

THE NATURE OF THE POLITICAL RESPONSIBILITY OF THE ADMINISTRATION AND OF ITS MEMBERS

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Abstract:

The political class which administers by applying the effective legislation is the essential component which must square up to guidance defined by means of integrity and political authority. As a right institution the responsibility is broached of the sundries right branches, beginning with the civil right, penal etc. and ending with the constitutional right. It must be conceived the fact that whatever guidance regardless if it's liberated by a natural single person in a certain circumstance or of the exertion of a public service, it implies a dose of responsibility, a fact that leads to conversation, hypothesis or possibilities of argument as restricted juridical character as well as factual. The concept of state or organized society brakes out the responsibility mechanism on perpetrated guidance.

Key words: political nature, juridical nature, political responsibility, ministerial responsibility, political responsibility, public authority

1. INTRODUCTION

The modern government involves the reaching of a system approachable, which is able to respond to all requirements that appear while functioning of law state. The concept of law state is constituted in essence upon the form of government regime type, and the government form will implicitly invoke representative elements, the political class that represents the nation's interest. We have to understand by the government phenomenon that the representatives are submitted both to political and juridical responsibility, towards the electorate.

With a view to the responsibility phenomenon, assigned to Government, to have authority, the Constitution represents the unanimous act, by which is stipulated about the political responsibility existence, but only by existing also the possibility of penal responsibility.

As bodies with public character, the Government, the President, the People's Lawye r, instituted by the Constitution adopted in December 1991 and reviewed in 2003, represents the essential factors that are determined by a juridical regime of the responsibility. In this sense, the type of responsibility has to be in view, which will be found more efficient for each public authority. Therefore, a juridical responsibility can be managed, but also a political one, and also the liable responsibility can be brought into discussion, as concerns the Government members, that represent a political institution and also an individual responsibility of each member of the government, having eminently a juridical nature.

As consequence, the presented paper tries to bring into first sight the responsibility phenomenon, under all its manifestation criteria.

2. THE RESPONSIBILITY OF GOVERNMENT RULERS

The doctrine is not unitary in qualifying the political responsibility as a problem which appertains or not of the juridical. It is or not the political responsibility a form of juridical liabilities? Thus it is shown that "The idea of the Administration's political liability is not foreign with the idea of juridical liability, political liability, when we report to the public authorities, it doesn't represent nothing else but a form of juridical responsibility, public right institution, by this evoking the collocation Constitutional right and Administrative right" [1],(Antonie Iorgovan, 1996).

Another author [2],(Cristian Ionescu,1999) was showing that the Parliament was exertion on the executive a control essential and exclusive political, the parliament control instruments and procedures, as well as the subsequent applying sanctions, having as well a s exclusive political

character. How one of the control procedures is the one linked by the placement in discussion the political liability, as the author shows, the exclusion from the juridical responsibility field of the administration's and its members political liability in his opinion. The administration's liability can be identified by an open minded notion as the ministerial responsibility, as it appears in the conception of the specialty literature. [3], (Dan Claudiu Danisor, 2007) Thus in the subsequent context it can be specified that the administration's responsibility in a strictly meaning it relegates to the collective liability of the administration, and the ministerial liability, an individual responsibility of every member which appertains to the collective organ and which is in an independent position by the responsibility engagement of the other members.

The ministerial liability terminology eliminates the risks of the executive's responsibility confusion in front of the legislative, with the administration's liability. The ministerial responsibility is considered as being a complement which appears as a counterweight of the dissolution right. Thus as a consequence the two notions "the ministerial responsibility and administration liability" do not function than in a compensation, their separate existence creates malfunctions which lead to the constitutional equilibrium destruction. The ministerial or the administration's liability in the essence is a political liability, the political power is not exonerated of giving account of its disclaimers and as a sequel it is put in the situation of undertaking the consequences of these disclaimers.

In the display of motives in a pre-project of ministerial [4], (C. L. Popescu) responsibility laws it is shown that such a law must regulate both forms of juridical liability provided by the Constitution, that as the penal one as well as the political one, more accurate "constitutional – politic", how is named by some specialty authors.

In spite of the juridical responsibility forms diversity, in the specialty literature regarding the right's general theory identifies a series of principles which include conceptions or common notes characteristic to all of the liability forms. [5], (N. Popa, I. Dogaru, Danisor, 2002). A muster takes us to the conclusion that the political responsibility does not situate itself in the general model of the juridical liability, having a special nature.

The political responsibility has a special nature manifested by "the presumption existence of the incriminating fact" [6], which comes in contradiction with the innocence presumption principle and with the fact that the sanction is purely political, consisting in the obligation which imposes upon the minister or upon the administration in its ensemble to withdraw if it loses the Parliament trust. The reports between the Parliament and the Administration are reports of juridical and political nature from where the idea that the Administration's liability has a double nature, political but at the same time a juridical nature [7], (Muraru I., 2003). Thus, although there are recognized certain juridical consequences of political liability it is specified the fact that in the moment it's set in discussion the Administration's and its members juridical liability, it is regarded the civil, administrative or penal responsibility, that is to say in a complex context the strictly juridical responsibility, with all the meanings.

The inter-war juridical doctrine made the distinction between the juridical and political liability, the distinction having as start the first one was advanced on the political game, without stipulating the necessity of encroaching a text of assertive right, as the juridical responsibility is developing itself included in the civil right with consequences in the penal right, or with evaluation forms which directed to penal sanctions.

Thus, Anibal Teodorescu identifies in the administrative right doctrine three points of view regarding the qualification of the ministerial responsibility notion: pure political liability, penal and civil liability. From this author's point of view the political responsibility is the one that the minister attracts to himself when from a political point of view he made a mistake or he made something that can be considered a mistake or an illegal fact which implies to sanction applying. [8], (Dan Claudiu Danisor, 2007). In one opinion it is shown that the Administration's members juridical responsibility has its constitutional frame in the article 114 instructions from chapter IV regarding the Parliament's reports with the administration from the III title of the Romanian Constitution [9]

(Mihai Constantinescu, Antonie Iorgovan, etc. 2004) The responsibility engagement of the Administration represents a parliamentary procedure through which it reclaim the settlement of urgent measures which are of the parliament competence. In this case the Administration pursuits the adoption of a program of a penal political declaration with the support of the parliamentary majority on which its established and in maximum rapidity.

For the liability commitment the administration is submitted to the formulation and adoption of the censorship motion, the fact is determining by the presentation of the program, of the general political declaration or of the law project in front of the Deputy and Senate room, in common meeting.

In case in which the administration does not succeed to realize its program of administering and the legislative program, thanks to the fact that the parliamentary majority does not function or it's not piecemeal with this function the institution we allude to, which functions on the base of a administering contract, it can dispose by the initiative of the unilateral denouncement. These situations appear after determining a political conflict between the Administration and the parliamentary majority situation which is regulated by the traditional institution of the censorship motion.

In this context it can be argued about the Administration's liability regarding the parliament, when the administration is consecrated as a public authority organism, but the responsibility is endorsed and in the case when the administration is identified by administrators as spokesmen of the people's will.

The second situation is regulated by Romania's Constitution 108 and 109 article, first paragraph "The Administration political answers only in front of the Parliament for its entire activity. Every Administration's member political answers is in accordance with the other members for the Administrations activity and for its acts.

The political liability concept hadn't loom very easy. There have been authors like French constitutionalist J. Barthelemy which absolutely denied that we would be in the presence of a responsibility form, then there were authors, including us, which sustain that "the ministerial liability" includes a political form and a juridical form, and the last one being classified in penal liability and civil liability.

The political responsibility is invoked in the wrongful guidance case of the Administration in its ensemble. The forms that generate the administration's and it's members political responsibility are shades of the obligation of answering to questions interpellations, making reports etc.

The Administration's liability call must not be confused with the liability call of a party which can be administer dominating by the elective by voting the opposition parties, the situation itself in this context makes relegation and the power competence and has no bond with the administration's liability call. Also with a responsibility in front of the elective or in front of the Parliament does not incubate the same desires regarding the administration's responsibility in its ensemble of its members in case of doing wrong actions or contraventions.

The contravention regarding the political liability which the administration can receive is dismissal, pursuant to trust withdrawal, given at the investiture. The administration political answers in front of the parliament, although the state power are equal, thanks to the parliament's degree of representation, "the Romanian people supreme representative organ". Each minister situates himself in his activity in two conditions: Administration's member and leader of the public center organ administration, that is minister. Starting from this dissociation, an author [10], (V, Priscaru, 1996) shows that depending on the regarding situation, the minister will answer with one form or the other of social liability: the political responsibility as the Administration's member and the juridical responsibility as a minister.

An argument in favor of sustaining the liability's political character as the Administration's member, it could be the Administration's institution political character, which issues from its parliamentary origin and from its dependence on the parliament accepted program, the parliament

3. CONCLUSIONS

As a result of those argued above, the responsibility of the representatives is liberated only at the democratic point of view.

Therefore, in accordance to Constitution, the Government can assume the responsibility towards Lower House and Senate, reunited in common meeting over a program, of a declaration of general policy or of a law project, but in accordance with this phenomenon, the paper has in view the individual responsibility, of each member.

From the concise presentation, it will result that the Government rulers' responsibility for the facts related to mandate exercise, the Constitution gives precise solutions, without doubts. As concerns the responsibility of common law, for the facts that are not related to mandate exercise, the Constitution will offer immunity, without detailing.

NOTES:

- [1] Antonie Iorgovan , *Tratat de drept administrativ român.Parte generala*. Ed. All, 1996,ed. a doua revazuta si adaugita, Editura, p. 501.
- [2] Cristian Ionescu – *Institutiile politice si drept constitutional*, Ed. Fundatiei "România de mâine", Bucuresti, 1999, p. 285.
- [3] Dan Claudiu D ni or, *Drept constitu ional i institutiile politice*, vol. I. Teoria general , Editura C.H.Beck, Bucure ti, 2007, p.468.
- [4] Idem, p. 469.
- [5] C.L. Popescu – art. citat, p.62.
- [6] N. Popa, I.Dogaru, D ni or. Ghe. D ni or. D.C. *Filosofia dreptului,Marile Curente*, Editura ALL Beck, Bucure ti, 2002. p.324.
- [7] Dan Claudiu D ni or, *Drept constitu ional i institutiile politice*, vol. I. Teoria general , Editura C.H.Beck, Bucure ti, 2007, p.385.
- [8] Muraru.I, *Drept constitu ional i institutiile politice*, vol.I, editura ALLBeck, Bucure ti, 2003.
- [9] Dan Claudiu D ni or, op.cit., not dup Anibal Teodorescu.
- [10] Vezi Mihai Constantinescu, Antonie Iorgovan, Ioan Muraru, Elena Simina T n sescu, *Constitu ia României, revizuit – comentarii i explica ii*, Editura ALL Beck, 2004.
- [11] V. Priscaru, *Tratat de drept administrativ român.Parte generala*. Ed. All, 1996,ed. a doua revazuta i adaugit , p.79.
- [12] Dan Claudiu D ni or, op.cit.,p.385.
- [13] Genoveva Vrabie, *Organizarea politico-etatică a României*,Ed. Cugetarea, Iasi, 1993, p. 302.

BIBLIOGRAPHY:

- [1] *Constitu ia României revizuit*
- [2] Mihai Constantinescu, Antonie Iorgovan, Ioan Muraru, Elena Simina T n sescu, *Constitu ia României, revizuit – comentarii i explica ii*, Editura ALL Beck, 2004.
- [3] Cristian Ionescu – *Institutiile politice si drept constitutional*, Ed. Fundatiei "România de mâine", Bucuresti, 1999.
- [4] Constan a C linoiu Victor Duculescu, *Drept Constitu ional i institutiile politice* , ed. Lumina Lex, 2005.
- [5] Antonie Iorgovan , *Tratat de drept administrativ român.Parte generala*. Ed. All, 1996,ed. a doua revazuta si adaugit .
- [6] Muraru.I, *Drept constitu ional i institutiile politice* , vol.I, editura ALLBeck, Bucure ti, 2003.
- [7] N. Popa, I.Dogaru, D ni or. Ghe. D ni or. D.C. *Filosofia dreptului, Marile Curente*, Editura ALL Beck, Bucure ti, 2002.
- [8] V. Priscaru, *Tratat de drept administrativ român.Parte generala* . Ed. All, 1996,ed. a doua revazuta i adaugit
- [9] Genoveva Vrabie, *Organizarea politico-etatică a României*,Ed. Cugetarea, Iasi, 1993.