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The Dynamics of Legal Liability and its Development Stages: some Key Considerations

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Abstracts: As a central concept in the legal doctrine and a true cornerstone of law, in all its branches, legal liability represents an issue of permanent topicality. Considering the existing theoretical confusions or insufficiently discussed aspects related to this institution, the present article tends to deepen and facilitate the understanding of the evolution of legal liability, its development stages and procedural phases, their content and destination within the dynamic mechanism of legal liability.

Keywords: legal liability; evolution; stages; procedural phases

1. Introduction

In the theory of law doctrine there are still some incompletely resolved theoretical problems. Although they seem as traditional, they are characterized by permanent topicality. One of these issues refers to legal liability. In its temporal and spatial coordinates, liability is categorically imposed as a central concept, regardless of the nature of the theoretical perspective that addresses it. Legal liability is one of the fundamental categories of law and it is also a concept loaded with novelty and overwhelmed by the multiple perspectives that its study can offer. It is not surprising that more and more authors argue for the need of an integrative vision in order to decipher the current meanings of the evolution of legal liability. There is an increased interest given, in recent years, in the Republic of Moldova and other states, for debating and revealing the different elements and facets of legal liability as a dynamic process, interest arising from the permanent reconfiguration of reality that raises questions and brings out problems considered to be definitively solved. The achievements in the field of legal sciences in general, ask for reconsiderations, especially in what concerns legal liability and its evolution.

2. About the Concept of Legal liability

Over time, legal liability has been the subject of study of various authors, the approaches being often different, shaping new opinions regarding this legal phenomenon, so that the topic addressed in this paper is constantly current and significant. Legal liability was defined as a *form of social responsibility* (Baltag & Dobînda, 2018), which arises as a consequence of a wrongful act commission and which represents a legal relationship established between the perpetrator, the state and the injured party. It aims to restore

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the rights of the injured party and compensate for the caused damage, but also to prevent the commission of new illegal acts, which is achieved through the intervention of the state coercive force.

In the specialized legal literature, legal liability has been approached as a general category of law, but also as a branch institution of the constitutional, civil, criminal, contraventional, labor, financial law or other law branches. From a philosophical point of view, legal liability, as a dimension of the legal phenomenon, represents the unity between content and form; liability is not only a static state of fact, but also a dynamic procedure, because with the application and execution of the legal sanction the legal status of the delinquent also changes.

3. Staged Approach to the Phenomenon of Legal Liability

Examining legal liability as a legal relationship of substantive law in development we deduce the staged approach to legal liability. Highlighting the stages of legal liability and studying their content allows the investigation of legal liability as a dynamic system in which changes that affect a separate default element lead to changes that operate the entire system. Not in vain, the General Theory of Law tends to study different legal phenomena, namely in their dynamics and not only as static phenomena. For example, it is known and unanimously accepted the staging of the application of law, it is interesting to look into the stages of manifestation of subjective law, also something new for the doctrine is the staging of legal conflict (Lazarev, 2003).

The status of legal liability in dynamics, allows us to infer that it does not occur automatically as a result of committing the illegal act. Regardless of the form of liability, this is a process that starts when the wrongful act is committed and is consumed at the end of the execution of the sanction applicable for the commission of the illegal act. Even when the sanction is applied immediately after the commission of the deed, the liability, nevertheless, is realized in a fixed period of time. This period is necessary for the application of a fair and appropriate measure of legal liability.

The doctrine knows several attempts to determine different stages of application of the law, deriving from the need for a more profound understanding of the issue. This approach allows solving several tasks that were not previously achieved, such as adding more clarity to the stages of legal liability. Their highlighting is determined by several factors: the logical sequence of certain actions related to legal liability; the functional stages of the legal process; the changes in the legal status of the subject of law at different stages of legal liability. We insist on the idea that the evolution in stages of legal liability is directly dependent on the actions of the legal subjects in the process of investigation by the competent bodies of the wrongful act and the changes that occur in the legal status of the subject of the wrongful act. It is worth mentioning that, throughout the evolution of legal liability, the legal status of the subject of legal liability does not remain unchanged and homogeneous. Firstly, it differs from the general status by the existence within it of specific rights and obligations. Secondly, considering that the competent state bodies are better acquainted with the wrongful act committed, changes occur not only in the content of the special legal status of the subject of legal liability, but also in its externalization.

As a basis for the staging of legal liability, we will take the criterion related to the correlation between the discovery by the state bodies of the illicit act and the changes that take place in the legal status of the perpetrator. We came to this conclusion, stating that legal liability will achieve its objectives when the competent state bodies determine the specific volume of rights and obligations of the perpetrator after establishing all the relevant circumstances in this regard.

In this way, *the stages of legal liability are specific phases in which the correlation between the volume of rights and obligations of the subject who committed the illicit act and the activity of the competent state bodies in the investigation of the wrongful act is reflected. From this, we deduce that, as the law enforcement bodies advance in the sense of knowing and investigating the illicit deed, the status of the perpetrator also changes, by becoming a special legal status* (Baltag & Dobînda, 2020). The changes in the legal status of the perpetrator also produce changes in the legal relationship of liability, which evolves. This process will only be completed when the purpose of legal liability is achieved.

Regarding the approach of the stages (phases) of legal liability, this subject is less discussed in the doctrine, as there is no single criterion based on which certain concrete stages of legal liability could be distinguished (Baltag & Dobînda, 2019). We mention that the General Theory of Law does not pay enough attention to this subject so important from a theoretical and practical point of view. As being said, in the literature there is no single criterion for highlighting the stages of legal liability and their continuity in time and space.

Summarizing the opinions regarding the stages of legal liability, we concluded that legal liability in dynamics goes through several stages.

The *first stage* of legal liability starts when the illicit act is committed and lasts until it is detected by the competent bodies. We call this stage the *emergence or birth of legal liability*.

The *second stage* begins with the *detection of the illicit act* by the competent bodies and ends at the time of entry into force of the law enforcement act, by this recognizing the commission of the wrongful act by a specific person. This act individualizes the sanction that will embody the measure of legal liability applied to the perpetrator. This stage can be also correctly called the *concretization of the legal liability* by the competent bodies. The content of this stage is represented by the qualification of the illicit deed. Already at this stage the perpetrator may be limited in certain rights and freedoms, such as the right to free movement, the right to manage property, etc. The measures applied to the perpetrator have a preventive and stopping character.

The *third stage of liability- its realization*, starts with the entry into force of the law enforcement act that recognizes the wrongful act committed. The realization of the liability within this stage is manifested through the actions undertaken by the competent bodies in order to apply the concrete measures indicated in that act. Thus, legal liability, which initially existed as a link between the rights and obligations of the parties to the legal relationship of liability, is now manifested through the actions of the parties that make it possible to achieve these rights and obligations.

This stage also reveals the essence of the existence of the legal relationship of liability. The limitations that the person bears, express the special legal status of the perpetrator until the execution of the sentence. The execution of the sentence also represents the completion of the realization of the legal liability.

It should be mentioned that this development of the legal relationship of liability can be concluded at any of the stages preceding the realization of legal liability, if the norms governing the release of legal liability will be applied.

All the *mentioned stages* represent different stages of evolution of the legal liability relationship, which also have different content and continuity, but which together represent a unique phenomenon of legal liability. By highlighting the stages of legal liability, we emphasize that the application of the sanction does not follow immediately after the commission of the wrongful act.

4. Dynamic Procedural Phases of the Evolution of Legal Liability

The highlighting of the legal relationship of liability and its evolution is reflected in the correlation between the substantive and procedural side of the law. If the substantive side has been sufficiently researched in the legal doctrine, the procedural one is insufficiently researched, although there are multiple opinions regarding the determination of the procedural form, the legal procedure, the procedural relations, the procedural stages in the evolution of legal liability. As mentioned above, legal liability in its evolution goes through several stages, which lead to changes in the legal status of the subject of legal liability. This process ceases when the purpose of legal liability is achieved by sanctioning the perpetrator. Each stage of the development of the substantive legal liability corresponds to a distinct procedural form or each stage of liability has a sequence of procedural activities specific to it.

The purpose, content and composition of the procedural phases are sufficiently well presented within the branch procedural studies. In the general theory however, the problem is less addressed. In our opinion, we can delimit two major phases of the legal process: *the phase of logical consecutiveness* and that of *functional prescription*.

The *phase of logical consecutiveness* is based on the logical consecutiveness of the undertaking of actions for the application of the rules of law. The first sub-stage, hence, - is to identify the *de facto* circumstances of the act; the second – the identification of the legal basis of the case; the third - the settlement of the case. Thus, the stage of logical consecutiveness is a system of rational operations, aimed at resolving the existing situation.

The *functional prescription phase* is a part of the legal process characterized by specific procedural conditions and relationships. Each sub-stage has concrete tasks to solve and ends with the adoption of a concrete act of law enforcement. We mention that the stage of functional prescription is a dynamic accumulation of means, methods, forms regulated by law that express or determine the realization of strictly procedural procedures that ensure the logical-functional consecutiveness of concrete actions aimed at achieving the final procedural result conditioned from a substantive point of view

Finally, regarding the stages and phases of the evolution of legal liability, we propose the following stages of legal liability. The stages of the evolution of legal liability are:

- 1) *the emergence or birth of legal liability* by the commission of the illicit deed. At this stage takes place the transformation of the legal liability at prescriptive level (provided by law) into the subjective liability of the perpetrator;
- 2) *the disclosure of the legal liability*, which includes the moment of starting the investigation until the completion of the investigation. This stage begins with the emergence of the procedural relations between the perpetrator and the competent body of the state;
- 3) *concretization and qualification of legal liability* - this stage is a continuation of the previous one and is summarized by choosing the appropriate, fair and proportionate sanction for the actual wrongdoing. Consequently, the act of enforcing the law is adopted (for example, the court decision);
- 4) *the realization of the legal liability*, which begins with the application of the sanction and ends with its execution and;
- 5) *the control of the execution of the sanction*. At this stage, the rights and obligations of the state and the perpetrator are manifested through real actions aiming to materialize the sanction (Baltag & Dobînda, 2020b).

Depending on the advancement of legal liability through the stages and phases previously exposed, as well as the efficiency of the activity of law enforcement bodies, we can highlight *two new ways of legal liability*:

- *realized legal liability* - this method of liability takes place when the perpetrator has been found, he is held legally liable for his deed, and is forced to bear the consequences of the sanction of a personal or patrimonial nature;
- *unrealized legal liability* - when the perpetrator of the illicit act is not identified or has disappeared from the sight of the competent bodies. The share of unrealized legal liability depends on the efficiency of the activity of the bodies meant to hold the perpetrator accountable (Baltag & Dobînda, 2018).

The evolution of legal liability may cease at any stage following the intervention of the institution of release from legal liability. The release of legal liability can be defined as *the exclusion, under the law, of the negative consequences of the application of state coercive force on the person who committed the illicit act* (Dobînda, 2020). The grounds for release of legal liability are: the low degree of social danger of the deed; the low degree of social danger of the perpetrator: the socially favorable behavior of the perpetrator following the commission of the illicit act; expiry of the limitation period for the application of legal liability; acts of amnesty and pardons.

The evolution of legal liability may cease at any of its stages by virtue of the application of the legal rules governing the institution of release of legal liability. This confirms our deduction regarding the fact that legal liability is a substantive legal relationship of protection that is constantly evolving.

Delimiting the release of legal liability from the release of punishment, we highlight *two stages* of release of liability: *pre - judicial* and *judicial*. We mention that in the first stage it is possible to release of liability, and in the second stage release from punishment. We consider that these stages of release of liability are interconnected with the very stages of the evolution of legal liability. For example, at the stages of the emergence and disclosure of legal liability, release of liability is possible by virtue of the expiry of the limitation period and on the basis of the amnesty act; at the stage of concretization and qualification of legal liability it is possible both release from punishment and release from liability; at the stage of liability realization, only the release of the punishment is possible, since already at this stage the perpetrator executes the punishment.

5. Conclusion

Legal liability is a constantly evolving process in which the procedural relations overlap with the substantive ones. This overlap starts from the moment of committing the illicit deed and lasts until its consumption at the moment of executing the sentence. Examining legal liability as an evolving substantive legal relationship, we deduce that this relationship has certain phases in its development. The phases of legal liability are dynamic stages in which it is reflected the correlation between the volume of rights and obligations of the subject who committed the illicit deed and the activity of the competent state bodies in the investigation of the wrongful act. So far as the state bodies advance in their investigation of the illicit deed, the legal status of the subject of legal liability also changes, becoming a special legal status. The changes in the legal status of the perpetrator propose changes in the legal liability relationship, which evolves. This process is completed when the purpose of legal liability is reached.

Reference

Baltag, D. & Dobînda, V. (2020). Unele reflecții referitoare la abordarea etapizată a răspunderii juridice/Some reflections on the step-by-step approach to legal liability. *Legea și viața/Law and life*, no. 12, pp. 9-15.

Baltag, D. & Dobînda, V. (2019). Unele reflecții privind construcția spațial-temporală și structural sistemică a fenomenului răspunderii juridice/Some reflections on the spatial-temporal and structural systemic construction of the phenomenon of legal liability. *Materialele conferinței științifice naționale cu participare internațională „Statul de drept în tradiție și modernitate”/Materials of the national scientific conference with international participation "The rule of law in tradition and modernity"*. Chișinău: USM, pp. 271-280.

Baltag, D. & Dobînda, V. (2020). Fazele dinamice spațial-temporale ale răspunderii juridice/The dynamic spatial-temporal phases of legal liability. *Legea și viața/Law and life*, nr. 8-9, pp. 10-15.

Baltag, D. & Dobînda, V. (2018). Generalități privind răspunderea juridică /General information on legal liability. *Conferința internațională științifico-practică, Integrarea europeană – Aspecte economico-juridice/International Scientific-Practical Conference, European Integration - Economic and Legal Aspect*. Chișinău: USEM, 12 decembrie, pp. 300-304.

Dobînda, V. (2020). Unele considerente referitor la liberarea de răspundere a subiectului răspunderii juridice în diferite etape de manifestare a acesteia/Some considerations regarding the release of liability of the subject of legal liability in different stages of its manifestation. *Legea și viața/Law and life*, no. 10-11, pp. 29-34.

Лазарев, В.В. (2003). *Реализация права. Общая теория права Курс лекций/Implementation of the law. General theory of law Course of lectures*. Moscow: Юристъ, с. 363.