

THE CRIMINAL RESPONSIBILITY – THE MOST SEVERE FORM OR THE JURIDICAL RESPONSIBILITY

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Abstract:

The routine life confronts us with numerous conduct deviations (homicide, theft, non-compliance of a contract, braking the discipline at work), deviations that are not equal as gravity and interrupt in a way or other what is considered to be the natural pattern of things.

The social responsibility establishing mechanism starts when the individual chooses a certain conduct (form all the possible ones).

Between the different types there can be certain interference, without eliminating the particularity of each one, so a deed that comes against a social norm could attract simultaneously the politic responsibility and juridical responsibility, each form being manifested in its specific shapes.

The juridical responsibility is a complexity of rights and obligations, that start when an illicit act is committed, representing the situation in which the public constraint is applied by juridical sanctions in order to establish stability in the social relations and to lead all the society members to the rightful pattern.

At its turn, the criminal responsibility is the most severe type of juridical responsibility because in intervenes when the most important social values are broken.

Key words: criminal responsibility, law, offences

The routine life confronts us with numerous conduct deviations (homicide, theft, non-compliance of a contract, braking the discipline at work), deviations that are not equal as gravity and interrupt in a way or other what is considered to be the natural pattern of things.

No matter what the deviancies form of expression, the reaction is identical: when a conduct is deviated form its normal pattern, it generates a sanction; when the rules that are generally valid, we talk about a responsibility for this inappropriate conduct.

The normal social conduct of the individual is the compliance with the law; still, life proves that there is a significant number of situations when the individual brakes the law, his/her actions getting out from normality¹.

The conduct of the individual is permanently submitted to certain opinions and reactions from the organised society, that are institutionalised using the social norms that shape the human behaviour, conducting his/her activity in the right social order².

Within the social relations, by the above-mentioned juridical norms, the state reserves its absolute right to decide over juridical acts and documents using responsibility. The social responsibility implies the social sanctioning of the conduct chosen by the individual in case of non-conformities between this conduct and the social norms that were instituted.

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Between the different types there can be certain interference, without eliminating the particularity of each one, so a deed that comes against a social norm could attract simultaneously the politic responsibility and juridical responsibility, each form being manifested in its specific shapes.

Among all the social responsibilities, the juridical responsibility is the most severe because it causes law breaking. The juridical responsibility has as essential characteristic, the possibility to apply, in certain cases, the public constraint.

Not any type of human conduct is revealing from a juridical point of view, only that that is settled under the incidence of the juridical norms³; the human conduct could enter into the juridical norms, in this case being legal or on the contrary, illicit or illegal.

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At its turn, *the criminal responsibility* is the most severe type of juridical responsibility because in intervenes when the most important social values are broken.

The criminal responsibility consists in the offender's obligation to hold a penal sanction as a consequence of the offence. The juridical relation of conflict, of constraint establishes specific rights and obligations for the participant subjects (the state – as owner of the right to ask for criminal responsibility and the offender that must be sanctioned for the committed offence that must be constrained to execute the punishment)⁵.

¹ I. Romosan, „Vinovăția în dreptul civil român”, Ed. All Beck, p. 2

² Gh. Bobos, „Teoria generală a dreptului”, Ed. Dacia, Cluj Napoca, 1994, p. 256

³ I. Ceterchi, I. Craiovan, same referrence., p. 105

⁴ D. Motiu, „Teoria generală a dreptului”, Cluj Napoca, 1996, p. 152

⁵ V. Mirisan, „Drept penal. Partea generală”, Ed. Convex, Oradea, 2002, p. 248

The only source of the criminal responsibility is the offence; that means that within the juridical relation of constraint must establish the existence of the offence, the sanction must be applied to the offender who must execute punishments.

The criminal responsibility is a fundamental institution of the criminal law, being a form of the juridical responsibility.

The criminal responsibility is stipulated in the norms of the criminal law. .

The criminal responsibility is not equally established for all the offenders, because the individuals that break the law are also different, and the acts they commit are not identical; for this reason it is necessary to individualize the criminal responsibility and establish the sanctions according to general and obligatory criteria:

- the dispositions of the Penal Code – general part, if there are no other derogation by special norms;

- the limits of the penalty settled by the special part; in relation to this one, the court of law establishes the exact penalty; these limits won't be able to be passed only in cases expressly stipulated in the law ;

- the degree of the social danger of the deed, it will be considered the content of the offence and also the situations, the conjunctures out of the legal content of the offence, giving an exact social danger to the offence;

- the offender, his/her physical and psychological evolution, the behaviour within the family and society, the way he/she acted, the perseverance of their crimes;

- the surroundings that diminish or increase the gravity of the criminal responsibility: the circumstances that increase or diminish the gravity of the offence, if we talk about a recidivist, the infraction contest, the intermediary plurality and the continuous offence.

The criminal responsibility is an offence that is specific to the criminal law, consisting in the offender's obligation to resent a penal sanction, a sanction as a consequence of the offences he/she has committed ¹.

In other words, the criminal responsibility is the juridical conflict relation of constraint that requires rights and obligations that are specific to the participating subjects: the state, as owner of the right to require criminal responsibility and the offender that must be sanctioned for the criminal deed and constrained to execute the penalty)².

The criminal law sanctions are the penalties, the educational measures (that are applied to the minors) and the safety measures.

The sanction specific to the criminal law is the penalty.

Concerning the physical forms, the penalties have a strictly personal character, representing a re-education measure and a measure of constraint that interdicts certain things.

¹ V. Mirisan, same reference, p. 248

² idem

Due to this strictly personal character, the penalties have as consequence the fact that their application and execution can be made only as long as the offender is alive¹. We talk about the penalties having a patrimonial character, like bails.

During the tribal communities period, the sanctions have a character of revenge of the victim against the person that did wrong; all family members of the victim participated to this revenge, until receiving a full satisfaction².

Later, at the apparition of the state, the duty to punish was taken by it, the first rules of punishment application have been established; these still remained a revenge instrument against the offender, the gravity of the offence being limited, leading to the so-called "lex talionis".

During time, using punishment as revenge, appeared the idea that considered that the punishment must not regard only revenge but also an example for the others³.

The penal responsibility accomplishes the specific function of the general law, meaning the educational and preventive function that is revealed from the fact that no illicit deed remains without sanction. In the mean time, the penal responsibility accomplishes a constraint function for the person that has committed the infraction.

The criminal responsibility is established on the principle of legal incrimination; according to it, this responsibility is taken only for those deeds that are expressly stipulated as infractions, the punishments and the measures that are to be applied must be expressly stipulated in the law.⁴

In the penal responsibility the principle of legality says that the apparition, the unfurl and solving the criminal relation is based on the law and strictly related to this one⁵.

If the penal law does not consider it an offence or does not gather its constitutive elements, there will be no criminal responsibility, and the penal action will not start and if it started it will not continue.

In these situations, the criminal investigator will order the exit from the criminal investigation and the court of law will pronounce the acquitting.

The criminal responsibility enters in action as a consequence of an illicit deed that affects a social value, protected by the law; an action or a non action that contravenes the juridical norms and is committed by a person that has the capacity to respond for his/her actions.

The criminal responsibility is settled on the idea of punishing the person that has committed the offence⁶.

¹ C. Stănescu, C. Bârsan, „*Teoria generală a obligațiilor*”, Editura All Educational, București, 1998, p. 123

² G. Antoniu, S. Danes, M. Popa, „*Codul penal pe înțelesul tuturor*”, Editia a VII-a, Editura Juridica, București, 2002, p. 95

³ G. Antoniu, S. Danes, M. Popa, same reference p. 95, 96

⁴ C. Stănescu, C. Bârsan, same reference, p. 127

⁵ A. Boroș, „*Drept penal, partea generală*”, Editura C. H. Beck, București, 2006 p. 258

⁶ C. Stănescu, C. Bârsan, same reference, p. 126

Each criminal punishment represents not only a constraint measure but also a repair of the social prejudice suffered by the order of law, because of the offence¹.

The criminal responsibility intervenes as a consequence of the results of the illicit conduct that affects the society, an individual, an action that has a socially dangerous consequence.

The dangerous consequence is the negative modification of the surrounding reality produced by the offence or that could be produced, expressed in the endanger, harming or threatening social values protected by the criminal law².

The socially dangerous consequence could be a state of danger, in this case the social value that was threat is harmed by its existence, and the social relations created around and due to this value could not normally unfurl.

It is the situations of infractions that threat the state's security, outrage, false deposition, where the law doesn't require the deed to produce a material result, considering that the threat to the social relations is sufficient for the dangerous action or offence.³

For the criminal responsibility a very important thing is represented by the type and degree of guilt, both for the quality of the infraction of the illicit deed and for the effective application of the conviction⁴.

In this way, an intentional illicit deed will be characterised in a different manner comparing with an illicit deed committed by negligence or imprudence, like the homicide comparing with murder in the first degree.

Regarding the requirement for the criminal responsibility, an offence in the first degree is expressively stipulated in art 17 Criminal Code that must be related with art. 19 that stipulates the types of guilt

Art. 19 alignment 1 Criminal Code, does not define the notion of guilt, but from its content results that the deed is committed with guilt when is committed with intention..

The guilt is defined in the criminal doctrine as “the psychical attitude of the person that commits a deed on his/her own will, representing a social danger and the person had, at the moment of the crime and consequences, the real, subjective possibility of this representation⁵.

As an essential character of the infraction, the guilt has two main types: intention and guilt, having also a mixed form: the praetor-intention or the exceeded intention.

Regarding the capacity of the persons called to respond for their illicit actions, in both cases, the responsibility is required only in case if the person that has committed the illicit deed, has acted with judgement⁶.

¹ C. Statescu, C. Bârsan, same refference., p. 126, 127

² Gh. Nistoreanu, A. Boroï, „*Drept penal si procesual penal*”, Editia a III- a, Ed. All Beck, p. 18

³ ibidem

⁴ idem

⁵ A. Boroï, same refference, p. 107

⁶ I. Romosan, same refference., p. 31

Form a juridical point of view, by judgement we understand the capacity of the person to realise the dangerous character of the deed and to consciously manifest his/her will, capacity related with the conscious deed¹.

Considering the biological and psychological particularities of the underage, the Criminal Code stipulates that the minor that has reached the age of 14 does not criminally respond; it is considered that there is an absolute benefit of lack of judgement.

The underage between 14-16 does not criminally respond if it proves that he/she has committed the deed with judgement, having a relative benefit of lack of judgement; the minor that has reached the age of 16 criminally respond, his/her judgement being presumed.

The proof of judgement must be done for each case by the juridical authorities.

The authorities establish using the medical and social investigation and also complex investigations in order to understand the conduct of the underage inside the family, school, work, entourage, things that could give information about whether he/she could realise or not the harmful character of the deed he/she committed².

The criminal responsibility is established by the decision of the court of law.

Excepting the cases stipulated by the law, when the penal action can be started only at the prior complaint of the victim, the fundamental principle in the criminal responsibility matter is to accomplish all the documents necessary for the unfurl of the trial³.

In all the situations, the state is present at the establishment of the criminal responsibility even if the criminal action is started by the prior complaint of the harmed person.

The criminal responsibility is prescribed in certain terms, starting from the moment when the deed was committed that differ, for minors the terms are reduced to half⁴.

¹ A. Boroi, same reference, p. 123

² A. Boroi, same reference, p. 123

³ C. Stănescu, C. Bârsan, same reference, p. 128

⁴ C. Stănescu, C. Bârsan, same reference, p. 131