation is subject to the appropriate involvement of the individual and state bodies the assumption by them of responsibility and accountability of their duties, both nationally and internationally.

The role and place of notions of responsibility and accountability should be reassessed (Dumitrescu, Dumitrescu, 2011)³ in the modern era, from setting the correct terminology because the two concepts are used to express different meanings and in particular, have revealed specificities of notions of responsibility and liability.

When identifying the proper terminology meaning of each concept, we observed that explanatory dictionary (Romanian Academy, 2009, p. 778 and 801) of Romanian language that defines "responsibility" as "an obligation to do something, respond, ...", while "responsibility" is defined as "the fact of liability", "responsibility" so confused that this requires the analysis and clarification.

Thus, a responsible person is "a person responsible for a management position, which has a load of responsibility, entrusted with the responsibility" while a person is a responsible person "liable for his actions or those of others, to be held accountable, responsible."

2. Responsibility versus Legal Liability

More broadly, concerns the responsibility of man in his depiction of the current (Bădescu, 2002, p. 53) agent of social action and is the main mechanism for defining the meaning of social integration of man (Florea, 1976, p. 6). Dimension of responsibility is vast and requires that the person "feel responsible for the consequences of acts that are not imposed as obligations of a rule, order, law

¹ Rousseau J.J. (Social Contract, 1972) takes the view that evolution leads to the adoption of rules of coexistence, leading institutions of repression and management, and loss of freedom and inequality are facts acquired in society.

² Romanian Intelligence Service, Strategic Vision 2007-2010. Professionalism concerns human resources management and aims to improve education and training of personnel, including attracting expertise from outside the service.

³ Thus, we stated: „The concepts of responsibility and accountability must be reviewed and renamed, both in terms of meaning are used (common sense versus juridical sense, individual versus community authority”.

(Halvek, 1975, p. 161), "responsibility extend to actions as a result of their reasons" on the goals pursued by each of the interests that put the game" (Stiehler, 1975). Responsibility can manifest in several sectors and when they question the moral responsibility versus legal liability notice that the two notions are complementary, the human being can manifest an attitude of order value, not normative order.

Liability concerns that under the law, under normal mental, someone may be liable for an act committed by him, an action taken. This is a form of integration of the individual in society, marking the natural process of human individuality and the order value, because the individual relates to the values expressed and contained the legal normative system of society, considering its own options, interests, creating their own value system in relation to exercising attitude (Bădescu, 2002, p. 68) (Costache, 2009, p. 141).

Legal responsibility criteria are the social values expressed by the legal regulatory system through legal rules and those who have fallen under the rule, but are likely to materialize a social requirement that calls for legal regulation. Legal responsibility is distinguished by its function to ensure the conservation, improvement, functionality and transform legal standards in order to preserve and promote legal and public good (Bădescu, 2002, p. 69).

Legal responsibility is, therefore, a conscious and deliberate attitude of taking care of to the manner of the rule of law, to the integrity of the legal system, but also to individual actions they take to ensure a climate of legality (Popa, 1989, p. 209), is a cultural attitude of the individual to the legislation, taken on its own initiative as an active person reporting the attitudes of others.

3. Irresponsibility

„Irresponsibility” term is used in both civil (put under ban) and criminal law (concerned that removing the criminal nature of the offense).

3.1. Specific rules of civil

In civil law, irresponsible term is used to define a person in civil law, irresponsible term is used to define a person devoid of sense of responsibility, without liability or unresponsive. If it finds a person is irresponsible¹, will take action against it by

¹ In practice it was decided that the diagnosis „mental deficiency moderate dislalie polymorphic, enuresis, sexual orientation disorder”; can be assimilated to the concept of legal derangement chronic indiscriminate. Pașcani Court, file 1864/2008, the sentence pronounced on 23.09.2008. www.jurisprudenta.com

placing under judicial interdiction¹, and in practice², it is note that, although lacking in discernment, the defendant may be forced to compensation under 1357-1371 Civil Code³ (responsibility for its own act), given that, consideration of fairness, doctrine and practice have allowed the possibility of obliging the author damage compensation to the victim, even if the author is injudicious, if it has a heritage that can be pursued.

Courts⁴, pursuant *the person who has no discretion to take care of its interests, because of mental or of alienated mental debility will be put by judge under the ban* to art. 164 Civil Code⁵, under which "" appreciated that the conditions are met and ordered the release of a person under interdiction under which consisted of a forensic examination report that is free of discrimination, the lack of discernment brings unable to look after its own interests and lack of discernment is alienated due to mental resulting in diagnosis "epileptic psychosis".

The medical literature (Moşescu, 2010) has noted that the mentally ill have the basic legal regulations, and other special regulations which together form the legal status of the mentally ill. It must be protected because of his health and his state particularity lies in the inability to mentally ill and disease awareness, and thus to appeal to a specialized service and understand the need for treatment.

3.2. Specific Rules of Criminal

Into the criminal law⁶, was enacted that the act is not an offense under the criminal law, if the perpetrator at the time of the offense, could not realize his actions or inactions or could not master them, following a state of derangement or other causes.

¹ See Decision of the Constitutional Court on the unconstitutionality exception nr.226/2003 under the provisions of Article 30 of Decree nr.32/1984-35 for implementation of the Family Code and Decree concerning natural and legal persons and under provisions 43-45 of the Code of Civil Procedure, published in the Official no. 458/27.06.2003.

² Court of Târgu-Mureş, Criminal sentence no. 467/07.04.2009, published on www.jurisprudenta.com.

³ Art. 998, 999 from the Old Civil Code.

⁴ Court of Iaşi, Criminal sentence no. 11684/22.10. 2008, published on www.just.com

⁵ Article 142 from the old Family Code, under which "one who has no discretion to take care of its interests, because of mental or of alienated mental debility will be put under the ban"

⁶ According to article 48 of the Criminal Code, irresponsibility is one of the reasons that removes the criminal nature of the offense. Discussions on irresponsibility should include biological criteria (medical) and psychological underpinning the notion of irresponsibility and reduced accountability problem.

Supreme Court¹ held that, if defendant paid because it is irresponsible (because of mental illness), court is obliged to rule on the establishment of a civil, under art.346 al.2 Criminal Procedure Code. So, the fact that offender was ordered to pay irresponsibility, it is not constitute grounds for civil action to resolve, and lack of discernment has consequences only on the criminal, not the civilian.

We must observe² that offense committed by an irresponsible person can result in a security measure, so that the obligation of medical treatment or medical hospitalization.

Safety measures (art.112 Criminal Code) are the specific measures of a preventive nature, that courts can take against persons who committed offenses under the criminal law. Of deeds must follow a state of danger which can not be removed in another way but through safety measures to prevent such possibly committing new offenses under criminal law.

Medical professionals (Moşescu, 2010) indicate that the safety measures, measures of health are preventive measures exclusively criminal, to be taken in order to remove a state of danger and to prevent criminal acts provided by law. These measures apply only to people with mental disorders who have committed offenses under the criminal law and are not determined by the existence of criminal liability for acts committed but there is a state of danger revealed by that act.

4. Responsibility versus Juridical Responsibility

Generally, responsibility of the person is aware of his debt to society, understanding the meaning and significance of his behavior, while the liability relates to a report of the individual and authority to a body being defined rights and obligations arising from an act committed illegal.

Rights and obligations arising form the framework for achieving such coercion by the state through legal sanctions (Costin, 1974, p.19), which means that liability is a legal relationship of coercion, and legal sanction is the subject of this report (Boboş, 1996, p.264).

Liability can be employed both in the legal relations between citizens and the legal relations between state and citizens and present in various forms - criminal, civil

¹ Supreme Court, criminal section, decision no. 1386/1991, www.jurisprudencedo.com

² Court Videle, criminal sentence no. 24/11.03.2009, published on www.just.ro. See also criminal sentence no. 367 from 17.12.2008 nr.367 of Court Medias which ordered convicts to medical treatment, performed a forensic psychiatric expert, who concluded that it suffers from oligophrenia Grade II, has no discernment of facts committed and their consequences, published on www.just.com

(tort, contract), administrative (contravention) and disciplinary, the criteria applied (social value protected, the degree of social danger of committing the wrong, the perpetrator's guilt, the normal type of which provision has been violated, the branch of law belongs to the norm).

5. Responsibility and Liability of the State. State Guarantee of the Existence and Compliance of the Rights

According to article 25 al.2 from the Civil Code¹, the state is in the category of legal persons, but it is not simply a legal entity, it is a legal entity „sui generis”.

Defined the doctrine as „an institution with the support a group of people sitting on a defined space, able to define his own competence and organized only in the exercise of activities can be grouped into functions: legislative, executive and judicial branches” (Drăganu, 2000, p.116) respectively „all organs of government, which means the device targeting political society” (Deleanu, 1992, p.8), the state has a number of functions that are analyzed in relation to accountability and responsibility.

Thus, the political function of the state (Ifrim, Ifrim, 2010, pp.145-153), which involves maintaining internal social order and defend the national territory, involving social, economic progress and social insurance, economic planning and management (Hanga, 1994, p. 228)² processes, requires the responsible state in relation to these areas and can attract the responsibility of the its management organs.

Sociological functions of the state, social coercion refers to the belief citizens about the compatibility between individual interests and general interests finally can attract state responsibility for the fate of its citizens.

Unlike the features mentioned above and which usually involves direct state responsibility and liability indirectly through its bodies, the third group of functions, legal functions of the state, involving both direct responsibility and direct or indirect responsibility of the state.

¹ Decree no.31/1954 regarding natural and legal persons was published into the Official Monitor no. 8 from 30.1.1954 and it represented the legal base until the New Civil Code appeared.

² Chapter no. I Napoleon, soldier and organizer: „The state leadership was exercised by several bodies: the consulate, the Senate, the tribunate, legislative body, the State Council and Council of Ministers or the government”

Thus, the function of legislative, executive¹ and judicial functions function, determine State responsibility in law (the adoption of a harmonized regulatory framework and modern), executive (the state shall ensure the fulfillment of duties of central and local government at its best) and judicial (judicial practice uniform, pronouncement of judgments in accordance with national and international legal framework) and can lead to situations where the state has legal liability, directly or indirectly, for failure to obligations.

State participates directly as a subject in some domestic legal relations (constitutional) and international legal relations, but also participate indirectly through its representative institutions (the state participating in civil relations as a subject of law by the Ministry of Finance).

We note that into the legal relations whose topic is not the state, is drawn the liability of law subjects (natural or legal persons), but although it is the responsibility of the state, is its responsibility as guarantor of the existence and rights of other subjects, because under the Constitution, the role of the state is to ensure and protect by lawful means „public interest”, „common good”, „general interest”.

In its relation with the civil society (Hegel, 1969, p.216), the state is a guarantor because it is the one who has „a duty to create a broad framework of rights and freedoms, to ensure progress in all its human dimensions and to ensure the assertion of the human condition” (Bădescu, 2001, p.87).

In this context, we consider it useful to point out that the state should exercise particular care to how to fulfill its functions, because the consequences of their failure to appropriate are going not only to determine responsibility and accountability, but they also can have very serious effects under the citizen.

Thus, in terms of legal functions, in the case of the lawmaking, the view that should be reiterated that this is usually an attribute of Parliament and only in exceptional cases is an possibility of expression from the Government² and people engaged into activities in this regard must be professional, with real ethical and moral concepts, in order to avoid repeated changes at short intervals of the regulatory framework, frequent delivery of the decision of unconstitutionality by the Constitutional Court, but also the pronouncement of judgments against the state in European Union courts³.

¹ Issuing decrees (chairman), decisions and orders (Government), orders, instructions, regulations (ministries), judgments and decisions (local government bodies).

² Law abuse shown by the abuse of government regulation on the way of ordinates.

³ See this many cases lost by the Romanian State to the European Court of Human Rights. Example: pilot decision vs. Maria Atanasiu and others. Romania 12 October 2010, pronounce on the problem of

In terms of judicial function, we signal first a non-unitary practice of the Romanian courts, and on the other hand, a lack of flexibility of the Romanian magistrates expressed on the way they understand to apply the European regulatory framework, both aspects „observed” by European Union courts¹.

6. Conclusions

Dimension of accountability to liability is comprehensive and it represent that the person „feel responsible also for the consequences of acts that are not imposed as obligations of a rule, order, law” (Halvek, 1975, p.161). „The responsibility extends under the result of actions and of reasons, under the goals pursued by each but also under the interests that everybody have” (Stiehler, 1975).

We can say that if the liability relates to the individual, the responsibility is related to internal capacity of somebody to choose under the right of option (Popa, 1989, pp. 199-200).

In this context, into the legal literature (Florea, 1976, p.30), it is noticed the need for clarification and distinction between the two concepts and it is asserted that in case of liability it can discuss about a conscious and deliberate assumption in relation to their own conscience, but also about „an active and militant attitude to the community, about the care for success or risk, resault or efficiency, consequences and value of the work that the agency runs out or leads” (Florea, 1976, p.30), and responsibility express a different relation between the agent and the corporate action to which it belongs, „a relationship between the agent and the corporate authority”.

Accountability function works globally, promoting and protecting values such as security, justice and social progress, while acting in the maintenance function

nationalized properties. The explanatory material that formed the basis of delivery of this decision provided that it was caused by repetitive of cases from the same internal structural weakness.

¹ See, for example, European Court of Human Rights - Judgement from 9 December 2008 in Case *Viașu v. Romania*, on the official website of the European Court of Human Rights, European Court of Human Rights. - Judgement of 13 January 2009 in Case *Faimblat v. Romania*, published in the Official Gazette, Part I, no. 141 of 6 March 2009, European Court of Human Rights - Judgement of 20 January 2009 in Case *Katz v. Romania*, on the official website of the European Court of Human Rights, European Court of Human Rights - Judgement of 3 March 2009 in Case *Denes and Others v. Romania*, the official website of the European Court of Human Rights, European Court of Human Rights - Judgement of 10 March 2009 in Case *Stanciu v. Romania*, on the official website of the European Court of Human Rights, European Court of Human Rights - Judgement of 12 May 2009 in Case *Elias v. Romania*, on the official website of the European Court of Human Rights, European Court of Human Rights - Judgement of 2 June 2009 in Case *Czaran and Grofcsik v. Romania*, on the European Court of Human Rights official site.

responsibility and promote legal security and stability and meanwhile accountability function works in the maintenance and promotion of legal security and stability.

Responsibility and accountability must be redefined in contemporary modern states, they are required for a balanced society, promoting true values, condition of the state acting as guarantor in relation to its citizens and close circle of rights and obligations related to the social contract partners.

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****European Court of Human Rights - Pilot-Case of Maria Atanasiu and others against Romania* in 12.10. 2010.

***Constitutional Court, decision of unconstitutionality nr.226/2003 on the provisions of Article 30 of Decree nr.32/1984-35 for implementation of the Family Code and Decree concerning individuals and legal entities and the provisions of Article 43, 45 of the Code of Civil Procedure, published in the Official no. 458/27.06.2003.

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