

REFLECTIONS ON THE PRINCIPLES OF JURIDICAL RESPONSIBILITY OF THE STATE IN INTERNAL RIGHT

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Abstract

The principles of juridical responsibility of the state must be investigated in accordance with the principles of juridical responsibility and those of the right. The principles of juridical responsibility develop and materialize the principles of the right. In their turn, the principles of the right represent the foundation of forming of the principles of juridical responsibility. The principles are being characterized by a determined subjectivity as those one are conditioned by the character of social relations on which is founded the system of determined right.

Key words: *principles; responsibility; legislation; state; social relations; right.*

1. Introduction

An important aspect of juridical responsibility of the state belongs to the principles and forms of achievement of these ones. The principles of the legal responsibility of the state find not only a reflection, but also usually a sanction in the legislation, regardless of the fact that they acquire a normative character and carry out an action to regulate the social relations of human behavior. Thus, we can formulate the following general features: a) the social determination of the principles; b) their generalization character; c) reflection and sanction in juridical norms (positive right); d) determined action of the principles on the processes of environmental reality and phenomenal evolution; e) the compulsory respecting the principle by all subjects of right. The principles in their individuality have own content specifically only to them, have a determined sphere of application and a concrete circle of subjects to whom are addressed specifically forms of achievement.

2. The 16th article of Constitution of the Republic Moldova stipulates as a primary obligation of the state the respecting and protection of the person, the respecting of the equality principle at all citizens before the law and public authorities, without indiscrimination of race, nationality, language, religion, sex,

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opinion, political affiliation, property, or social origin, to ensure the free access to the justice, providing the right to the petitioning, as well as the right to the re-establishment in rights and to the overhauling by the state of the damage caused by the authorities actions of criminal pursuit judicial, or of other public authorities¹.

The basic law of the country stipulates that the constitutional foresights concerning the rights and human freedoms are interpreted, and applied in accordance with Universal Declaration of the Human Rights, with international treaties to which the Republic of Moldova is part that the international norms regarding human rights have priority given the internal ones. Thus, the legality and proportionality, legality and equality, individualization and irreversibility belong to the principles of the juridical responsibility of the state.

The legality justice of the juridical responsibility. The supremacy of law as a principle of the rule of law equally spreads over the phenomenon of the state's legal responsibility.

The legislation concerning the juridical responsibility of the state must correspond to the right and equity. In fact, legality as general principle is incorporated in the constitutionality and legality of juridical responsibility of the state (Grama, 2003, p. 108).

The equity (justice) of juridical responsibility). The juridical responsibility in its diver's manifestations of genre and species is based on the principle of equity (justice). The equinity, correctness as a general principle find its expression in the legislative settling of the juridical responsibility, in the practice itself of applying of this institutions, is reflected nearly in all the principles of the juridical responsibility.

The hauling over the juridical coals of the public and state bodies and civil servants is correctly and fair as it appears as a result of violating of the right norm and the punishment is only possible in the term of law and according with it. A manifestation of the equity principle (equality) can be found in the norm settling non-retroactivity of the law that found its consolidation in the art.22 of Constitution of the Republic of Moldova. No one shall be convicted for acts or omissions, which at the time of their commission did not constitute crimes. It will not also apply harsher than that one being applied now of perpetrating of the criminal act (Baltag, & Moraru, 2015, p. 90).

The law disposes only for the future example criminal law more favorable. These constitutional stipulations are suitable strengthened in the branch of legislation. Thus for instant the paragraph 4 art.3 of Constitution of the Republic of Moldova stipulates that: it the new law stipulates a milder offence sanction it will be applied this sanction, paragraph 2 , the offence law which hardens the

¹ *Constituția R. Moldova* din 29 iulie 1994, Monitorul Oficial al R. Moldova nr.1 din 12.08.1994

sanction or worsens the situation of the guilty person in committing an offence has not a retroactive effect¹.

The proportionality of the principle in the juridical responsibility of the state. The analysis the proportionality in doctrine, in legislation, in international treaties and jurisprudence must answer to several essential problems:

- it the proportionality is in fact of the right and in affirmative case if it is a constitutional principle; the principle having a reasonable, normative and jurisprudential signification;
- the procedural size of the principle;
- its application in exerting activity of the government power;
- the dedication and application of the proportionality principle in the common right;
- the signification of the proportionality for the protection of human rights;
- the possibility of the judge including the constitutional one to exercise the control regarding the respect of the proportionality principle and to sanction, the excess of power;
- the elaboration of a definition for the proportionality as a principle (Baltag, & Moraru, 2015, p. 98).

In the doctrine, it was affirmed that the proportionality can be analysed not more as a result of combination of three elements: the taken decision, its finality and real situation to which it is applied. The proportionality is correlated with legality concepts, opportunity and discretionary power. In the public right the violation of the proportionality principle is considered as being the over fulfillment of the action freedom, let at the disposal of authorities and finally the excess of power.

Synthesizing we can say the proportionality is a general principle of the right and a principle of the juridical responsibility dedicated explicitly or deduced from constitutional legislative regulations and from international juridical instrument based on the values of reasonable right of the justice and equity and which expresses the existence of a balanced and adequate relation between action, situations, phenomena as well and the limitation of disposed measures by the government authorities to what is necessary for reaching of a legitimate goal, in this way being guaranteed the right and basic liberties and being avoided the abuse in right (Moraru, 2009).

The legality is an omnipresent and compulsory principle to be respected in all the branches of right and by all categories of public authorities indifferently from its branch to which belongs this one. The legality is a principle on which must be based the behavior of every citizen in a state of right. In the domain of the juridical responsibility except the general requirement, this principle contains also some particular requirements specifically to the categories of juridical norms by which are being regulated different forms of the responsibility.

¹ *Constituția R. Moldova* din 29 iulie 1994, Monitorul Oficial al R. Moldova nr.1 din 12.08.1994.

The investigation of these features involves necessary a distinction between the activities of regulation of juridical responsibility by normative acts emitted by the competent bodies of state and the practical activity of applying normative acts, that is of i.e. holding the legal subjects accountable for violating the legal order. The practical action of applying presents numerous concrete aspects that must answer to some requirements identically numerous of the legality principle. As a form of manifestation of compulsion of the state, the juridical responsibility involves the application of juridical sanctions with reference to the persons, which violated effectively the right order its goal principal being the re-establishment of the integrity of this order. That is why one cannot conceive that the re-establishment of the order or right to occur outside of the legal requirements so with the violation of the legality (Baltag, 2006, p. 21).

The specialty doctrine certifies the existence of diver's conceptions about what is legality what does mean the nature, content and its principles. For the supporters of the approaching statist approach, legality means the strict respecting and compulsory of the right or that is identically, the respect of the law (the right and law in this case are being identified). For example in the jurisprudence it was formed the legislation concept as a strict execution and inviolable of the laws and legal normative acts by all the subjects of right.

In this sense, we will present the expressing of the principle of legality made by B.Negru and A. Negru: "The principle of legality of the juridical responsibility has a complex character that is being manifested by:

- the juridical responsibility occurs only on the bases of the juridical norm;
- the application of a sanction concerns the strict competence of the state and his official representatives;
- the state bodies themselves work in strict conformity with the provisions of the juridical norms" (B. Negru, & A. Negru, 2006, p. 490).

V.Patulea maintains that the legality was constituted as a counterweight of the arbitrariness: the principle of the legality involving the subordination of the state in relation to the right (considered as limiting the power of this one), the activity of the state's bodies being appointed and regulated by judicial norms (Pătulea, Șerban, & Marconesu, 1988, p. 45).

The principle of individualization of responsibility means the maximum individualization of the juridical consequences applicable to those who violate the law. This one is not only oriented toward re-establishing the rights compensation (repairing the caused damage) proportional reaction with the seriousness of the deed but also toward achieving and resocialization the juridical responsibility.

The principle of individualizing responsibility does not suppose only the application of easier punishment (that is characteristic of the humanistic principle) and does not even excludes the application of some actions more severe for reaching the purposes of juridical responsibility. In the existence of legal foundations, juridical responsibility is always timely but the character of the punishment is quite something more than the convenience of this one.

As a criterion of individualization of the juridical responsibility appears first the character and the degree of social peril created by committing an illicit action, the seriousness of this one. At the same time, the juridical quality of the illicit action exercise influences characteristically to the element of the make-up of the illicit deed (the form of quietness damage, etc.). A role in no way deprived of importance belongs to characteristics of the perpetrator is personality presenting importance form the juridical and social psychological point of view. To the category of individualization we also include attenuated and worsen a circumstances of the juridical responsibility. The list of attenuated circumstances of the juridical responsibility in the manner stipulated by the contravention law and criminal one is not exhaustive (art.42 CContr. of RM)¹. All the more, there can be an exhaustive list of these circumstances in private law.

The principle of individualization of juridical responsibility of the state is materialized by taking into account of all circumstances of objective and subjective nature for achieving as possible as correctly of the responsibility. The obligation of the state to compensate the damage caused by the public power, to restoration of the rights and legitimate interests of the victims must in no way replace the identification and prosecution in retrogressive order of the persons concretely guilty of the illegality committed.

The principle of irreversibility is one universal for the institution of juridical responsibility. Applied in the responsibility of the state this one suppose an adequate reaction regulated by the law to the illicit action having as author the state in order to reestablish the equity , to repair the damage, to sanction the culprits and to educate the concrete persons and generally the entire society. Thus, the state of Republic of Moldova can be prosecuted bath as a state and by means of the bodies of state power, the bodies of local public administration and of civil servants.

3. Conclusions

In conclusion, we may mention the principle of juridical responsibility of the state have an objective character, being conditioned by the nature and society. Not the nature and society are complied with the principles but contrary the principles are true in a measure in which these ones correspond to the nature and history of the socially.

The principles like the ideological categories form in the social conscience of the people under the pressure of entire totality of the social relationships specifically to a certain step of social evolution is embodied in the conscious

¹ *Codul contravențional al R.Moldova* no.218-XVI from 24.10.2008, Official Journal of R. Moldova no.3-6 (2009).

activity, volitional and persistent human activity. The existent relationships determine objectively the real content of the principles.

Being formulated by the science, in different branches of social activity, these directing ideas appear as a result of creative activity of human concerning the environmental reality. Nevertheless, scientific principles cannot be any guiding ideas, even if people, but only those that adequately reflect the objective laws, trends of historical evolution, recognize them.

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