

COMPARATIVE STUDY REGARDING THE DELINQUENT CRIMINAL AND CIVIL RESPONSIBILITY

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Abstract:

The common life confronts us with many conduct deviations that are not equal as importance and in a way or another, break what is considered to be the ordinary course of things.

Whatever the shape of these human deviations, the reaction is identical: when a conduct deviates from its normal course, it provokes sanctions, when the general accepted rules are violated then appears a kind of responsibility for this inappropriate behaviour.

Consequently, the social responsibility implies the social sanctioning of the behaviour that was chosen by the individual, in the case of nonconformity between his conduct and the social norms.

Among the different types of the social responsibility, the juridical responsibility is the most important, because it is based on the violation of the law.

Not any human conduct is relevant by a juridical point of view, only that that is set under the incidence of the juridical norms. Also, the juridical responsibility has as main characteristic, the possibility to apply, if the case, the state's constraint.

Among the most important types of juridical responsibility we mention the delinquent criminal and civil responsibility. There are many similarities and also differences between the two.

Key words: comparative study, delinquent criminal, civil responsibility.

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Among the most important types of juridical responsibility we mention the delinquent criminal and civil responsibility. There are many similarities and also differences between the two.

1. Both civil and criminal responsibilities are components of the juridical responsibility that is also a part of the social responsibility. The two types of responsibility appear after the accomplishment of certain refutable deeds by certain individuals.

- *The civil responsibility* is a type of juridical responsibility that consist in obligations that grave a person to repair the prejudice caused to another person by its deed or, in cases stipulated by the law, the prejudice that is responsible for²⁵¹.

- *The criminal responsibility* is a fundamental institution of the criminal law, being a type of the juridical responsibility that consists in the obligation of the offender to suffer a criminal sanction, a punishment, after committing an infraction.

2. – *The criminal responsibility* is ruled by the norms of the criminal law.

The criminal responsibility can not be established equally for all the offenders, because the individuals that violate the law are different, and the deeds that are committed are not similar. For this reason, it is necessary to proceed to the individualisation of the criminal responsibility and to the establishment of the criminal sanctions according to general and obligatory criteria:

- The dispositions of the criminal code, general part, if there are no exemptions from the special laws;

- The limits of the sanction settled by the special part, according to which the court of law establishes the actual punishment, limits that will not be over passed only in the cases that are expressively stipulated by the law;

- The degree of social danger of the deed, meaning that the content of the infraction and also the situations, the external circumstances and the legal content of the infraction that give the deed a real social danger;

- The delinquent, its psychological and physical development, the family and social behaviour, the manner in which the persons acted, the infraction perseverance;

²⁵⁰ I. Ceterchi, I. Craiovan, *Introduction in general theory of law*, All Publishing House, Bucharest, 1993, page 105.

²⁵¹ C. Turianu, Gh. Stancu, *Civil law cours. Real rights. The general theory of obligations*, Universitara Publishing House, Bucharest, 2006.

- The circumstances that attenuate or engrave the criminal responsibility: attenuating or engraving circumstances, relapse, a series of infractions, intermediary plurality and the continuous infractions.

- *The civil responsibility* is stipulated by the norms of the civil law (art.998 – 1003 Civil Code) that focuses on a principle that corresponds both to ethical and social equity requests, and also to certain requests of the juridical security: the principle of the civil responsibility for the illegal deed that causes prejudices²⁵².

According to art.998 Civil Code, „ any deed done by individuals that lead to a prejudice of another individual, obliges the person that has committed the error to reparation”.

Excepting the responsibility for its own deed, art.1000-1002 institutes the responsibility of certain categories of persons for the illegal deed that is accomplished by another person, the responsibility for the prejudices caused to the goods or animals found in the juridical guard of certain persons and the responsibility of the owner for the prejudices caused by the ruin of certain buildings that belong to him.

Art. 1003 focuses on the solidarity character of the responsibility of the persons that can be blamed for causing the prejudice.

3. Distinctively to the criminal law, the civil law recognises two types of responsibility: delinquent civil responsibility and contractual civil responsibility.

The delinquent civil responsibility composes the common law of the civil responsibility (due to this fact, when we refer in this paper to the civil responsibility we refer to this type of responsibility), while the contractual civil responsibility has a derogatory character.

When the obligation starts from a contractual relation between two parts, the responsibility is contractual, when it starts from a deed that leads to a prejudice by an illegal deed, we talk about delinquent responsibility²⁵³.

4. – *The criminal responsibility* is a sanction that is specific to the criminal law that consist in the obligation of the offender to be submitted to a criminal sanction, a punishment as a consequence to the fact that he has committed an infraction²⁵⁴.

So, the criminal responsibility is the conflict juridical relation of constraint that requests for specific rights and obligations of the participants, meaning the state - as the owner of the law to submit to criminal responsibility and the offender - that must be sanctioned for the infraction that is committed, constrained to face the punishment²⁵⁵.

²⁵² C. Stătescu, C. Bârsan, *Civil law. The general theory of obligations*, All Educational Publishing House, page 121.

²⁵³ C. Turianu, Gh. Stancu, *Civil law cours. Real rights. The general theory of obligations*, Universitara Publishing House, Bucharest, 2006.

²⁵⁴ V. Mirișan, *Penal law. The general part*, Lumina Lex Publishing House, Bucharest, 2004, page 248.

²⁵⁵ Idem.

The criminal law sanctions are the punishments, educational measures (applied to the underage) and the safety measures.

Consequently, the specific sanction of the criminal law is the punishment.

Regarding the physical forms, the punishments have a strictly personal character, representing a mean of re-education and a measure of constraint that interdicts certain rights.

Due to this strictly personal character, the punishments have as consequence the fact that their appliance and accomplishment can not be done only as long as the person that committed the actions is alive²⁵⁶. We even talk about the punishments having a patrimonial character, like fees.

- *The delinquent civil responsibility* is a sanction that is specific to the civil law, applied for the illegal deed that causes prejudices, following the re-establishment of the subjective rights that were violated by these illegal deeds that brought prejudices.

This is a civil sanction having a character of repair, without being in the same time a punishment. Even though, at its historical origin, it was considered a punishment, during its evolution it reached the status of individual sanction, only with the purpose of repair²⁵⁷.

Distinctively to the criminal responsibility that is applied in to the individual that has committed the illegal deed, with the purpose of re-education and sanction, the delinquent civil responsibility is a civil sanction that is applied to the benefit of his patrimony.

If the offender has deceased, the obligation is transmitted to its followers²⁵⁸.

If it had considered being a punishment, it would not be transmitted on to the followers of the person that has committed the illegal deed²⁵⁹.

5. The two types of responsibility both *delinquent civil responsibility* and *the criminal responsibility* accomplish the specific function of the law in general, meaning the educational-prevention function that starts form the fact that any illegal deed is to be sanctioned.

The delinquent civil responsibility is a repairing function that is represented by the will to compensate, in the charge of the offender²⁶⁰.

The criminal responsibility accomplished a function of constraint towards the person that has committed an infraction..

6. – *The criminal responsibility* is established on the principle of the legal incrimination, according to which this responsibility is taken only for those deeds that are expressively stipulated as infractions, the punishments and the measures that are applicable must be expressively stipulated by the law²⁶¹.

²⁵⁶ C. Stătescu, C. Bârsan, same reference, page 123.

²⁵⁷ C. Stătescu, C. Bârsan, same reference., page 123.

²⁵⁸ Idem.

²⁵⁹ Ibidem.

²⁶⁰ C. Stătescu, C. Bârsan, same reference, page 124.

²⁶¹ C. Stătescu, C. Bârsan, same reference., page 127.

- In the case of *delinquent civil responsibility* the obligation to repair the prejudice starts with every illegal deed that causes prejudices²⁶².

The civil legislation institutes a responsibility principle for every deed of this kind, without actually describing each deed²⁶³, similarly with the criminal law, that defines each infraction by law.

7. Both *delinquent civil responsibility* and *the criminal responsibility* are consequences of an illegal deed that violate certain social values that are protected by the law²⁶⁴.

For this reason, it seems that both types of responsibility intervene while an illegal conduct is manifested, meaning an action or a non-action that comes against the juridical norms, committed by a person that has the capacity to respond for its actions²⁶⁵.

So the deed is a product of a human action or a non-action that means that the simple decision to approach an inappropriate conduct is not considered being an act.

8. An important criterion of distinction between the two types of responsibility is that while the *civil responsibility* is based on the idea of repairing a prejudice that is brought to a certain subject, the *criminal responsibility* is based on the idea of punishing the person that has committed the infraction²⁶⁶.

The criterion of distinction must not be considered as being absolute, because the idea of punishment is not completely foreign to the civil responsibility, as the idea of repairing a prejudice is not completely foreign to the criminal responsibility²⁶⁷.

For this reason, there can be cases of civil responsibility in which the obligation of repairing the prejudice can be completed with a fee having a sanctioning role²⁶⁸.

9. The two types of responsibility, *delinquent civil responsibility* and *the criminal responsibility* intervene as a consequence of a harmful result of the illegal conduct that provoked certain damage to the society or to one individual.

This harmful result, in the case of the criminal responsibility is called a socially dangerous consequence and in the case of the delinquent civil responsibility is called prejudice.

The harmful result allows us to appreciate the degree of social danger of the deed.

In order to involve the criminal responsibility, the incriminated action or non-action must produce a dangerous consequence.

The dangerous consequence is the negative modification of the environment produced by the deed or that is possible to be produced. Harming, endangering or

²⁶² Idem.

²⁶³ Ibidem.

²⁶⁴ C. Stătescu, C. Bârsan same reference, page 127.

²⁶⁵ I. Ceterchi, I. Craiovan, same reference, page 105.

²⁶⁶ C. Stătescu, C. Bârsan, same reference, page 126.

²⁶⁷ Idem.

²⁶⁸ Ibidem.

threatening the social values that are protected by the criminal law represents these consequences²⁶⁹.

The socially dangerous consequence can be represented either in a state of danger - in this case the social value is threatened by its existence- and the social relations created around it; due to this value, the relations do not unfurl normally²⁷⁰.

In the civil matter, the prejudice represents the harmful result, of patrimonial or non-patrimonial nature, touched in any way by any kind of deeds, the rights of individuals and the values that are protected by them. This result, according to the civil law, attracts the obligation for repair from the responsible individual²⁷¹.

10. Both types of responsibility, the civil and the criminal responsibility is based on the guilt of the person that has committed an illegal deed, even if this guilt is only an intention, negligence, or imprudence²⁷².

For the criminal responsibility, the type of guilt represents a key element, for the description of the illegal deed as infraction, and also for the actual appliance of the criminal punishment²⁷³.

A deed that was committed intentionally will be punished differently than a deed committed by negligence or imprudence, for example homicide or murder in the first degree²⁷⁴.

In the case of the delinquent civil responsibility, the influence of the responsibility is not conditioned by the type of guilt of the offender that must repair entirely the prejudice caused by the illegal deed²⁷⁵.

The guilt represents a type of dangerous psychological attitude of the offender towards the deed he committed and its consequences.

Concerning the involvement of the criminal responsibility, the guilt is expressively previewed in the art 17 Criminal Code and must be synchronised with art.19 that describes the types of guilt.

Art. 19, first alignment Criminal Code, does not define the notion of guilt, but its content describes that the deed is committed with guilt when it involves intention or culpability.

According to art.19 first letter, the deed is committed with intention when the offender:

- predicts the result of its deed, this result being the purpose of the deed
- predicts the result of its deed even though he did not follow it, accepting the possibility of its existence.

²⁶⁹ Gh. Nistoreanu, A. Boroi, *Penal law and procedure law*, Third Edition, All Beck Publishing House, page 18.

²⁷⁰ Idem.

²⁷¹ C. Turianu, Gh. Stancu, same reference, page 177.

²⁷² C. Stătescu, C. Bârsan, same reference, page 127.

²⁷³ Idem.

²⁷⁴ Ibidem.

²⁷⁵ C. Stătescu, C. Bârsan, same reference, page 127.

The intention can have different shapes:

- direct intention
- indirect intention

In the case of the culpability, the author does not predict the antisocial result of its deed, if he proved to be handy, able, attentive, (even though he could have been), the infraction could not have been produced²⁷⁶.

The culpability has also two shapes:

- the culpability with prevention (ease)
- the simple culpability (negligence)

From an historical point of view, the civil guilt as a juridical institution has its origin in the Roman system of civil responsibility which sanctioned the civil delinquency that produced damage to the patrimony of another person, either by negligence or intention²⁷⁷.

The Romanian Civil Code has taken the idea of distinction between the intentional types of guilt and the non intentional types of guilt, but does not give special meanings to the degree of guilt²⁷⁸.

As a principle, there is a responsibility even for the easiest guilt. There are matters where the guilt, in the shape of intention can produce special effects in the field of responsibility²⁷⁹.

In the Romanian civil law, the subjective side of the deed is expressed in a series of terms like: "guilt", "culpability", "mistake", a variety of concepts that lead to certain confusions that were actually put into attention by the majority of author in the civil law²⁸⁰.

If the criminal law presents the guilt as intention - the fundamental type or guilt, general and basic, the infractions are committed with intention and only by exception by guilt or intention, the civil law does not retain this kind of rule.²⁸¹

First of all due to the fact that in the civil law does not function the concept „nullum crimen sine lege”, the state can not undertake the whole sphere of the illegalities in the civil law, and then because the related illegalities are committed mostly by imprudence or negligence²⁸².

In the civil law, the guilt in the shape of intention appears always in the same time and as infraction in an intentional shape, but also in the case of deeds that belong to the contractual field, when the debtor, with bad will, does not accomplish its contractual obligations²⁸³.

²⁷⁶ G. Antomiu, Ș. Daneș, M. Popa, *The penal code for everybody*, Juridica Publishing House, Bucharest, 2002, page 56.

²⁷⁷ I. Romoșan, *The guiltyness in romanian civil law*, All Beck Publishing House, Bucharest, 1999, page 8.

²⁷⁸ I. Romoșan, same reference, page 9.

²⁷⁹ Idem.

²⁸⁰ I. Romoșan, same reference, pages 19, 20.

²⁸¹ I. Romoșan, same reference, page 21.

²⁸² Idem.

²⁸³ Ibidem.

11. The criminal law describes the degree of the guilt as having a great importance influencing the punishment, the civil law describes the civil responsibility as being submitted to other principles like:

1. the civil responsibility can be taken under consideration even for the smallest guilt

2. independently on the seriousness of the guilt, the author of the illegal deed must entirely repair the prejudice and the quantum of the fees is established depending on its degree, not according to the seriousness of the guilt²⁸⁴.

12. In the criminal law, the legal authority selects by the incrimination norm the deeds that represent infractions, making a description of both objective and subjective side of the infraction. It is possible that the same deed to affect both social relations protected by the criminal law and those that belong to the repair of the civil prejudice.

The same situation can contain civil and criminal guilt, but sometimes the criminal guilt can lack; this fact rises further the problem of repairing the civil prejudice. But the civil prejudice will not be repaired, if there was not retained the civil guilt of the author.

This kind of situation imposes with necessity to solution the relation between the civil and the criminal guilt²⁸⁵.

13. Regarding the capacity of the persons called to respond for their illegal deeds, in both cases the responsibility is involved only if the person that has committed the illegal deed, was conscious²⁸⁶.

From a juridical point of view by acting consciously we understand the capacity of the individual to be aware of the socially dangerous character of the deed and to manifest its will, capacity, in relation with the actual deed that was committed²⁸⁷.

Considering the biological and psychological characteristics of the minor, the Criminal Code stipulates that the minor that has not reached the age of 14 does not have a criminal responsibility can not be able to act consciously.

The minor between 14-16 years has a criminal responsibility if it is proven that the deed was committed consciously, it is considered to exist a relative lack of judgement: the minor that has reached the age of 16, has a criminal responsibility, being considered to be aware of his actions²⁸⁸.

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

This is established using the medical expertise and the social investigation, with complex investigations in order to understand the conduct of the minor in the

²⁸⁴ I. Romoşan, same reference, page 24.

²⁸⁵ I. Romoşan, same reference, page 28.

²⁸⁶ I. Romoşan, same reference, page 31.

²⁸⁷ A. Boroï, *Penal law. The general part*, C.H. Beck Publishing House, Bucharest, 2006, page 123.

²⁸⁸ A. Boroï, same reference, page 128.

family, at the job, in entourage, that could lead to the conclusion that he could not be aware of the dangerous character the deed he committed²⁸⁹.

Certain domains of law (civil law, procedural civil law), make the distinction between:

- usufruct capacity

- exercise capacity

- *The usufruct capacity* is the ability of the subject to have rights and obligations, starting with the birth of the individual and ceasing at its decease.

- The rights of the child are recognised at the moment of its conception, but only if it is born alive.

- the exercise capacity is the ability of the individual to exercise its rights and to assume its obligations, committing personally juridical deeds.

Regarding the exercise capacity we distinguish:

- the restricted exercise capacity of the minor that has reached the age of 14, presuming that he has no sufficient life experience and judgement in order to have a full exerciser capacity.

- the full exercise capacity starts from the day the person becomes aged.

Consequently, in the case of *civil responsibility* the minors that have reached

the age of 14 are presumed to work with judgement, having a restricted

exercise capacity, the minors that have not reached this age will not respond

by a civil point of view and the individuals that have reached the age of 18 will

respond from a civil point of view if they were not set under the interdiction of

the law, presuming that there is a full exercise capacity.

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

Excepting certain cases stipulated by the law, when the criminal action can be started only at the prior complaint of the affected part, the main principle in the field of the criminal responsibility is that that the documents that are necessary to the unfurl of the criminal trial are accomplished²⁹⁰.

In all the situations, the state is present at the establishment of the criminal responsibility, even when the criminal action is started at the complaint of the affected part.

In the case of the *delinquent civil responsibility*, the parts can by their own and without the intervention of the court of law, reach to an agreement regarding the way of repairing the prejudice that was caused by the illegal deed. The court of law

²⁸⁹ A. Boroï, same reference., page 123.

²⁹⁰ C. Stătescu, C. Bârsan, cited work, page 128.

intervenes only at the request of the victim, if the author of the illegal deed will not repair the prejudice willingly²⁹¹.

²⁹¹ Idem.