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Civil Servants Liability

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Abstract: Today it is inconceivable life under normal conditions without a set of rules that members of society have the obligation to respect. Violation of any rules leads to call to account (political, legal) a person who is guilty of breaking the rules. If civil servant in Romania, as well as for a normal citizen, violation of legal provisions leads to legal liability, because civil servants, even if they have a special status, are obliged to respect them. In this paper we present forms of liability that is committed by civil servants, their particularities and the way to avoid hiring such liabilities namely professional activity in an efficient way, exacting and specific to an administration from a democratic society characterized by the rule of law.

Keywords: legal liability; civil service; civil servant; ethics; deontology

1 Introduction

From the beginning, it is necessary to make the distinction between the concepts of responsibility and accountability in the field of legal sciences. Doctrine (Dabu, 2000, p. 39) defines legal responsibility as “a legal institution which the legislator expresses vocation of persons legally liable for incidental facts and legal acts committed directly or indirectly by other people or by things that are in their administration”. The same author states that unlike responsibility (which he sees as a liability in the abstract, a capacity, a vocation liability) legal liability is “actual responsibility” which the competent authority (court or administrative authority) shall determine after procedures, and finishes with a specific penalty that may be with or without cancellation of the illegal act, return to the previous situation, establishing damages to compensate for damage, respect of the procedure provided by law in relation to taking safety measures (Dabu, 2000, p. 39).

According to specialized literature (Iorgovan, 2005, p.636) this distinction between the two concepts is highlighted in terms of administrative law in several respects. Professor Antonie Iorgovan stated that: “First, administrative law examines responsibility and liability of state administration, secondly, administrative law examines this phenomenon in relation to civil servants and, third, administrative law is concerned by the research of responsibility of citizens to legal norms and to their responsibility for their violation”.

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Based on the above doctrine (Nedelcu, 2009, p.427) it is concluded that the responsibility is the attitude that civil servants adopt in relation to civil authority and beneficiaries, it appears as a “volatile nature and educational event” something that is acquired after a period of time, consciously, that can be modeled, the civil servant must learn to improve himself to cope with all situations that may arise in carrying out specific tasks they occupy in civil service.

In the legal responsibility we share the view (Zaharia, Gh.T. & Budeanu-Zaharia, O. & Budeanu, T.I. & Chiuariu, T.Al., 2001, p.343) that it is “a form of social responsibility consisting of complex rights and related obligations which, regarding law, are born as a result of the occurrence of illegal acts and that form the frame in which the legal sanctions take place to ensure the restoration of order”. It follows that the main element that leads to its involvement is committing an illegal act or the existence of a conduct contrary to the law.

Under the legislation¹, violation by civil servants, with guilt, of service duties entails disciplinary, administrative, civil or criminal liability after case. We see thus, that it can be identified four forms of accountability of civil servants:

- disciplinary liability;
- contravention liability;
- civil liability;
- criminal liability.

Given the branch of law that legal rules can be included in by violation of which it undertakes legal responsibility, “distinguished by their different legal nature of protected value”, liability can be classified as follows (Cărăușan, 2012, p.396):

- a) public liability: disciplinary, administrative, criminal.
- b) liability of private law: civil.

We must mention that culpable violation of service duties for themselves can draw one or more forms of accountability, with one exception, namely liability and criminal contravention that cannot be cumulated (Clipa, 2013, p.320).

2 Civil Servants Liability Forms

2.1 Disciplinary Liability

The Civil Service Regulations (Article 77 paragraph 1) provides that culpable violation of duties by civil servants appropriate to civil service that they hold and of the rules of professional and civic conduct provided by law, constitutes misconduct and will result in disciplinary liability. According to the doctrine (Trăilescu, 2010, p. 167) disciplinary misconduct is “a breach of administrative law concerning the correctness of carrying out duties by civil servants”.

Also, Mrs teacher V.Vedinaș defines disciplinary liability as “culpable act committed by public civil servants that violates the obligations deriving from the public report or in relation to it and affecting its socio-professional and moral status” (Vedinaș, 2009, Administrative..., p.470).

It constitutes misconduct under Art. 77 paragraph 2 of the Status the following facts:

¹ Art. 75 Law no. 188/1999 regarding the status of public (r2) published in the Official Gazette of Romania, First part, no.600 from 8 Decembre 1999.

- a) systematic delay in carrying out the work;
- b) repeated negligence in solving tasks;
- c) unjustified absence from work;
- d) repeated failure of the work program;
- e) interventions or insisting on solving applications outside the legal framework;
- f) failure to secrecy or confidentiality of work with this character;
- g) events affecting the prestige of public authority or institution in which they operate;
- h) conduct during the working hours of political activities;
- i) failure to perform duties;
- j) violation of legal provisions relating to duties, incompatibilities, conflicts of interests and prohibitions established by law for civil servants;
- k) other acts provided for misbehavior in the normative acts of the civil service and civil servants.

In the following, we will try to clarify some issues related to consideration of some of the facts presented above as misconduct. Thus, the terms that we find in the Status “systematic delay”, “repeated negligence,” “repeated failure”, were not made by chance but have a particular significance. According to specialized literature (Clipa, 2013, p.324) “misbehavior of facts such as those mentioned, has to be committed as similar multiple acts forms or comparable, showing persistence, consistency, perseverance in illicit conduct”.

Regarding the repeated failure of the work program it is considered that it is nothing but a customization (Vedinaş, 2009, p.286) of the offense referred to in letter c) i.e. unjustified absence. In this case, the civil servant does not comply with the work program and he interrupts the normal conduct of his activities through unjustified departures from work for certain periods of time unlike unauthorized absence, situation in which he does not appear to work at all.

If civil servant interferes to resolve claims outside the legal framework, it is the case of misconduct because it always performs with guilt, civil servants legal behavior excluding from the start such requests. On the other hand, failure to secrecy or confidentiality of work refers to the obligation of civil servant not to transmit data or information that he has knowledge, in the exercise of his duties, information that is not publicly available.

Conduct, during working hours, of political activities is a disciplinary offense because civil servants must be politically neutral and they should not favorise any political party. The politicization of the civil service (see Savenco & Puşcă & Lupşan & Gîscă, 2011) almost always led to the emergence of negative consequences in the smooth functioning of public administration, made public servant no longer enjoy stability etc.

This last provision, letter k) of Article 77, paragraph 2, of the Status indicates that the list of acts that constitute misconduct is “limiting” because it mentions the existence of other facts provided as misbehavior in regulations of the civil service and civil servants. Based on Article 73 paragraph 3 letter j) of the Constitution which provides that Civil Service Regulations, shall be regulated by an organic law, we share the view (Clipa, 2013, p. 325) that such provision is unconstitutional because “it allows lower normative acts (in terms of their legal power) to organic law be described and sanctioned misconduct”.

For disciplinary offenses aforesaid, legislator provided in the Status (art. 77 par. 3) a series of disciplinary sanctions such as: written reprimand, reduction of wages by 5-20% over a period of up to 3 months, suspension of advancement in wage rates or, where appropriate, to promote public service for a period of 1 to 3 years, demotion in the public service for a period of up to one year, dismissal

from public service. They serve as to “convince” the civil servant to perform properly duties of service.

The concrete reference in the text of the Status of facts that constitute misconduct, and ways of disciplining them, shows the concern of legislator to eliminate any infringement of administrative law as such misconduct prevent the effective exercise of administration.

2.2 Contravention Liability

Contravention liability of civil servants engages in if they have committed an offense during and in relation to the duties of service (Article 83 paragraph 1 of the Status). Contravention, as defined by Government Ordinance no. 2/2001¹, is the offense committed with guilt, established and sanctioned by law, ordinance, by Government decision or, where appropriate, by decision of the local council of the village, town, city or sector of Bucharest, of the county council or of the General Council of Bucharest.

We note that the commission of an act in contravention of the civil servant during and in relation to job duties is “the essential condition” for its liability offenses (Căraușan, 2012, p.400).

2.3 Civil Liability

Civil liability is the responsibility for damage caused to natural or legal persons by another person who is a civil servant, by failure to fulfill their public duties or their faulty.

This type of liability of civil servants undertake, according to the Status (Article 84) in three situations, namely: a) to damage caused, with guilt, to heritage of public authority or public institution in which they operate; b) for failure to return within the statutory period the amounts that were given unfair; c) for damages paid by the public authority or public institution, as principal, of third parties, under a final and conclusive judgment.

2.4 Criminal Liability

According to art. 86 paragraph 1 of the Status, civil servants liability for offenses committed while on duty or in connection with the duties of civil service they occupy is engaged in criminal law. In this case we can talk about crimes such as bribery, receiving undue benefits, abuse of service, influence peddling, etc.

3 Avoiding the Liability of Civil Servants

In their capacity as carriers of discretionary power of public administration, civil servants may manifest abusively by violation of the rights and interests of citizens (Bocăniață, 2010, p. 17). In these circumstances, as mentioned above, comes the responsibility of civil servants if the act by which their service duties are violate is committed with guilt. Officials may avoid liability by showing a correct and honest behavior while conducting their duties. This behavior is also found in the doctrine (Albu, 2009, p.90) expressed by the deontological exercise of civil service and “it represents that situation where the civil servant fulfills his legal duties and tasks in a spirit of respect for obligation and meeting the legitimate rights and interests of individuals, natural or legal persons in their capacity as beneficiaries of civil services”.

¹ Government Ordinance no.2/2001 on the legal regime of contraventions, approved and amended by Law no. 180/2002, with subsequent amendments.

Civil service ethics has been defined as “a set of rules of conduct for civil servants to work in public administration, in a post of specific activity, using responsibly, training, qualities and individual skills for implementation of laws correctly, in the interests of citizens and progress of the country” (Mocioi, 2001, p.9 apud Ivanoff, 2010, p. 78).

Specialized literature (Albu, 2009, p. 227) states that unlike other law topics, civil servant liability undertakes responsibility in relation to the two categories of offenses, as were or were not committed in the line of duty or in connection with its function as a civil servant. Thus, if the civil servant commits outside acts unrelated to its quality or performance of duties, he will answer in common law. On the other hand, when the facts are affecting the prestige of public authority or institution where they work, or are committed in the exercise of service duties or in connection therewith, it will result in the liability of the civil servant.

Finally we can say that “civil servant liability occurs both for breach of professional duties derived from labor relation, and for breach of professional and civic conduct provided by law” (Vedinaș, 2007, p.128).

4 Conclusion

From the above, it appears that one of the forms of liability mentioned above to be engaged, several conditions must be fulfilled in: the person who commits the offense has to be civil servant and by its action violated one or more duties and last but not least, this act has to be committed with guilt.

Breach of duties by civil servants, in addition to the liability of the person who committed the act, prevent the development of law enforcement process and lead to decreased citizens confidence in government's ability to meet their needs.

To avoid liability of civil servants and all other negative effects, it is important that the civil service to be performed in compliance with all rules, both those related to moral and especially the legal provisions which outline professional conduct that civil servants must take in performing their duties.

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