

CRIMINAL LIABILITY OF THE CIVIL SERVANTS AND OTHER PERSONS THAT HAVE IMPORTANT FUNCTIONS, IN ROMANIA AND SOME OTHER COUNTRIES THAT ARE MEMBERS OF THE EUROPEAN UNION

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Abstract: *Legal liability in the science and practice of law, is a central area, since it is essentially a guarantee of achieving law and its concrete manifestations, as a fundamental component of the system of law, is an amount of specialized forms of liability are governed by separate legal institution. Legal liability is a form of social responsibility established by the State in breach of rules of law by a wrongful act entailing bearing the consequences appropriate to the guilty, including the use of coercive force to restore order to rule of law infringed.*

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The legal liability is a very important part of the science and law practice as it guarantees the right. In its manifestations it represents a sum of specialized liabilities that are governed by different legal institutions.

As the legal system is concerned, the legal liability represents the negative consequences that arise from doing something illegal.

The legal liability is a form of social liability imposed by the state as a result of breaking the law norms by an action that brings some consequences including the use of force by the state in order to re-establish the law.

In prof. Ion Oancea's opinion "the legal liability is a complex of rights and obligations". Other writers define the legal liability as being the judicial action of constraint that leads to judicial sanction.

The liability will result in a sanction due to some illicit action. The legal liability is the result that a person that broke the legal norms established by the state reaches. This result is a sanction of the law.

The legal liability is the fundamental judicial institution of the criminal law that together with the crime and the sanction institutions represent the most important parts of the criminal law¹. As a form of legal liability, the criminal liability is a consequence of breaking the criminal legal norm by a person or a legal entity.

In order to establish the law order in general and the criminal law order, all persons that are part of a state need to behave in the limits of the laws of that state so that the social relations would develop normally.

Those who do not behave according to the provisions of the criminal norms and commit illicit actions are constraint by a criminal legal report of conflict in order to re-establish the order. In the criminal doctrine the criminal liability is defined as being "the criminal legal report of constraint issued from the breaking of the law; the state on one side and the criminal on the other side. This is a complex report whose content is represented by the right of the state as representative of the society to punish the criminal, to sanction him according to his actions and to constrain him to fulfil the sanction as well as the criminal obligation to answer for his action, to obey the sanction given in order to re-establish the order and the authority of the law"².

As the criminal liability is solely based on committing a criminal act in the criminal legal report of conflict, it must be established:

- The existence of the action that gives rise to the criminal liability, the forbidden action
- The guilt named by law, in committing that action

¹ I. Oancea – *Theoretical explanations of the Romanian Criminal Code*, vol. I, p. 99

² C. Bulai – *Criminal Law*, vol. III, p. 14 - 17

- The suited punishment that is to be applied to the criminal and executed by him³.

As the importance of the experience research in other European countries, the well-known lawyer Marc Anseille noted that “the research of foreign experience allows the lawyer to see new horizons, to better understand the law of his country, as the specific characteristics of this law is even more highlighted in comparison to other systems. The comparisons will endow the lawyer with ideas and arguments that can not be reached otherwise, even if he has an excellent knowledge of the law of his country”

We want to discuss the norms that refer to the criminal acts that can be committed by the civil servants or other persons that have important functions. We have noted that many criminal codes of the European countries deal with groups of norms that refer to such criminal acts and the liability of their achievement.

In Germany the criminal acts that may be committed by such persons are dealt with in the chapter “Criminal acts related to service”. The system of these criminal acts contains:

- Receiving undeserved goods,
- Taking bribe,
- Giving undeserved goods,
- bribe,
- giving an illegitimate decision,
- causing body injuries to others by use of title
- compelling others to testify,
- to take proceedings against an innocent person,
- to carry out a sentence against an innocent person,
- incorrect official statements,
- illegitimate collection of taxes,
- illegitimate collection of taxes that are not mentioned,
- minimizing the payments,
- violation of trust during the diplomatic service,
- violation of the service secret and of the special obligation of keeping the secret,
- illegal publicity of the trials,
- violation of the means of connection by mail or phone,
- violation of fiscal secret,
- the representation of both parties in the same trial by the same lawyer.

This detailed list of the criminal acts allows us to note that the above named chapter of the German Criminal Code includes criminal acts that can be attributed to common law persons as well as criminal acts specific to criminal trials or carrying out the sentence, the criminal act of civil servants and sometimes even by lawyers.

The subject of the mentioned criminal acts, when talking about some criminal acts as “receiving undeserved goods” or “taking bribe” is “the person that fulfils public duties”.

In the German Criminal Code, the person with a liable function is defined as being “the person who, according to the German law:

- a) is a civil servant or judge,
- b) is closely related to accomplishing the state attributions,
- c) carries out the state administrative attributions in the state power institutions or other establishments.”

The person liable for the accomplishing public duties is “the person that has no liable function and acts:

- a) in a state organ or institution that fulfils state orders or
- b) in an organization, factory or company that fulfils state administrative functions in the state power organisms or other institution

³ Idem p. 12

- activates for them and is compelled by law to conscientiously accomplish his duties”.

The French criminal code, passed in 1992, came into force in 1994, contains 4 books.

In the fourth book “Criminal acts and misdemeanours against the nation, state and public order”, in the third title “Assaults against the state power” the second chapter is “Assaults against the administrative organizations of the state by civil servants”. The name of the chapter denotes their characteristics of this group of criminal acts from the point of view of the generic objective and the subjectivity of criminal acts.

The criminal acts performed by persons that have liable functions are grouped in three sections:

- power abuse against the administrative organs
- power abuse against private persons
- honour violation.

The first group includes criminal acts as taking some measures in order to meet the law, the exercise of attributions by a person that was previously officially informed on the decision and the facts that led to his/ her dismissal.

The second group includes the assault of the civil servant against the personal freedom, the discrimination against persons or legal persons, the assault against the secret of mail, etc

The third group refers to taking bribe, use of influence, receiving undeserved goods, the infringement of the free access and equality between those who take activate on the goods and services’ market for the organizations of the state, the illegal appropriation and embezzlement of goods.

Besides this, the chapter “ Fraud”, included in the title” Assaults to the trust of society” deals with the forgery in documents issued by a state organism, by a person that represents the state power and works in one of the state organisms, if the criminal act was committed during the service hours.

The law of 13th July 1983, concerning the right and responsibilities of the public servants, has a big importance in defining the responsibility of the persons that work in the public law (persons that have liable functions) when talking about abuses.

The French Criminal Code does not give a general definition of the public law persons. According to the French criminal code these criminal acts may be committed by:

- representatives of the state power (important persons);
- people that activate in the state service (employees of four hierarchical groups, each of them including more rankings of the civil servants);
- People who have a public mandate

Among these, in some chapters and articles of the crime code, the following persons can also be liable for criminal acts: the person that have state power, the person that fulfils the duty of a civil servant, the person that was elected, the person that has a state function, the employee of a state institution, the employee of a nationalized factory, the employee of a mix economic institution where the state or the state organization hold more than 50 percents of the share capital, the employee of the state post office, the state accountant, and so on.

The Spanish criminal code includes specific norms that refer to the liability of the civil servant for the criminal acts related to work or function. Title XIX of the criminal code is “Criminal acts against the state power” and includes the following chapters:

- „Criminal acts performed by civil servants and others”
- „Refusing to investigate crimes”
- „Insubordination and refusal to help others”
- „Treachery in keeping the papers and breaking the secrets”
- „Bribe”
- „Influence”
- „Peculation”
- „Fraud and illegal taxes”

- „Forbidding the transactions and the activity of the public servant, excess of power during the mandate”.

The Spanish code does not include the definition of the liable person, but art. 25 the second alignment defines the civil servant: “the person that has state function by law, as a result of elections or who was named”.

A chapter, named “Criminal acts committed by liable persons” can be met in the title “Criminal acts against judges or magistrate, lawyers, public prosecutors or representatives of the prosecution, members of the instance, secretary of the court, etc.

The Italian code, according to Law 86 of 1990, considers that the subject of the service infringement are the persons that have responsibilities and those who have obligation that are specific to liable persons. The liable person is the person that has legislative, judiciary or administrative function. The state function is the function that is defined by the norms of the public law and by decisions of the state power organisms. It is characterized by the forming and the expression of the will of public administration and has power attributions. The persons that have a function of public necessity are also liable for the criminal acts committed at work. These persons are the person that practice law, persons that work in the health system or any other person whose profession requires the special permission from the part of the state organisms.

The following criminal acts can be committed by liable persons:

- illegal assigning
- taking bribe,
- bribery,
- incitement to bribery,
- power excess,
- use of inventions and discoveries acknowledged due to the function,
- use of service secret,
- incitement to neglecting or bantering the state institutions, laws or normative papers,
- refuse to carry out the obligations imposed by the job,
- interruption of the public service or public necessity service.

In the Romanian Criminal Code, title IV ”Criminal acts that harm activities of public interest or other activities defined by law”, the first Chapter includes „the service infringements or the criminal acts related to work”:

- service abuse against the interest of people,
- service abuse by limiting some rights,
- service abuse against the public interests,
- qualified service abuse,
- service negligence,
- abusive behaviour,
- negligence in keeping the state secret
- taking bribe,
- bribery,
- receiving undeserved goods,
- traffic of influence,
- actions committed by other public servants.

In the Romanian Criminal Code the public servants, the servants are liable for service infringement or related to work. In the case of taking bribe the action is even worse if it was committed by an employee that has leading functions.

When taking into consideration the criminal law, “the public servant” is the person that has permanent or temporary duties in the service of a public unit, regardless of the means of investment. According to the criminal law the word “public” refers to “everything that concerns the public authorities, institutions or other legal persons of public interest, the administration, use or exploitation of goods of public property, public interest services ...”

The latest Criminal Code contains the Fifth Title “Service and corruption infringements” that has two different chapters: “Corruption infringements” and “service infringements”

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