CRIMINAL LIABILITY IN THE INTERNAL LAW OF THE EUROPEAN UNION MEMBER STATES

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Abstract: *The purpose of present paper is to analyse the criminal juridical liability within the European States through a more detailed presentation of two legal systems, the French and the Romanian one.*

Key words: *Criminal, Liability, Europe.*

1. Brief History of the Juridical Liability

Such as many other juridical notions, the criminal liability during its conceptual evolution was preceded by a few theses, having initially a social meaning and therefore, a wider application range. Such concepts are the social responsibility and the liability, which taken in their vast meaning of social phenomena, can be met from the most ancient times, even from the times when the first human society appeared.

Gradually there appears a clearer delimitation between the notions of "responsibility" and "liability"; the latter does not aim the value system as much (as the former one does), but much more the normative system of the society, based on which the complex relations between the state authorities and structures, on one hand, and citizens, on the other hand, are realized.

Although the responsibility and the liability remain simultaneous and mostly similar phenomena, the liability becomes more and more individualized and separated, constituting a distinct entity founded on special external factors which manifests as an expression of compulsory requirements imposed by the State to the citizens. The final purpose is the protection and the conservation of the important social values, while its functionality is ensured by a sanctions system.

The definition of the juridical liability notion generated multiple controversies. Thus, Henri Lalou, starting from the etymological significance of the word "liability", relates the idea of liability to the obligation resulted from an infringement.

The Italian doctrine, more specifically oriented towards the criminal liability, defines the liability as the offender's obligation to bear criminal punishment. The German school, with its illustrious representatives G. Haney and Wagner, affirms that the liability is the expression of a "conduct measure required by the law".

The present definitions describe the juridical liability as the institution which comprises all the juridical norms that regulate the juridical relations born within the specific activity, carried out by the public authorities, pursuant to the law, against those who infringe or ignore the lawful order in order to ensure the observance and the promotion of the juridical order and the public welfare.

Starting from the XII century in the English criminal law, under the influence of the Roman law and the Canonical Law, there were crystallized the first points of view imposing the criminal guilt at the basis of the criminal liability.

Due to historical reasons, the English law went through a special evolution, independently of the Roman juridical system. As main consequence of this evolution, the Anglo-Saxon law does not have the classifications or the definitions that the Roman traditional law does, or the principles born from the common basis of the continental law systems. As opposed to the continental model, the basis of the English law is the jurisprudence (the common law). That is why certain principles or general applicability rules are quite difficult to distinguish, as long as the jurisprudence resumes it all to giving solution to actual cases; therefore the presentation of an English law institution is only but a complex one. Instead of criminal law, in England there were and there are still functioning

many criminal laws, which were adopted even since the XIV Century. The oldest law still functioning presently is the Law regarding the country treason of 1315.

In the French criminal law there were already modern orientations regarding the criminal guilt concept even since the XIX Century. Thus, there was brought forward the matter of determining the forms of criminal guilt. In the Second Book of the Criminal Code and Criminal Trial Code of 1810 there were provided the dispositions regarding the discharge of criminal liability in case of insanity or moral and physical constraint. Pursuant to the French Criminal Code and Criminal Trial Code, the co-participants shall be held criminally liable such as the guilty persons, except when the law stipulates otherwise. Article 61 also stipulated that any person who was aware of an offender's illicit deed or who offered refuge or gathering place shall be punished as co-participant. The provisions of the respective code also mentioned the fact that the persons who committed the deed in state of "madness" or were "forcedly imposed", should be absolved of criminal liability.

In the German criminal law the basic source was the Criminal Code of May 15, 1871, having as author the German jurist Adolf Leonar. This code of law or criminal book is the basis of the present criminal code. The book was based on Kant, Hegel, Binding, Feuerbach philosophy, taking the ideas from the criminal law classic school with its theories of psychological guilt and the freedom of will, where the criminal liability was objectively founded on the generation of damages within the lawful order and the punishment concept represented the payment for the caused damage.

2. The Criminal Liability Notion

In the specialty literature there are mentioned many distinction criteria, such as the criterion of the nature and the social importance, of the interest and the injured value, the criterion of the type of juridical sanction, the criterion of the subjects' quality etc. The classification according to the defining particularities criterion of the illicit from the infringed juridical norm point of view conduct has a special theoretical and practical importance.

The criminal liability, as distinct form of juridical liability, possesses certain defining features which distinguish it from the other forms. The consequences of the attempts to turn the juridical liability term into a concept had inevitable repercussions upon the criminal liability notion as well.

Therefore, there are widely spread opinions regarding the definition of the criminal liability: some authors sustain that it is a person's obligation to bear a criminal sanction for having committed an infraction. The definition was criticized due to the belief that it realized a confusion between liability and the sanction itself, ignoring the fact that the sanction is nothing but the instrument for achieving the juridical liability.

According to other opinions, the criminal liability should be regarded as a constraining juridical relation with a content is formed of the obligation to bear a juridical sanction and the right to apply a criminal sanction; such right belongs to the State and it is exercised by its specialized organs. However, there are reservations to this definition as well: its sustainers tried to express a notion by outlining in the most general and abstract manner the substance of the respective phenomenon and they did not trace distinctions between the content elements of the juridical relation and the juridical norm itself.

Finally, there are other authors who sustain that the criminal liability grants content and finality to the criminal juridical relation, "by determining objectively and subjectively, actively and passively, the mechanic incidence of the criminal sanctions" (I. Oancea, *Criminal Law Treaty. General Part*, ALL Juridical Publishing House).

We can exhaustively define the criminal liability as the juridical institution which comprises all the juridical norms regulating the juridical relations that form the object of the criminal law; such norms are born within the scope of the activity regarding enforcing the criminal liability upon anybody who infringes or ignores the lawful order, by committing infractions; it is an activity carried out by the public authorities pursuant to the law and governed by its own principles, in order to protect the essential social values, confirmed by the constitutional order, in order to maintain and promote the juridical order and the public welfare.

3. Delimitation of the criminal liability from other forms of juridical liability

Each form of juridical liability has certain distinctive characteristics which cannot be found in the other forms. This is also valid in case of the criminal liability. Its specific character consists in the subject's illicit behaviour, which must have the form of an infraction. Besides this, the criminal liability is based on the concept of sanction. In most cases the criminal liability is accomplished or put into practice by determining and executing the penalty. However, the liability and the penalty are not identical notions, so by no means they should not be mistaken. A person who bears criminal liability can be exempted of penalty pursuant to and in conformity with the law. Therefore, the criminal liability is a considerably wider and ampler category then the criminal penalty. The penalty does not wear out the essence of the liability notion and it cannot exist without liability, while the liability is possible without applying the penalty.

Another qualifying sign separating the criminal liability from other forms of juridical liability is constituted from the organs convoked to determine the types of liability. The criminal liability is also distinguished by the organs which have the right to apply the sanctions: only the law courts. In case of the material liability, however, the influence measures can also be applied by the administrations of the juridical persons, while the administrative sanctions can be applied by the law courts, as well as by other specialized organs and by persons with liability functions.

Another characteristic of the criminal liability is the level of the applied sanction, as well as the fact that these sanctions do not have a specific character, such as the financial character of the sanctions in case of the civil and material liability.

Finally, the criminal liability is distinguished by the quality of the subjects. There can be subjected to the criminal liability only the physical persons who have committed, intentionally or imprudently, a socially dangerous deed stipulated by the criminal law and who has reached the age indicated by the law, who is responsible and possesses certain specific qualities stipulated by the law.

4. The principles of the criminal liability

In the criminal law system of the European States, the criminal liability, as well as all the other institutions, is governed by a series of juridical principles.

The national criminal legislations of all the states promote the fundamental principle according to which the infraction is the only ground of the criminal liability.

The obligation corresponding to a person for having infringed a criminal norm to bear a penalty for the committed infraction and the judicial organs right to apply the penalty, represent the criminal liability as a form of the juridical liability.

Inn order to enforce the criminal liability it is necessary that the deed should be committed with guilt, to present social danger and to be stipulated and punished by a criminal norm; the absence of any of these elements shall have as consequence the lack of criminal liability.

The criminal liability is personal and corresponds to the offender only; the individualization of the liability is accomplished by the fact that the penalty applied to each author or participant should correspond to the type of the infraction, to the circumstances of having committed the deeds and it should be proportional to the gravity of the deed.

The criminal liability always corresponds to the physical person and it is personal, for engaging the liability being necessary the existence of the guilt, which involves the exclusion of the collective criminal penalty and liability.

The necessity to restore the lawful order infringed by committing the offences led to the institution of the rule according to which the criminal trial shall be initiated and carried out officially (the principle of the official criminal trial). In case of the infractions with a reduced gravity or regarding the interpersonal relations or regarding personal life, the Criminal Code and other laws with criminal dispositions stipulate that the criminal action cannot be put initiated or exercised unless the damaged person has expressed the desire to bring the perpetrator to justice by introducing a previous complaint before the judicial authorities.

The previous complaint constitutes a criminal law institution, its absence representing a cause to remove the criminal liability (art.131 Criminal Code).

The institution has also a trial related reflex which has direct repercussions over the possibility to exercise the criminal action and implicitly over the criminal liability.

The main characteristics of the criminal liability have incidence in the international law as well, implicating particularities determined by the nature of the international juridical relations and the content of the specific infractions. However, the law stipulates different procedures for applying the criminal liability for certain categories of persons (foreign citizens, foreign persons enjoying diplomatic immunity (more exactly extraterritoriality and inviolability), dignitaries, juridical persons etc. the foreign citizens enjoying diplomatic immunity do not fall under the jurisdiction of the host-country (the International Convention of Vienna 1961).

Therefore, the principle of the criminal liability legality has a fundamental importance; it stipulates that the entire process of applying the criminal liability to the persons who have infringed or ignored the lawful order should be carried out only within the limits and the context determined by the legislation in force. Only the law can determine which illicit acts are considered infractions, which are the organs with the competence to examine the respective infringements of the lawful order, what sanctions can be applied, which are the conditions for enforcing and executing such sanctions, as well as the causes which remove the infraction character of the criminal act or criminal liability.

Another principle, not any less important, is the principle of the personality, also known as the principle of the individual criminal liability, which determines the strictly personal character of the liability. Its addressee can be no other than the person guilty of having committed an infraction.

The principle of unique criminal liability involves the rule according to which there can only be one criminal liability for one infraction. However it does not mean that the main criminal liabilities cannot be accompanied by complementary penalties or by an accessory penalty (certainly, under the condition that such criminal sanctions should cumulate out of different reasons and should have different functions). Besides this, the criminal liability can coexist and be accompanied by other forms of juridical liability, such as the administrative, disciplinary or civil liability.

The humanism principle involves the utilization of those instruments which do not lead to the humiliation or degradation of the human being and which do not injure the dignity of the person subjected to the criminal liability.

The finality principle involves the rule according to which, any person who has committed an infraction shall be subjected to the criminal liability and shall bear criminal sanction, regardless of the social position or the occupied position.

Very closely related to this principle is the principle regarding the equality of the persons before the law, which stipulates that everybody has the same rights and nobody should benefit of privileged treatment; this principle forbids the any kind of discriminations whatsoever during then criminal liability process.

The Member States apply in their national criminal law the “ne bis in idem” principle, pursuant to which a person who was permanently judged within a member state, cannot be prosecuted for the same deed in another member state, provided that, in case of conviction, the penalty should have been executed or in process of execution or cannot be executed any longer in conformity with the legislation of the State in which the conviction was pronounced.

In the French criminal law, the guilt is built on the basis of an ample significance, which can characterize any infraction activity. It consists of the mere volitional element, because any human activity consists of material elements, as well as of psychic elements.

The German criminal law is the one of May 15, 1871 and it was essentially modified at March 10, 1987. However, the German criminal law is not entirely coded, because other legislative acts are also applied. Following the union of the Federal Germany with the Democrat Germany at August 31, 1990, on the former Democrat Germany territory some of the dispositions of the January 12, 1968 Criminal Code are still applied.

The present criminal code of Germany instituted the formal definitions of the infractions. At §11 the terms used in this code are explained as follows: “It is considered illegal an activity which gathers the elements comprised within an infraction content which is stipulated by the criminal

law." In the criminal doctrine, infraction means an illegal activity committed with guilt, having the signs and the features of one of the infractions incriminated in the legislation, being an anti-juridical one subject to the application of the criminal sanction.

The criminal code of Germany systematizes differently the infraction matter. Thus, first it is defined the perpetration and the omission infraction (§13), as well as the institution of the liability for the person who acts through another person (§ 14); further on it is regulated the guilt (§15; §18), the error regarding the circumstances of the deed (§16), the error regarding the interdiction (§17), the minority (§19), mental alienation (§20), diminished responsibility (§21), tentative (§§22-24); participation (§§25-31); self-defence (§32); state of necessity (§§33- 35) etc. Therefore, §15 of the Germany Criminal Code stipulates that only the intentional action shall be punished, if the law does not explicitly stipulates that the faulty action is punished as well.

At May 26, 1996 the new Spanish criminal code came in force; it was adopted in 1995 and it replaced the 1870 code. The inspiration source for this code was the 1978 Spanish Constitution. We can also point out the fact that within the Spanish criminal code, there are also functioning several special criminal laws.

The Spanish criminal code comprises in its regulations the definition of the intentional and faulty action and inaction. Article 10 of the code mentions as acknowledged infractions and offences those actions or inactions punished by the law and committed intentionally and imprudently.

The Italian criminal code regulates within the title regarding the infraction, the causality relation (art. 40), the participation of causes (art. 41), the guilt (art. 42-43), the punishment objective conditions (art. 44), the fortuitous case and the force majeure (art. 45), the physical constraint (art. 46), fact error (art. 47), the provoked error (art. 48), putative act (art. 49), victim's consent (art. 50), enforcing a right (art. 51), self-defence (art. 52), legal use of weapon (art. 53), state of necessity (art. 54), faulty excess (art. 55), tentative (art. 56), the infractions committed through media (art. 57-58), infraction circumstances (art. 59-70), the participation of infractions (art. 71-84). Thus, article 42 of the Italian criminal code stipulates that nobody can be punished for an action or inaction stipulated by the law as infraction, if it was not committed knowingly and willingly. Nobody can be punished for an action stipulated by the law as offence, if it was not committed intentionally, except the case expressly stipulated by the law in which the offence is committed with praeterintention or out of guilt. The law determines the cases in which the result is differently placed on a person's charge as a consequence of his action or omission.

Article 43 stipulates that the offence is intentional, if the harmful or dangerous result, which is the result of the action or the omission that the existence of the offence depend on, according to the law, is foreseen and intended by the perpetrator, as a consequence of its own action or omission: the offence is committed with praeterintention, when a more serious result than the one intended by the agent derives from an action or omission; the offence is out of guilty when the result, even if it is foreseen, is not intended by the agent and it occurred due to negligence, imprudence, ignorance, lack of skill or by not observing the law, the regulations, the orders or the discipline rules.

In 1997, in Poland appeared a new criminal code, applied at January 1, 1998, which renounced to the legislative definition of the infraction. The social danger notion of the infraction was replaced with the prejudice character. When assessing the prejudice character of the infraction, pursuant to article 115 of the Polish criminal code, the type and importance of the social value are taken in consideration, the degree of the caused prejudice or which could have been caused, the value, the circumstances, the manner and the methods of causing it, the importance, the guilt degree of the perpetrator who contributed to committing it, the reason and the type of the infringement of the safety measures, the infringement degree.

5. The criminal liability in the Romanian criminal law

The criminal liability in the Romanian law system is based on the same specific European principles previously described and constitutes the fundamental juridical institution of the criminal law, which, alongside with the infraction institution and the sanctions institution form the pillars of the criminal law system.

5.1. Replacement of the criminal liability

The replacement of the criminal liability corresponds to the criminal policy and the criminal law principles, regarding determining a concordance between the social danger degree of the committed actions and the nature of the juridical liability to the determined.

By the replacement of the criminal liability, the juridical constraint regarding the achievement of the criminal law order is diversified.

In order to decide the replacement of the criminal liability, the court should check if the legal conditions related to infraction and perpetrator are met. Thus, in order to be able to rule such measure, the punishment provided for infraction should be of at most 1 year or fine, the deed should present a reduced degree of social danger, the damage should be recovered entirely, the perpetrator should regret having committed the deed, and the court should consider that the perpetrator can correct himself without the application of a punishment. At the same time, it is imposed that the perpetrator should not have been convicted before or applied administrative character sanctions twice.

5.2. Removal of the criminal liability. Causes

There are circumstances posterior to the commitment of the infraction which lead to the conclusion that the perpetrator's criminal liability is not necessary or can no longer be applied. Such states, situations, circumstances leading to not applying the punishment to the perpetrator, acknowledged by the legislative bodies and regulated by distinct juridical institutions are causes that remove the criminal liability. Such causes are:

A. Amnesty

The amnesty is the clemency act granted by the Parliament pursuant to the law which removes the criminal liability, the execution of the penalty and the other consequences of the conviction for infractions committed up to the date when the amnesty law appeared, due to criminal politics reasons.

The effect of the amnesty is the removal of the criminal liability for the committed deed. Thus, if the criminal trial has not been initiated yet, it shall not be initiated at all; on the other hand, if the trial has already been started, it shall cease at the moment when the amnesty act is applied. There is an exception to this case, when the trial continues at the defendant's request so that he can prove his innocence. If at the finalization of the trial, the defendant is found innocent, the court shall pronounce an acquittal decision. In case the defendant's guilt is found, he shall not be convicted, applying the provisions of the amnesty deed instead.

At the same time, the effect of the amnesty is the cessation of the execution of the penalty, as well as the removal of all the consequences resulting from the conviction. This means that the respective conviction shall not be taken in account when determining the relapse state and it shall not constitute an impediment in granting the parole. Moreover, if the penalty has been enforced, the execution shall cease, but if it has not been enforced yet, it shall not begin at all.

B. Prescription. Types

A first form of the criminal prescription is the prescription of the criminal liability. Its effect is the removal of the criminal liability for the committed deed. That is why, in the criminal law, the prescription is considered to represent a sanction at the address of the judicial organs passivity, as they had the right to sanction the perpetrator. The effect of the criminal prescription is similar to the one of the pre-conviction amnesty.

The prescription operates regardless of the infraction seriousness degree, except the infractions against peace and humanity. The prescription terms are determined according to the nature and the duration of the sanction stipulated by the law for the deed to be prescribed, taking into account the special maximum duration of this penalty.

The prescription term starts elapsing as of the date when the infraction was committed (when the result occurs, in case of the infractions with result, when the action or inaction takes place, in case of the formal infractions and when the infraction wears out, in case of infractions with execution duration). In case of minors, the prescription terms are reduced to half. Therefore, in case of minors, there operates a double reduction, because the trial term is calculated according to the

limits of the penalty reduced to half and then the so calculated term is also reduced to half. For example: In case of a sentence with prison from 5 to 15 years, the trial term shall be of 4 years.

The second form of the prescription is the prescription of the execution of the penalty. Its effect is that the penalty is considered as executed when a certain time interval stipulated by the law has passed.

The prescription terms, in such case, is determined according to the nature of the penalty for which the execution is prescribed, taking into account the exactly determined duration determined by the Court for such penalty.

C. Absence or withdrawal of the previous complaint

The lawsuit is usually initiated officially. However, there are exceptions when the promotion of a lawsuit is up to the harmed person. In such case, the reduced social danger of the infraction is taken into account or the fact that the development of the lawsuit could cause moral prejudices to the harmed person.

If the law stipulates that the action is initiated only following the previous complaint of the harmed person, the absence of this complaint removes the criminal liability. By exception, the lawsuit can also be initiated officially when the harmed person lacks of the exercise capacity or has a restricted exercise capacity.

D. Parties' reconciliation

It is a bilateral act by means of which the defendant and the harmed party consent to end the lawsuit, removing the criminal liability and extinguishing the lawsuit. As opposed to the withdrawal of the previous complaint which operates *ad rem*, the parties' reconciliation produces effects *in personam*, operating only between the reconciled parties. In conclusion, the active or passive solidarity does not operate.

6. The criminal liability stipulated by the French code

Pursuant to the French code, the criminal liability represents the obligation to answer for having committed the incriminated deeds and to bear the sanctions stipulated by the text of the law for the respective deed.

In democracy, the citizens have rights, but also obligations. The freedom is closely related to responsibility and involves the enforcement and the observance of certain limits in order to be correctly exercised. As opposed to the civil liability, the criminal liability involves an action from the State in order to remove any element that could influence the public order.

The criminal liability is stipulated by the French criminal code in the articles 121-122 and it should be regarded from the perspective of three essential aspects:

- The criminal participation;
- The forms of the criminal liability;
- The cases removing the criminal liability;

<u>The criminal participation</u>

Regarding the criminal liability, at article 121-1 the French code stipulates in the first place an essential principle, meaning the personal criminal liability principle according to which only the person who has committed or participated to perpetration of an infraction has to answer. Therefore, the criminal liability cannot intervene for another person's deed and it cannot be collective either or, differently put, a group cannot answer for a person's deed.

A first form of the criminal participation is being the author. The author of an infraction is the one who commits the execution deeds which represent the material element of the infraction. In case of infractions committed by omission, the author is the one who, pursuant to the dispositions of the law, had the obligation to act in a certain way but he didn't.

In the previous legislation of the criminal code, there was also stipulated the institution of the collective liability, but it disappeared when the present criminal code came in force, although the common guilt still exists within the law courts jurisprudence, especially in case of association in order to commit criminal actions. However, from the perspective of the present legislation, in case a

group of persons has committed an infraction, each of them shall be liable as author according to the performed execution acts.

The second form of the participation stipulated by the French criminal code is being the co-author. The co-author is the one who participates directly to the perpetration of the infraction alongside with the main author. He is liable for the same infraction even in case the main author is later on declared irresponsible or suffering from insanity. Within the process of penalty individualization, in case of the co-author, the penalty can be diminished or increased according to extenuating or aggravating circumstances retained in charge of the defendant.

The third and the last form of the criminal participation stipulated by the French code is being the moral author. The moral author or the instigator is the one who determines another person to commit a deed stipulated by the criminal law by any means. The French law does not provide nor acknowledge independently this criminal law institution. The conviction shall be done by taking into account the complicity institution which takes the form of complicity by determination and challenge. When instituting the new criminal code, the issue of introducing an autonomous criminal liability for the moral authors of the infraction was also debated. This possibility was very rapidly abandoned by the electoral code commission. However there are a few cases stipulated by the criminal law in which the distinct sanctioning of the moral authors is do possible and the most important is the one of determining a person to commit suicide.

The French criminal code stipulates that the author is not only liable for having committed the infraction provided by the law, but in the expressly stipulated cases, he is also liable for the unsuccessful attempt to commit the infraction, that is for tentative.

In fact the tentative is defined as the attempt to commit an infraction, by enforcing the infraction resolution, an attempt which does not produce its effects due to objective reasons, independently of the perpetrator's will.

At the same time, the code defines the complicity institution as well, establishing as accomplice a person who knowingly helps or assists the perpetrator in preparing or committing the infraction. Another element characteristic to the French code is considering as accomplice the person who instigates the perpetrator to commit the infraction.

The tentative, as stipulated by the French law, should be understood from the perspective of two essential aspects:

The first aspect is the one of the material element of the tentative. Thus, the tentative is characterized by the beginning to execute the material element of the infraction. The perpetrator is no longer in the stage of the preparation acts, but he does not finish the infraction resolution either. For example, the insurance fraud tentative led to establishing a clear jurisprudence. Thus, it was considered in practice that a simple simulation of a disaster is a preparatory act which is not punished because it does not tend to nor causes to obtain the insured sum from the insurer. However, it was considered tentative and sanctioned accordingly the false declaration of a situation in order to determine the insurer to pay the insured sum.

Given the real situation, the criminal law understands to grant impunity to the perpetrator in certain situations. Thus, the voluntary relinquishment before the consummation of the infraction, determines the perpetrator's absolution of liability. The motivation for such argument was that the perpetrator, by abandoning the execution of the infraction activity, proves that he is not dangerous. At the same time, by abandonment, the perpetrator proves that his decision to commit the infraction was not irrevocable. In this way, the law encourages future perpetrators in abandoning the commitment of an infraction, in this way being exempted of liability.

In case the infraction activity is interrupted or it does not produce its effects out of reasons independent of the author's will, meaning the tentative, which according to the French criminal code is punished.

In order to benefit of impunity, the voluntary relinquishment should intervene before the consummation of the infraction. However, some special texts reward the active regret attitude posterior to the commitment of the deed, by granting impunity, such as the case of the conspiracy

infraction, but still this is an exception and it is not considered by the criminal code as a posterior voluntary relinquishment, but as qualms of conscience without juridical value.

The second essential aspect is the subjective element within the tentative. Thus, the perpetrator has to commit the infraction intentionally in order to be held liable for its consequences. This element is essential. The intention to commit the infraction is the one that justifies the sanction of the tentative, regardless of the result, as it affects the public order.

A particular case of the tentative is represented by the impossible infraction. It is defined as the unconsumed criminal deed due to the objective impossibility to commit the respective infraction and not due to an error made by the perpetrator or to a fortuitous event. In case of tentative for such an infraction, the code does not stipulate any sanction, taking into account the fact that the public order is not affected.

Forms of the criminal liability

The physical persons' criminal liability

The essential rule in this matter is the one according to which nobody is liable from criminal point of view, unless for his own deed. This rule had only jurisprudential character anterior to the present criminal code.

The only exception to the rule mentioned above is the implication of a person's liability for the deeds of another person under his authority. An example in this purpose can be constituted by the liability corresponding to the manager of a company for the deeds committed by an employee in the exercise of his duty.

A special situation in case of the physical persons' criminal liability appears when the perpetrator is minor. There can be made a clear distinction between the minor perpetrator and the adult perpetrator. In case of the minor person, there appears the issue of a different assessment of the deed, special procedures and even distinct courts that is the law courts for minors.

Until 1912 there was not a special treatment in case of minors. If a decision was pronounced against a minor, the penalty was reduced to half. The criminal law adopted in 1912 determined the appearance of the law courts for minors and instituted at the same time an absolute presumption of irresponsibility for the minors under 13 years old. There was also created a special sanction: the supervised freedom which allowed the placement of the minor in a re-education institution. In such cases, following the 1945 Ordinance regarding the juvenile delinquency, the minor under 13 years old cannot be convicted, but he is not absolved of any liability either. That is why the code stipulates that the minor having power of discernment is criminally liable for the criminal acts he committed. Therefore, the minor under 10 years old proved without power of discernment benefits of absolute criminal irresponsibility, the minor under 13 years old having power of discernment bears educational measures, remaining at the appreciation of the judge to what extent, the minor between 13 and 16 years old supports educational measures and within the common law benefits of the reduction of the stipulated penalty to half, and finally, in case of the minor with age between 16 and 18 years old the regime is more complex, meaning he can benefit of minority treatment, but the same can be removed in case of relapse, according to the law.

The juridical persons' criminal liability

Pursuant to the French criminal code, the juridical persons, except the State, shall be held liable according to and only in the cases expressly stipulated by the law. The criminal liability is implied when the organs representing a juridical person commit a deed stipulated by the criminal law in its behalf.

The juridical person's liability does not constitute a cause for removing the authors or the accomplices' liability.

The juridical person's liability involves the existence of the juridical personality. In general, an infraction committed before the set up of the juridical person cannot be charged to it. At the same time, the law institutes the principle of the specialization. Thus, the juridical persons are not held liable unless in the cases expressly stipulated by the law.

Although the law expressly stipulates that the State cannot be held liable, the local authorities can be brought before the justice for infractions committed during the exercise of activities susceptible to form the object of a convention for assigning a public service.

The juridical person's disappearance, even by merger, shall naturally determine the cessation of its criminal liability

Cases which remove the criminal liability

The objective causes are the following three:

- The authorisation by the law. This involves the existence of a contradiction between a criminal text and another legal text, whether civil, administrative or criminal. For example, the use of violence by state authorities or certain medical procedures could constitute infractions to the extent in which they would not benefit of legal circumstances.
- Self-defence. The person who commits a criminal deed against a person or an asset, by carrying out in this way a necessary, simultaneous and proportional action for the protection of the person or the asset, shall benefit of this criminal liability removal cause. The features of self-defence are the following: an unjust action against the person in self-defence; a present action and a retort concomitant with the action; a necessary retort; a retort proportional with the action.
- The state of necessity. It involves the existence of a reaction necessary and proportional to an imminent danger. Contrary to the self-defence, the state of danger involves the existence of a situation of objective danger, not necessarily related to an unjust action.
- Force Majeure. This is the unexpected, unpredictable and irremovable circumstance, which causes a person's action or inaction to produce illicit effects.
- Lawful error. Pursuant to the French criminal code, if it is established that a person actually believed he could legally perform an action as a consequence of a lawful error that could not have been avoided, that person shall not be held liable for the respective action.

BIBLIOGRAPHY:

1. Basarab Matei - Criminal Law. General Part. Volume II, Lumina Lex Publishing House, Bucharest, 1997.
2. Basarab Matei – The juridical deeds which modify and extinguish the criminal law relation, Studia Universitatis Babes-Bolyai.
3. Barac Lidia – The Juridical Liability and sanction, Lumina Lex Publishing House, Bucharest, 1997.
4. Bulai C. – Manual of Roman Criminal Law: General Part, ALL Publishing House, Bucharest, 1997.
5. Muresan Marius – Theoretical-normative and practical aspects for the motive and the purpose of the infraction - Chisinau, 2008
6. Newman Donald J. - Introduction to Criminal justice, Third edition, New York, "Random house" Publishing House, 1997, p. 202.
7. Pradel Jean - Droit penal general, Paris, Ed. „Cujas", 1996.

Web Sources:

8. http://ec.europa.eu/anti_fraud/green_paper/corpus/ro.pdf
9. http://www.springerlink.com/content/x67246180lu175q1/fulltext.pdf
10. Criminal Liability of Companies Survey - lex mundi
11. http://law.jrank.org/collection/46/Crime-Criminal-Law.html
12. http://law.jrank.org/pages/860/Criminal-Law-Reform-Continental-Europe-Criminal-law-reform-in-continental-Europe.html