

PROFESSIONAL NEGLIGENCE AND LEGAL LIABILITY

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Abstract: *By exercising the professional activity, in all fields, it is possible to cause some antisocial consequences. These consequences may be more or less important and the facts which cause them are: disciplinary deviations (which fall under professional regulations), violations of civil law (which fall under civil law), offenses (which fall under administrative law) and crimes (falling under criminal law). The most serious among them are the crimes, because they attract criminal law incidence.*

Key words: *professional negligence, disciplinary liability, civil liability, offenses, criminal law liability*

1. INTRODUCTION

During the professional activity there may be facts which are contrary to the normative acts which are into force at that moment. These facts may attract juridical liability of those who committed them and that is why it is very important for those who perform professional activities in all fields, in the technical field as well, to know the legal consequences they run into after the commission of such acts. Our research aims at underlining the different types of acts which may attract the juridical liability and to identify the correspondence between the seriousness of the facts and the juridical nature of the liability. In this way, the classical principle “*nemo legem ignorare censetur*” (nobody can claim the ignorance of the law in his favor) becomes more efficient.

2. TYPES OF ACTS COMMITTED WHILE EXERCISING THE PROFESSION AND THAT ATTRACT LEGAL LIABILITY

It is possible to make several classifications of acts committed in practice and that may lead to legal liability, using multiple criteria.

First of all, depending on the type of mental attitude of the perpetrator towards the act and the consequences of the act, we can distinguish between intentional facts, on one hand, and the negligent facts, on the other hand. The intentional facts are the most serious ones because the offender: a) foresaw the outcome of his/her act, and intended for this outcome to take place by the commission of that act; or b) foresaw the outcome of his/her act and, although he/she did not intend it, accepts the possibility for it to take place (article 19 par. 1 pct. 1 from the Romanian Penal Code). An act is committed out of negligence when the offender: a) foresaw the outcome of his/her act, but did not accept it, because he/she unfoundedly deemed it unlikely to take place; or b) did not foresee the outcome of his/her act, although he/she ought and would have been able to (Art. 19 par. 2 pct. 1 from the Romanian Penal Code).

The second criterion used to classify antisocial acts is that concerning the type of conduct which realizes it. From this point of view, we can identify facts committed by action and facts committed by omission.

Another criterion concerns the seriousness of the fact and this one is the most important one because it indicates even the type of legal liability which is generated by the fact. According to this criterion, we can identify disciplinary deviations (which fall under professional regulations), violations of civil law (which fall under civil law), offenses (which fall under administrative law) and crimes (falling under criminal law). The most serious offenses are the crimes and the legal consequences are the strictest as well in these cases.

3. FORMS OF LEGAL LIABILITY FOR ACTS COMMITTED WHILE EXERCISING THE PROFESSION

At this point we will indicate the forms of the legal liability using as a starting point the last presented classification.

Firstly, we indicate the disciplinary liability, which corresponds to the least serious type of facts. It is about simple misconducts which break the disciplinary rules set for a special kind of activity or for a certain type of job location. Generally, these kind of fact are established by professional regulations especially created for each type of activity and they are different from case to case. It might be about disrespect the work schedule, for instance, or maybe about disrespect the order for the deployment of some activities. In these cases, the sanctions are established by the professional regulations as well and they consist mostly in decrease in revenue of the person who committed the act, but may be also a sanction of reprimand or a warning. If the disciplinary misconduct represents according to a legislative act from a higher level a fact more serious, it will be handled accordingly. In this way, for instance, if a delay in fulfilling a job duty is the cause of injury to a person's physical integrity, the misconduct transforms in a crime and fall under penal law.

Secondly, a fact committed during professional activity may be a civil law breach. Generally, it is about a damage caused by a breach of a civil law provision. It might be one of the two types of civil liability: tort liability or contractual civil liability. The first one is the wider one and it may be activated when an employee commits an illicit act during his professional activity and this act is the cause of a damage produced to one person. The second type of civil liability appears when a part of a contract fails to respect a contractual provision and in this way the other part of the contract or the other parts of it suffers damages. So, the difference between the two types of civil liability is given by the source of the obligation which is disrespected by the offender: in the first case is a legal obligation (the source is the law itself) and in the second case it is about a contractual obligation (the source is the convention between the parts and has the power of law for all involved in it) (Filipescu, I. P. & Filipescu, A. I., 2007. *Civil Law. General Theory of the Obligations*, Universul Juridic Publishing House, 978-973-8929-72-2, Bucharest).

Moreover, the tort liability may be activated in some different situations. It might be about a deed of the author him/herself which causes damage to other people – e.g. an employer does not respect a legal term to repair an industrial installation and this causes environmental pollution. But, in the civil law it is possible to meet a legal liability for a deed of another person, because the professional relationship (or even a personal one) between two persons. For instance, an employer may have him/herself in the position to respond in front of the civil law for a fact of one of his/hers employee committed during the professional activity. E.g. the employee does not close a specific device and the installation causes the environmental pollution. That deed is also imputable to the employer, too. In the same field it is possible to meet a civil liability for a deed “committed” by a thing, but imputable to the owner or the possessor of this thing. For instance, it is possible to have a civil liability when the owner of the building keeps it in a bad shape, and a small piece of the building façade falls on a car parked in front of it and causes damages to it.

Thirdly, a deed committed during the professional activity may be serious enough to represent a contravention. In this case it is about a deed which affects a social value, committed with guilt and indicated as a contravention by a legal instrument – law or a government decision or ordinance. In some particular cases it is possible that the deed qualified as a contravention by the law to be in the same time the fact which justifies the civil liability. To reconsider an example, if the deed which causes the environmental pollution is a contravention, its author will respond under the administrative law (because the deed is considered a contravention by it), but under civil law as well, because it caused damages to other people and it must be required as the previous situation to be re-established. In this way it is possible that in consideration of the same act its author to be bound to pay, on the one hand an administrative fine (because the fact is considered by the law a contravention) and a particular amount of money, indicated by a court (in order to repair a damage produced by that behaviour).

Fourthly, during the professional activity it is possible to commit facts which are considered crimes by the criminal law. It is about the most serious facts according to the impact they produce on the social life. That is the reason why they justify the incidence of the criminal law, with the most severe sanctions in the whole juridical system: the penalties, which can consist even in a life long imprisonment. It is obvious that not each criminal act is punished in this way, but only the ones which have the most serious consequence (such as death of a person). (Mantovani, F. 2007).

The crimes which are committed while exercising the professional activity may be of two kinds: intentional facts or negligent facts. (Pradel, J. 2004). The intentional facts are the most dangerous because they reveal a mental attitude of the delinquent which creates the possibility to repeat the same kind of behaviour. In these cases, the perpetrator knows which the consequences of the facts may be, and he/she accepts or even wants them to be produced. The intentional facts are various. It may be about corruption (when a person who is on duty claims or even accepts money or any kind of advantage to do or not to do a fact related to his/hers professional activity). In these cases, although that person is paid by the employer to do a specific activity, she/he takes money or another kind of advantage to behave in a specific way.

In the same time, it may be about a falsification of documents. In these cases an employee can falsify one document while she/he issues it and makes a false certification or does not certificate a real event. In other cases it might be about financial frauds. For instance, it might be about embezzlement which consist in the act, committed by a clerk, either for him/herself or for another, of appropriating, using or trafficking money, values or other assets in his/her management. (Delpino, L. 2004).

The other kind of crimes which can be committed during exercising the professional activity are represented by the negligent facts. They are less serious but still attract penal liability. Generally, it is about public servants transgression, out of negligence, of a service duty by its non-accomplishment or by its erroneous accomplishment, if it has caused significant disturbance in the proper operation of a body or an institution of the State or of another public unit or caused prejudice to its property or major prejudice to the legal interests of a person. When such a fact is more serious than a simple negligence at the workplace, the lawmaker indicates another qualification for the antisocial behavior. (Conte, P. 2005). For instance, if the professional negligence is the cause of a person’s death the crime committed is a special form of homicide out of negligence which has a professional component. In a particular case it is possible that a person, while exercising his/hers professional duties, forget to close an installation, to have an explosion because of this fact and the death of a person in this explosion. In this case it is about a aggravated variant of homicide out of negligence, committed by disrespect of professional duties.

4. CONCLUSION

By professional negligence we must understand a non intentional fact which consists in a transgression of a service duty by its non-accomplishment or by its erroneous accomplishment and which causes a disturbance in the proper operation of a unit or a prejudice to the legal interests of a person. This kind of fact may attract different types of juridical liability depending on the particular level of social danger which is identified in each act. The most severe form of legal liability is the penal liability and it occurs when the fact is qualified as a crime by a legal provision. On the other hand, such fact may be a contravention, when an administrative legal provision says so. The same fact cannot be in the same time a contravention and a crime.

So, nobody can claim the ignorance of the law and in this paper we have shown the fact that in our current professional activity it is possible to commit different kind of actions or omissions that cause damages or put even danger to other persons or goods. These facts may be the reason to support some legal consequences, even limitations of the personal freedom, and it is very important for everybody to be aware of this possibility.

The perspective we had in our research is mostly a juridical one and it is valid in each field of professional activity which implies a particular level of risk in its development.

In our future research activity we intend to continue the investigation of this topic, with a special attention for the consequences of the professional negligence in technological processes. In this way, the conclusion we came to in this paper will be the starting point of a future research which will be centered on the particularities observed in a particular field of activity.

5. REFERENCES

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