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COMPARATIVE OVERVIEW OF THE PATRIMONIAL LIABILITY OF EMPLOYEES AND THE CIVIL LIABILITY OF PUBLIC SERVANTS

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Abstract: *Legal liability is a fundamental institution of law, intended to ensure the compensation of damages caused by unlawful acts. The patrimonial liability of employees and the civil liability of public officials differ through specific characteristics determined by their distinct regulatory domains: labor law and administrative law. Liability for damages caused within employment or service relationships is essential for maintaining discipline and legality in professional activity. Although both employees and public officials can be held responsible for compensating damages caused to the employer or public institution, the applicable legal framework differs, reflecting the distinct nature of employment relationships compared to public service positions.*

Keywords**:** *social responsibility, legal liability, public officials, employees, patrimonial liability of employees, civil liability,*

Introduction

Responsibility, as a general concept, represents the awareness and acceptance of one's own actions and the bearing of their consequences. It involves fulfilling one's obligations, regardless of their nature: moral, social, professional, or legal. Responsibility is not always imposed by law, as is legal liability; it may also be of an ethical or personal nature.

It can remain at the level of individual conscience or may involve the externalization of this assumption within society, a community, or a group, which may or may not lead to the application of sanctions, even if such sanctions are not established by law, but rather agreed upon and accepted by the members through customary practices.

Although the two concepts are closely connected, the difference between them lies in the fact that social responsibility refers to the individual's relation to society, while legal liability reflects society's reaction toward the individual, giving rise to liability through the framework of social responsibility (Pătulea, Stelu, & Marconescu, 1988).

Legal liability implies a societal reaction to the individual's conduct, arising in situations where the person has violated the social values of the society or community to which they belong (Vedinaș, 2018). Legal liability materializes as the obligation of a person to bear a sanction prescribed by law, as a result of an action or inaction that breached a legal norm. It consists of the obligation of the individual to compensate for the damage caused by committing an unlawful act, under the conditions provided by law.

Legal liability, depending on the branch of law governing it, may take various forms: criminal liability, contraventional (administrative offense) liability, civil liability (contractual or tort), disciplinary liability, patrimonial liability, material liability, etc.

From the perspective of this analysis, patrimonial liability is particularly relevant, as it refers to the obligation of a person to compensate for a damage caused to another person through an unlawful act.

Patrimonial liability plays a key role in employment and public service legal relations, serving as the mechanism through which the employer or public authority can recover damages caused by employees or public officials, respectively. Although the objective is the same — compensating the damage — the applicable legal framework differs significantly between private sector employees and public servants.

This article aims to conduct a comparative analysis of the two forms of liability, highlighting similarities, differences, and practical and legal implications.

In labor law, patrimonial liability is defined in Article 254 of Law no. 53/2003 regarding the Labor Code, which states:"(1) Employees are patrimonially liable, under the rules and principles of contractual civil liability, for material damages caused to the employer through their fault and in connection with their work. (2) Employees are not liable for damages caused by force majeure or other unforeseen causes that could not have been prevented, nor for damages that fall within the normal risk of the job."

Thus, patrimonial liability is defined, through the provisions of the Labor Code, as the obligation of the employee, based on the rules applicable to contractual liability, to compensate for material damages caused to the employer by fault or in connection with their work (Ţiclea 2016).

Government Emergency Ordinance No. 57/2019 on the Administrative Code regulates several forms of patrimonial liability, namely:

a) administrative-patrimonial liability for service limits,
b) administrative-patrimonial liability for damages caused by administrative acts,
c) joint administrative-patrimonial liability for damages related to the exploitation of assets and services, and
d) patrimonial liability of the staff of public authorities or institutions in connection with delegated responsibilities.

From the perspective of this scientific analysis, the relevant form is patrimonial liability, more specifically the *"civil liability of the public servant"*, as defined in Article 499 of the Administrative Code.

According to Article 499 of the Administrative Code, civil liability refers to the liability of a public servant for damages caused, with guilt, to the patrimony of the authority or public institution where they work, for failure to return within the legal term the amounts granted unjustified to them, or for damages paid by the public authority or institution, as principal, to third parties, based on a final court decision.

A. Common Elements

The civil liability of public servants represents a form of legal liability arising from a legal obligations relationship in which the liable person must repair the unjust damage suffered by another person. Through the provisions of the Administrative Code (Article 499), this form of liability is specifically established for this category of personnel. The legislator uses the general term civil liability, without specifying whether it refers to tort liability (Article 1349 of the Civil Code) or contractual liability (Article 1350 of the Civil Code) (Salavastru, 2020).

Although not explicitly defined by law, the service relationships of public servants have a contractual origin, contract that has been defined in case law. Through Decision No. 14/2008, the High Court of Cassation and Justice held and stated that public servants "do not carry out their activity based on an individual employment contract," but "the appointment act issued by the public authority, together with the application or acceptance of the position by the future public servant, constitutes an agreement of will — the administrative contract" (Țiclea, 2020).

Similarly, it is asserted that the patrimonial liability regulated by the Labor Code represents, in its legal nature, a form of contractual civil liability, with particular characteristics derived from the specific nature of labor law relationships (Georgescu, 2011, p.67).

Therefore, the patrimonial liability of the employee is considered a special form of contractual civil liability.

Liability Conditions

According to Article 499 of the Administrative Code, the civil liability of the public servant is triggered in the following situations:

a) for damages caused with guilt to the patrimony of the authority or public institution where the official operates;
b) for failure to return, within the legal time limit, amounts that were unduly granted;

c) for damages paid by the authority or public institution, as principal, to third parties, on the basis of a final court decision.

Article 499, letter a) of the Administrative Code regulates the typical form of civil liability of public servants. In order for this liability to be engaged, two main conditions must be met:

- a damage must have been caused to the patrimony of the authority/public institution;
- the damage must have been caused with guilt.

To these are added two additional conditions derived from the Civil Code norms:

- the unlawful act;
- the causal link between the act and the damage (see Article 1357 para. (1); Articles 1358–1359 of the Civil Code) (Țiclea, 2020).

According to the principles established by labor law, patrimonial liability exists only if the following cumulative conditions are met:

- the person who caused the damage must have the status of employee of the employer whose patrimony was affected;
- the act must be unlawful and personal, committed in connection with their work duties;
- there must be actual damage caused to the employer's patrimony;
- there must be a causal link between the unlawful act and the damage;
- the existence of guilt (intent or negligence).

The absence of even a single condition from those listed above excludes the patrimonial liability of the employee.

As can be observed, the conditions for engaging the civil liability of public servants and the conditions for engaging the patrimonial liability of employees are common.

Thus, the act of the employee or public servant by which a material damage is caused to the employer or public authority must be deemed unlawful in relation to their service obligations, as stipulated by law, the collective labor agreement, the internal regulations, the individual employment contract, the lawful orders and directives of

hierarchical superiors, and the job description. Furthermore, the existence of fault must be proven by the employer.

An essential document in this context is the job description (fișa postului).

However, the absence of a job description or the absence of certain duties from it does not automatically lead to the exoneration of patrimonial liability of the employee concerned. This is because the job description is supplemented by other obligations of the employee arising from legal provisions, internal labor law sources, and the employer's orders and instructions which were brought to the attention of the employee (Ștefănescu, 2007).

In the case of the civil liability of public servants, the damage is the most important element — the essential and necessary condition of civil liability. This damage must be patrimonial, meaning that it concerns material goods with economic value that can be assessed in monetary terms, and that belong to the respective public institution.

Such damage constitutes a negative modification of patrimony, which may occur through a reduction in assets as a result of unlawful acts (e.g., degradation, loss, defects, excessive use of raw materials, supplies, spare parts, etc.), through the failure to collect payment for delivered products or provided services, or through an increase in liabilities (e.g., payment of fines or penalties for which certain employees are at fault). In its content enters both the actual loss (*damnum emergens*) and the loss of expected benefit (*lucrum cessans*).

The existence of damage is a necessary and essential condition, but not sufficient for the creation of an obligation to repair it. In addition, the damage must cumulatively meet the following characteristics: it must be certain, direct, personal, and must result from the violation or attaining of a right or a legitimate interest (Țiclea, 2020).

The direct nature of the damage is expressly established in Article 499 letter a) of the Administrative Code, which states that the civil liability of the public servant is engaged for damages caused with guilt to the patrimony of the authority or public institution. However, damage may also be produced indirectly, in cases where, as principal (*comitent*),

the employer is required to compensate a third party for harm caused by the employee during the performance of their job duties (Salavastru, 2020).

This indirect mode of damage production is provided for in Article 499 letter c) of the Administrative Code, which states that the civil liability of the public servant is also engaged for damages paid by the public authority or institution, in its capacity as principal, to third parties, based on a final court decision.

Similarly, in the case of patrimonial liability of the employee, such liability cannot exist in the absence of damage. The damage represents a modification of patrimony due to an unlawful act committed by the employee, which results either in a reduction of assets or an increase in liabilities (Georgescu, 2011).

In order for an employee to be held patrimonially liable, the damage must be:

- real and certain,
- direct,
- material, and
- not yet repaired.

The damage is certain when it is definite both in terms of its existence and its ability to be evaluated. The condition of determinability is also fulfilled even when the damage is not mathematically calculated, as long as it can be reasonably determined.

In contrast, if the damage is future and hypothetical, it does not meet the requirement of certainty, as its occurrence is uncertain.

The damage must be directly caused to the employer's patrimony through an unlawful act connected to the employee's work duties, or indirectly to a third party's patrimony, in which case the employer becomes directly liable as principal (*comitent*) for the actions of their subordinate (*prepus*) committed during the execution of job-related tasks (Georgescu, 2011, p. 73).

The damage must be material, resulting from the infringement of a patrimonial interest. Within the framework of patrimonial liability, moral damages cannot be claimed.

Moreover, the damage must not have been previously compensated at the time the employer requests reparation; otherwise, liability ceases. Reparation of the damage must be made by the person who committed the unlawful act.

The unlawful act is an essential condition for liability to exist, whether we refer to the public servant's or the employee's liability. Such an act may be an action or omission contrary to the law, resulting in the violation of subjective rights or legitimate interests of a person (Ștefănescu, 2007).

The act must be deemed unlawful in light of the service obligations arising from law, the collective labor contract, internal regulations, the individual labor contract, and lawful orders or instructions from hierarchical superiors (Georgescu, 2011, p. 58).

In situations where the act does not have an illicit character, even if damage has resulted from its commission, it is not sufficient to trigger civil or patrimonial liability. The liability of the public servant is also excluded in cases where there is a legal cause that removes the illicit nature of the harmful act, specifically:

- self-defense (Art. 1360 Civil Code; Art. 19 Criminal Code);
- state of necessity (Art. 1361–1362 Civil Code; Art. 20 Criminal Code);
- fulfillment of an activity imposed or permitted by law, or execution of a superior's order (Art. 1364 Civil Code; Art. 21 Criminal Code);
- consent of the victim (Art. 1355 Civil Code; Art. 22 Criminal Code);
- lawful and normal exercise of a subjective right (Art. 1353 Civil Code).

Regarding the exclusion of liability in the case of executing a superior's order, it should be noted that the public servant has the right to refuse, in writing and with justification, to carry out orders received from the hierarchical superior, if he or she considers them to be illegal (according to the provisions of Art. 437 of the Administrative Code), provided that such situations are brought to the attention of the

hierarchical superior of the person who issued the order. However, the public servant will be held liable under the law if the order is found to be legal.

As for the cases that remove the illicit nature of the act in labor law, according to Article 270, paragraph 2 of the Labor Code, employees are not liable for damages caused by force majeure, or by other unforeseen causes that could not have been avoided, nor for damages that fall within the normal risk of the job.

The parties to the individual employment contract may also agree on an exoneration clause. Thus, if by means of an agreement concluded upon the termination of the employment relationship the employer waives any patrimonial or non-patrimonial claims arising from the employee's contractual civil liability, any subsequent civil claims will be unfounded (Georgescu, 2011, p. 81).

The existence of a causal link between the illicit act and the damage caused

In order to trigger civil or patrimonial liability, the material damage incurred by the employer must be the result of an illicit act committed by the public servant or employee in connection with their work. When establishing the causal link, it is necessary to consider not only the illicit act as a positive action, but also the illicit act as an omission (failure to act) (Țiclea, 2020).

Guilt is a *sine qua non* condition for incurring civil or patrimonial liability. Its absence eliminates the liability of the person who committed the harmful act. Guilt has been defined as *"the psychological attitude of the perpetrator towards the illicit and harmful act and its consequences."* It is *"seen as a process of conscience composed of two factors: an intellectual process and a volitional process."* (Ștefănescu, 2007, p. 892).

In the context of civil liability, guilt can take two forms: intent and negligence.

With regard to patrimonial liability, since the employee undertakes an obligation *to do* (of means) through the individual

employment contract, the patrimonial liability governed by the Labour Code—a variation with specific characteristics of contractual civil liability—represents a form of subjective liability. Therefore, without establishing the employee's guilt in causing the damage, patrimonial liability is inadmissible (Ștefănescu, 2007, p. 892).

Guilt constitutes the subjective element of patrimonial liability, in contrast to the other conditions which belong to the objective side of the illicit act. It is defined as the person's psychological attitude towards the act and its consequences at the time the illicit act was committed.

The forms of guilt are not relevant, either in labor legislation or in administrative law. Patrimonial liability may be triggered even for the slightest form of fault (imprudence, negligence), and regardless of its nature—whether intent or negligence.

When establishing fault, several criteria are considered, including the employee's position/post, the degree of subordination between employees (in cases of joint participation in the illicit act), the actual contribution of each co-participant to the damage, the extent to which the employee took steps to avoid the damage, and the existence of bad faith in committing the act.

In the case of public servants, when determining fault, it is necessary to consider the position held by the author of the act within the hierarchy of the public authority or institution, the role played in the breach of service duties—for example, the person who gave the order to issue the administrative act or to carry out the task, who signed the damaging administrative act, and so on.

Further clarification regarding how the legal liability of the public servant is engaged is provided by the provisions of Article 565 paragraph (2) of the Administrative Code, which states: *"Liability is determined based on the form of guilt and the effective participation in the breach of the law."*

In matters of patrimonial liability, there is a presumption of innocence, as established by Article 272 of the Labour Code, which also applies to the patrimonial liability of public servants.

The burden of proving fault in committing the illicit act lies with the employer, who must demonstrate this by explicitly indicating the employee's breached duties, as outlined in the job description.

B. Key differences between the patrimonial liability of employees and public servants

The determination and recovery of damages under the civil liability of public servants are carried out unilaterally by the injured employer, following a special procedure that involves issuing an *order for recovery* or the signing of a *payment commitment* by the liable person. These documents serve as enforceable titles.

This procedure is excluded, as principle, to cases of patrimonial liability under the Labour Code.

According to Article 500 of the Administrative Code, for the recovery of damages caused—with guilt—to the property of the authority/public institution, or for failure to return unduly received amounts within the legal term, an *order or decision for recovery* must be issued within 30 days from the date the damage was discovered, or a *payment commitment* may be signed by the public servant.

Thus, damages caused to the public authority/institution may also be recovered through a payment commitment, voluntarily assumed by the public servant. This constitutes an alternative legal mechanism for determining and recovering damages. It is a unilateral legal act through which the responsible individual acknowledges having caused the damage and agrees to cover it.

The payment commitment includes specific clauses regarding the conditions for recovering the damage. The public servant assumes the obligation to cover the damage caused in connection with their work, or to return unduly received sums, or the equivalent value of unlawfully received goods that can no longer be returned in kind, or for services not entitled.

By virtue of the law, this document has the legal force of an enforceable title, and no further formalities—such as legalization, investing with an enforceable formula, or official communication—are

required in order to initiate enforcement proceedings (Georgescu, 2020, p.133).

The legislator does not regulate a specific deadline for assuming a payment commitment. However, it is considered that such a commitment should be made within the same timeframe in which an order for recovery may be issued, namely 30 days from the date the damage was established.

As observed, under the civil liability of public servants, there is no explicit limitation on the amount of damage that can be recovered through a payment commitment—the public servant may be held fully liable for the damage caused.

However, according to Article 254 of the Labour Code, if the employer determines that an employee has caused damage through fault and in connection with their work, they may request the employee—through a report of findings and damage evaluation—to repay its value by mutual agreement, within a period not shorter than 30 days from the date of communication. The amount recovered by mutual agreement cannot exceed the equivalent of 5 gross minimum wages per economy.

An agreement concluded under these conditions does not constitute an enforceable title. The actual recovery of material damage is carried out either:

- by applying Labour Code provisions (through salary deductions, respecting Article 257),
- or, if mutually agreed, under common law (through full payment or payment in installments).

If the value of the damage exceeds five gross minimum wages per economy, the employer has the following options:

- to forgo the attempt to reach a written agreement and directly file a claim in court for the entire amount considered as damage.
- to conclude a written agreement with the employee for the portion of the damage equal to 5 gross minimum wages, and take legal action for the amount exceeding that legal threshold (Ștefănescu, 2007, p.911).

As previously mentioned, for the recovery of damages caused—with guilt—to the property of a public authority/institution, or for the non-return of unduly received amounts within the legal term, an order or decision for recovery must be issued within 30 days from the discovery of the damage, or a payment commitment may be signed by the public servant.

The order or decision for recovery is a unilateral act issued by the head of the public authority/institution, based on documentation provided by the human resources and/or financial-accounting departments. This act identifies:

- the person responsible (the public servant),
- the damage or the unjust benefits received (amounts, goods, services),
- the amount to be recovered, thus compelling the person at fault to repay it.

The order or decision for recovery may be challenged in the administrative litigation court. If no action is filed or the claim is rejected, the final recovery order becomes an enforceable title.

The right of the authority's head to issue the recovery order is subject to a statute of limitations of three years, starting from the date the damage occurred.

In cases where damages are paid by the public authority/institution, as the principal, to third parties, recovery is based on a final court judgment.

In labor law, damage recovery is done by mutual agreement, up to a limit not exceeding five gross minimum wages per economy. If the damage exceeds this amount or if the employee disagrees—based on the assessment and evaluation report—with the value of the damage established by the employer, the matter must be referred to the court, according to Article 254 of the Labour Code.

Possibility of Joint Liability

Material damages caused to the employer may result from actions committed by multiple employees, regardless of whether they have similar job responsibilities or hold the same position.

Generally, the contractual civil liability of employees who have caused actual damage to the employer is not joint, unlike tortious civil liability. The liability provided by the Labour Code is contractual, similar to common law contractual civil liability, where the rule is divisibility. Thus, the provisions regarding joint liability do not apply by default (Predut, 2022).

In labor law, joint patrimonial liability is an exception, provided explicitly and restrictively by law. For instance, Article 28 of Law no. 22/1969 on the employment of custodians, the constitution of guarantees, and liability related to the management of goods of economic agents, public authorities, or institutions states:

"A manager or any other employee responsible for hiring, transferring, or maintaining a person in a custodian position without respecting the legal requirements regarding age, education, or legal status, as stipulated in Articles 3 and 38, as well as the criminal record conditions in Article 4, shall be jointly and fully liable for the damages caused by the custodian."

Also, Article 34 of the same law provides:

"Any person who, through a court decision, has been found to have obtained goods embezzled by a custodian from public property, and who obtained them outside the custodian's job duties, knowing that the custodian was managing such goods, shall be jointly liable with the custodian for covering the damage, up to the value of the acquired goods."

Being of strict interpretation, the application of solidarity in matters of patrimonial liability cannot be extended to situations other than those expressly and limitatively stipulated by law. Moreover, it does not apply automatically, but only if it is proven that the employee violated specific job duties.

In administrative law, joint liability of the public authority and the public servant or contract staff for damages caused by administrative acts—typical or equivalent—is regulated by Law no. 554/2004 on administrative litigation, Article 16, which refers to cases where compensation is sought for the illicit action of a person:
"...who contributed to the drafting, issuance, adoption, or conclusion of the act or, as applicable, is found guilty of refusing to resolve a request concerning a subjective right or a legitimate interest."

Conclusions

The comparative analysis between the patrimonial liability of employees, regulated by the Labour Code, and the civil liability of public servants, as provided by the Administrative Code, highlights two distinct models of legal regulation, tailored to the specific nature of each type of legal relationship—employment or public service.
In labor law, the employee's patrimonial liability reflects the legislator's intention to protect the employee. This is evident through the limitation of financial liability, the strict requirement to prove fault, and the rigorous procedures for determining the damage. These measures aim to ensure a fair balance of power between employer and employee, preventing potential abuses.

In administrative law, the patrimonial liability of public servants is considerably stricter, being based on the principle of responsibility toward the public interest and the proper management of public assets. The public servant is fully liable for damages caused and is therefore under greater pressure regarding the professionalism and diligence of their activity.

From a practical perspective, both types of liability present significant challenges:

- In the case of employee liability, the main difficulties lie in proving both the damage and the guilt .

- In the case of public servant liability, the issue lies in the potential chilling effect, where the fear of disproportionate liability may discourage initiative or efficiency.

In conclusion, although patrimonial liability for both professional categories shares a common foundation—the idea of material damage reparation—the method of application differs substantially, depending on whether the legal relationship is contractual or statutory. This differentiation is justified by the nature of each sector, but it also raises the question of whether public servants require stronger legal protection, potentially through future legislative adjustments.

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