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CONCEPT OF LIABILITY, LEGAL LIABILITY, AND BUDGETARY RESPONSIBILITY

Abstract

Responsibility is a concept used in common communication but also as a technical term, especially in the legal sciences, but also in psychology, ethics and sociology, philosophy, and theology. In many languages, the etymology of the term is based on the Latin *respondeo*, which means answering someone, giving an account, or simply giving an answer to a question. In law, responsibility is understood as the necessity to bear the consequences foreseen by law for the actions of the responsible entity or for the result attributed to the responsible entity. And at the same time, we can also state that legal responsibility is a legal relationship in which a secondary obligation arises for the responsible subject by violating his primary obligation.

Key words: liability; legal responsibility; budgetary responsibility; budget; fiscal responsibility; Ministry of Finance of the Czech Republic; public finances.

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1. Introduction

The post deals with the concepts of responsibility, legal responsibility and then budgetary responsibility. The motivation for choosing the article was chosen mainly because it is a very complex, extensive, topical and specific issue. In public discourse, this topic cannot be avoided and often the individual framework of the issue is neglected and there is hardly a comprehensive interpretation of the legal view of the topic. This contribution aims to carry out a brief literature search dealing with accountability, taking into account budgetary responsibility. Attention was also paid to the Act on the Rules of Budget Responsibility addressing the principles enhancing the transparency and health of public finances.

The subject was also to search for literature and synthesize the opinions of authors dealing with the issue, especially Prof. Marková or Prof. Gerloch.

Based on the description, analysis and synthesis of the knowledge gained, the author wants to arrive at the confirmation or refutation of the hypothesis that the concept of responsibility, legal responsibility is perceived differently in the Czech Republic from several points of view and also on the basis of individual branches of law. The logical structure of the contribution is also subject to this.

2. Concept of liability and legal responsibility

Although the notion of responsibility is mainly seen as a philosophical or moral category, there are also a number of ideas in legal or economic theory that deal with the issue of responsibility. Responsibility, as we have already pointed out, is an ethical category that allows us to make judgments about whether or not our actions are in accordance with generally accepted values or accepted social norms (laws) [Mrkývka, Blažek, Tomášková, Schweigl, Pařízková, Neckář, Šramková 2020: 45].

On the basis of the above, we can therefore argue that legal responsibility is an institute that cuts across all branches of law and is linked to the coercive (punitive) nature of law. It is through legal responsibility that enforcement, the imposition of sanctions, or even punishment or the determination of who is obliged to bear the consequences of those facts that are considered undesirable or that need to be remedied or corrected, arise. Including the possible presence of social condemnation, which is more applicable to punishments than to all sanctions. Punishment, but also sanction, as a possible consequence of situations (or actions) that legal norms identify as undesirable, is intended to reduce the occurrence of undesirable actions or conditions. For this reason, therefore, we can consider legal

responsibility as one of the basic forms of realization of law. However, the connection with all branches of law is also the reason for the difficulty of the theoretical (general) grasp of liability. In fact, it is necessary to include a number of aspects that are characteristic of a particular sector or a specific approach. Criminal liability is far removed from private liability and, although we can find common elements, it is always necessary to take into account sectoral specificities [Škop, Smejkalová, Štěpáníková 2021-2022: 215].

Legal liability, although strict legal regulation is necessary in its identification, definition, or application (legal liability is not possible without being established by legal norms, regardless of its form or its classification in a specific sector), is linked to moral responsibility and fulfils various social functions. It serves to distribute political or economic power and also has practical and symbolic significance. It is therefore necessary to be precise in its legal conception and to be aware of the other meanings that the determination of adverse consequences may have [Škop, Smejkalová, Štěpáníková 2021-2022: 216].

Thus, we can summarize that legal liability has a narrower meaning than the term liability in general language and we can define it as "the application of adverse legal consequences, established by a legal norm, to the one who violated a legal obligation". And the purpose of legal responsibility is to eliminate the consequences illegal behavior and establishment of a state that is in accordance with the law. It is a substantive law institute that we can meet in both public and private law.

3. Budgetary responsibility - fiscal responsibility

Budgetary responsibility is a concept whose meaning can be interpreted differently by different people not only in the Czech Republic. On the basis of the foregoing, we can therefore proceed to define the concept of budgetary responsibility. The notion of fiscal responsibility is a concept that has only recently entered the public consciousness, especially after the last economic crisis in the period 2007-2015, when not only individuals but also public institutions began to incur relatively large debts, leading to a significant increase in public debt. It is therefore necessary to address this issue at the present time. Since there is no single definition of the concept of fiscal responsibility, this concept is viewed from many angles. For this reason, the following are just a few selected views on the concept.

Gerloch divides budgetary responsibility into legal and political responsibility. Legal responsibility is when a legal obligation is breached. Political budgetary responsibility is responsibility for, for example, a law passed, a budget drawn up, etc. On this basis, budgetary responsibility can then be defined as a responsible budgetary policy, the main objective of

which is the responsible management of public finances, respecting the principles of transparency, efficiency, economy, and effectiveness in the use of public funds [Gerloch 2021: 174].

According to Marková, the concept of budgetary responsibility appears mainly in the documents of states that have faced and are facing the problem of high indebtedness (due to frequent deficits because of the problematic financing of public needs). This concept is then associated with the establishment of certain preventive mechanisms, rules, against indebtedness and excessive redistribution – i.e. regulation of revenues, expenditures, loans, and other items in the budget of the state, local authorities, or other public sector institutions. These rules are then often found in the constitution or laws of the country in question [Marková 2010: 691].

In the Czech Republic, our legislation does not directly regulate this concept, but the Law on the Rules of Budgetary Responsibility, in its introductory provision, lays down certain obligations for the state, local government units, and other public institutions to ensure sound and sustainable public finances, to promote economic and social development, and to comply with the rules of transparency, efficiency, economy, and effectiveness in the management of public finances, so that the development of public debt is sustainable in the long term.

The Act on the Rules of Budgetary Responsibility, as already mentioned, does not clearly define responsibility in the Czech Republic, but only states the requirements for the state, territorial self-government units and other public institutions regarding the management of public funds, that the main priority of public institutions in the public sector is to manage public funds transparently, efficiently, economically and effectively, in a way that ensures long-term sustainability, and to also use them to support macroeconomic and social goals, while ensuring that the debt of the public sector does not undermine the long-term sustainable state of public finances. All the above-mentioned requirements are important especially from the point of view of the state functioning as a whole, as well as from the point of view of territorial self-government units, but nevertheless, from the author's point of view, it is the requirement of long-term sustainability that is considered the most important [Act on the Rules of Budget Responsibility, as amended: §1, §2].

4. Budgetary responsibility from the perspective of the Ministry of Finance

A similar view of budgetary responsibility was presented by the Ministry of Finance of the Czech Republic in 2018, stating that budgetary responsibility can be understood as a

transparent, efficient, economical and effective use of public funds, usually implemented by introducing numerical fiscal rules for the entire government sector (expenditure rule, debt rule) as well as for individual sub-sectors separately, by monitoring compliance with them and by a transparent budgeting process, especially in the medium term. The main goal of budgetary responsibility is thus to achieve sound and sustainable public finances in the long term.

In order to ensure all the above-mentioned requirements for budgetary responsibility, it is also appropriate to establish fiscal rules that must be respected by the selected public administration sectors for which they are established. For example, fiscal rules on budgetary responsibility are implemented at the European Union level through the Stability and Growth Pact and the EU Council Directive 2011/85/EU on requirements for budgetary frameworks of the Member States, and, subsequently, in individual countries through their own legislation. In summary, responsibility is linked to budgetary and fiscal rules and, as has already been said, this issue is not just a matter of recent years [Tomášková, Pařízková 2015: 98].

Another possible view to draw on is the distinction between fiscal and budgetary policy, where fiscal policy, as one of the basic macroeconomic policies of a government, is concerned with setting a fiscal strategy for several years, e.g. the term of a particular government, while budgetary policy is associated with the day-to-day management of public budgets, their implementation and execution.

5. Conclusion

To summarize budgetary and fiscal rules are associated with responsibility, and this issue, as has already been said, is not just a matter of recent years, given that previously, in connection with the increasing indebtedness of advanced economies, it was gradually begun to consider ways of reversing this trend and contributing to the long-term sustainability of public finances, and it is precisely the establishment of some type of rule limiting the basic parameters of public budgets that is one of these options. In our conditions, we can talk about having both budgetary and fiscal rules, although some theorists dealing with the issue consider the concept of fiscal and budgetary to be synonymous, but I do not share this view. This is due to the fact that we have important laws, namely budgetary rules whether national or ÚSC and the Act on the Rules of Budget Responsibility, which relates to a longer period of time, while the budget term to a short period, i.e. to one budgetary period and that in the conditions of the Czech Republic is a calendar year.

Assuming that the concept of budgetary responsibility is currently not specifically regulated in Czech legislation and that there is at least some specific definition, it is necessary to proceed from the general definition of legal responsibility, which “means the application of adverse legal consequences provided for by a legal norm against the person who has violated a legal obligation”. It contains two aspects, namely adverse legal consequences for the violator of the norm and the possibility of state coercion in the enforcement of a sanction or in the forced fulfilment of a legal obligation. Therefore, if it is to be budgetary responsibility, it should relate to a breach of an obligation arising from the budgetary rules in relation to the relevant budget of the public budget system.

From the above, it follows that fiscal rules should be more general in nature, simple, immutable, and serve as a kind of maximum government performance. On the other hand, budgetary rules should limit the treatment of the annual budget, specify its individual items, such as the amount of current expenditure, and lay down the procedure for exceeding these items, including sanctioning and other mechanisms. It is debatable whether this theoretical division of the rules into fiscal and budgetary rules is also respected in practice.

The aim of this contribution was to carry out research dealing with responsibility, taking into account budgetary responsibility, with the author seeing this goal fulfilled, even if the potential reader does not always identify with it.

From the above findings, it can also be stated that the hypothesis stated at the beginning of the article was confirmed.

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