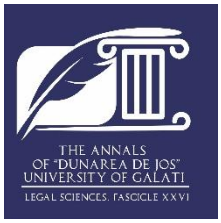

Theoretical Analysis of Land Legal Liability: Realities and Perspectives

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Abstract: *In the context of continuous transformations in the field of land relations, the intensification of regulations on land administration and use and the entry into force on April 1, 2025, of the new Land Code in the Republic of Moldova, the issue of legal liability for violation of land legislation is gaining increasing importance in theoretical and practical terms. Although this type of liability is not expressly established as a distinct form within the classical system of legal liability, contemporary social and legal realities require a reanalysis of the specificity of land-related illegal acts and applicable sanctions. Given the complexity of regulated relations – from land ownership, to agricultural, urban and ecological regimes, landowners' rights, etc., the question arises to what extent the violation of land norms can be treated as an autonomous field of application of legal liability or does it undermine the traditional forms of liability, such as civil, contraventional and criminal.*

Keywords: *land legislation; legal liability; land legal liability; private land; public land; guilt*

1. Introduction

In the context of continuous transformations in the field of land relations, the intensification of regulations on land administration and use and the entry into force on April 1, 2025, of the new Land Code in the Republic of Moldova, the issue of legal liability for violation of land legislation is gaining increasing importance in theoretical and practical terms. Although this type of liability is not expressly

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established as a distinct form within the classical system of legal liability, contemporary social and legal realities require a reanalysis of the specificity of land-related illegal acts and applicable sanctions. Given the complexity of regulated relations – from land ownership, to agricultural, urban and ecological regimes, landowners' rights, etc., the question arises to what extent the violation of land norms can be treated as an autonomous field of application of legal liability or does it undermine the traditional forms of liability, such as civil, contraventional and criminal.

2. The Importance of Forms of Legal Liability in Contemporary Law: between Tradition and Evolution

In the sphere of everyday perception, the concept of responsibility is, in general, known to most people. However, this common understanding is not sufficient when the term is used in the context of legal science and especially in the sphere of land relations. From the initial efforts to formulate a scientific definition of legal responsibility, it became evident that this concept is characterized by ambiguity and plurivalence. Even within a clearly defined branch of law, the notion of responsibility is used to designate various legal or social phenomena, but also to elucidate multiple aspects of human behavior (Kirkov, 1996, p. 5).

Legal liability is one of the most pressing and discussed issues in the science of law. In the absence of a coherent and well-structured system of legal liability, legal norms lose their efficiency and predictability, becoming incapable of satisfying the social demands attributed to them (Ştoda, 2011, p. 23).

The subject of legal responsibility, both in the general theory of law and in the branch sector, has repeatedly been the object of study of many authors. The specialized literature dedicated to this subject is constantly expanding, reflecting the complexity and topicality of the topic (Stahi, 2020, p. 155).

In contemporary legal doctrine, the issue of forms of legal liability remains one of the most controversial and widely debated topics. According to one of the theoretical perspectives, each branch of law should correspond to a distinct form of legal liability, otherwise, questions arise regarding the legitimacy and necessity of the existence of that branch of law (Malahov, 2022, p. 261)

In opposition, other researchers emphasize the lack of necessity for a specific form of legal liability for each branch of law, arguing that the notions of tort and legal liability are transversal and found, in one form or another, in all areas of law (Livshiț, 2001, p. 149).

In this context, most authors recognize the existence of classic forms of legal liability – criminal, administrative, civil, disciplinary. At the same time, part of the doctrine supports the expansion of this traditional framework, arguing in favor of recognizing branch forms of liability, such as financial liability (Procopovici, 2014, p. 88), constitutional liability (Arseni, 2018, p. 3), ecological liability (Ardelean, 2017, pp. 160-161), patrimonial liability (Stahi, 2015, p. 153).

When addressing the issue of new forms of legal liability, it becomes essential to clarify the elements that differentiate them from the already established forms. In other words, the mere emergence of legal liability as a reaction to the violation of the rules of a certain branch of law is not sufficient to justify the existence of a new form. It is necessary to demonstrate its distinct character in relation to existing forms, by highlighting its own legal grounds, a special application procedure, a specific category of subjects involved, distinct competent bodies and special negative legal consequences.

In this context, we agree with the author D. Baltag, who mentions that the correct determination of the forms within the system of legal liability greatly conditions the activity of the legislator. Without the development of a general theory of liability, it is impossible to formulate and create branch theories of legal liability (Baltag, 2007, p. 67; Stahi, 2020, pp. 160-161)

Although we support the idea of expanding the classical forms of legal liability, as well as adapting the branches of law formed in previous periods, which do not always faithfully reflect the legal realities of the 21st century, we nevertheless consider that the thesis according to which each branch of law should have its own form of legal liability is not entirely convincing. It is unlikely that the necessity of forms such as agrarian liability or housing liability can be reasonably substantiated. On the other hand, strictly limiting legal liability to the classical forms established over decades through the evolution of jurisprudence, risks becoming an obstacle (a brake) in the way of the development of specialized branches of legal science. This rigidity may prevent the identification and efficient resolution of new legal problems arising in contemporary practice. This issue gains particular theoretical relevance in the case of legal liability for violations of land legislation, which most clearly illustrates the tension between classical approaches and the modern requirements of the legal system.

3. The Essence of Legal Liability for Violation of Land Legislation

According to art. 2 of the Land Code of the Republic of Moldova, land is the main object of land relations. It is a natural resource protected by the state, which includes all lands located on the national territory. In legal relations, land is perceived simultaneously as a natural resource, a natural object and real estate.

In specialized research, legal liability for unlawful actions in the field of land law is treated as a distinct issue, but not in a sufficiently extensive manner to be able to state that this form of liability is fully substantiated in the current legal doctrine. It is essential to highlight the specific features of land liability, as they contribute to the conceptual and applicative delimitation of the respective legal institution. Such an approach is justified by the fact that, at present, both national and international legal doctrine has yet to clearly define the legal regime of land liability.

The legal regulations on legal liability in land matters are found in Article 78 of the Land Code of the Republic of Moldova, which establishes the general principles of liability for unlawful acts affecting the protection and use of land. Chapter XI of the Land Code contains only one article on liability for non-compliance with land legislation, which only establishes the possibility of criminal, administrative and civil liability in cases of violation of land law requirements. Paragraph (2) of Article 78 of the Land Code of the Republic of Moldova provides that the application of sanctions to natural and legal persons for non-compliance with land legislation does not exempt the respective natural and legal persons from the obligation to repair the damage caused.

So, interpreting paragraph (2) of Article 78 of the Criminal Code of the Republic of Moldova, in certain situations, the assessment of the social danger of an act is replaced by the assessment of the prejudicial nature of the illicit action, in relation to the consequences produced on the land fund or on land relations.

Moreover, the legislator does not provide a legal definition of the concept of "land liability", which in practice requires resorting to analogies with other forms of legal liability. In this context, a particularly relevant question arises for the theory and practice of land law: *what are the defining features of legal liability in the land domain?*

In the specialized literature, especially in Russian literature, we find a series of definitions that reflect the essence of land legal liability in the current modern context. Thus, G. V Chubukov, N. A Volkova, V. V Kurochkina, define land tort "as a specific action or inaction that contravenes the norms of land legislation" (Chubukov, Volkova, Kurochkina, 2009, p. 135).

In turn, S. A. Bogoliubov considers violation of land legislation as an illicit behavior manifested not only through actions, but also through inactions, in situations where the legal norm expressly imposes an obligation to act (Bogoliubov, 2009, p. 255).

A.T. Anisimov, A. Ia. Rîjencov, S.A. Ciarkin, draw attention to the fact that "violation of land legislation represents a culpable illegal action of a person, consisting in failure to fulfill the obligation to rationally and responsibly manage land resources. This conduct prevents the exercise of the legitimate rights of landowners and undermines the land legal order established by the state, affecting the efficient management of the land fund - considered a true natural and national wealth" (Anisimov, Rîjencov, Ciarkin, 2013, p. 256).

M. Iu. Tihomirov defines violation of land legislation as "a culpable act, committed either intentionally or through negligence, by which the norms of the branch of law that protects social relations regulated by land law are violated, causing harm to private or public interests" (Tihomirov, 2010, p. 435).

In the view of the local author, I. Teacă, liability in land law represents the set of legal norms that regulate the procedures and coercive measures applicable to natural and/or legal persons who refuse to execute or comply with legal or contractual obligations. Failure to comply with these obligations generates a violation of the land law order, thus justifying the intervention of the authorities through coercive measures. According to the author, the only legal premise for attracting legal liability and applying sanctions is the existence of an illicit act in the land field – action or inaction committed with guilt, which violates the provisions of the law, affects the land law order, the rights and legitimate interests of landowners and causes damage (Teacă, 2007, p. 215).

Therefore, we can conclude that an unlawful act in the land domain can be defined as a culpable action/inaction, committed within the framework of land legal relations, which generates negative consequences and is sanctioned under criminal, contravention or civil law.

4. Conditions of Liability for Violation of Land Legislation

The conditions of legal liability in land matters require the existence of constitutive elements that define the unlawful act (with certain significant particularities depending on the nature of the land legal relations and the specific regulations in force) and justify state intervention through coercive measures and substantiate the application of the sanctions provided for by law.

a. Object of land infringement is regulated in art. 2 of the Land Code of the Republic of Moldova. Typically, the object targeted by illicit land acts is land (as a natural resource protected by the state/land plot (as an immovable property).

Violations may take the form of illegal occupation of agricultural land or other categories of land, degradation of fertile soil or its improper use, in contradiction

with the destination established by law, etc.; violation of the rules on the rational use of land, for example, these violations concern the failure to apply agro technical and protective measures necessary to maintain soil quality. These include: inadequate control of diseases and pests of agricultural crops, ignoring measures to prevent erosion processes or other phenomena leading to soil degradation, as well as failure to fulfill legal obligations regarding the improvement of the agrochemical and ecological state of the land; violation of the legitimate rights and interests of landowners - in these cases, the violations relate to the failure to respect the right of ownership, possession or use of the land. Also included are the facts related to the conclusion of legal acts (contracts of alienation or transfer for use) with non-compliance with legal requirements, which prejudice the rights of other right holders. Also, non-compliance with legal deadlines for resolving requests from citizens and legal entities regarding the assignment or use of land (Cotorobai, 2001, p. 125; Teacă, 2007, pp. 216-217).

b. The subject of the violation of law. Who can be the subject of the legal relationship of land law? It is axiomatically clear that only people can be. Only people can enjoy that valence that can bind them in legal relationships. Only people have the ability to have rights and the obligation, and even more so, to exercise them, establishing legal relationships between them. Analyzing the text of paragraph (1) of article 1 of the Land Code of the Republic of Moldova, the legislator establishes that this code regulates the legal regime of the land fund of the Republic of Moldova and the land relations established between persons. So, the legislator operates with the notion of "... persons", which, in the light of this legislative variant, we believe, differs from the full meaning of the notion.

The Romanian author, Gh. Mihai, mentions, "that being a person is not the same as being a person in law", because in the absence of formal conditions, the state through its organs are social entities simultaneously with their quality as subjects of law, while man is a social entity prior to this quality" (Mihai, 2003, p. 276).

On the other hand, doctrinaires state that being a person in law is the *sine qua non* condition for becoming a subject of law, it does not matter that he is a person, beyond the legal requirements. Only the person consecrated as a person in law by legal law could become a subject of law (Mihai, 2003, p. 277).

The Civil Code of the Republic of Moldova, in Title II of Book I "Persons", refers to all subjects of civil law: "Natural person", "Legal person" and "Participation of the Republic of Moldova and administrative-territorial units in relations regulated by civil legislation". So, rightly, as the local authors, S. Baieş and N. Roşca, argue, both the state and the administrative-territorial units participate in civil legal relations as legal persons, therefore the subjects of the civil legal relationship are natural persons and legal persons (Baieş & Roşca, 2004, p. 257).

Land legislation regulates a separate notion regarding the subjects that can participate in land relations. According to paragraph (3) of article 1 of the new Land Code of the Republic of Moldova: "land relations represent the totality of legal relations established between landowners or between them, on the one hand, and public authorities, on the other hand, on the basis of law, legal acts or fact". Therefore, within the framework of land law, the subjects of land law are landowners and public authorities.

Art. 4 of the Land Code in force regulates by landowners "… the holders of the right of ownership, of limited real rights over land, as well as those who, according to civil legislation, have the status of landowner. Also, para. (3) of art. 4 of the Land Code of the Republic of Moldova specifies that depending on the destination of the land, the right of the subjects of land relations may be limited by law.

Landowners also include the following categories: landowners, land beneficiaries, and land possessors.

The Plenum of the Supreme Court of Justice, by Decision No. 8 of 22.12.2014 on the practice of application of land legislation by courts, decided that the subjects of land relations are landowners, natural and legal persons, public authorities in the process of land use.

To be qualified as a subject of law, the person must have legal capacity, that is, to be able, under the requirements of the law, to affirm through his conduct the possession of social values. Legal capacity is a regulated premise, therefore a condition of legal logic.

Therefore, the subjects of the legal relationship of land law are persons, either individually, when we are talking about a natural person, or organized under the law, in the case of legal entities, and of course the state.

c. The objective side of the violation of law. Land law refers to the set of external manifestations of behavior contrary to land law norms, which violate the legal regime of land and may produce harmful consequences on the land or on the legitimate rights and interests of its owners. This aspect is essential for the delimitation of the facts that attract legal liability, regardless of its form (civil, contraventional or criminal). In doctrine, the objective aspect is analyzed through the prism of several constitutive elements: the illicit act (action or inaction, harmful consequence, causal link and violation of an explicit legal norm). Thus, the objective aspect reflects the visible, established nature of the behavior that is inconsistent with the land legal order.

d. The subjective side constituted. In general, we can say that the subjective side of the illicit act - as an element of legal liability, is expressed differently in the branches of law, imposing certain differences, but these differences cannot remove the unity

of the concept in which the subjective attitude of the author of the illicit act is expressed, towards it and its consequences (Adam, 2004, p. 298).

The assessment of the guilt with which a person commits a harmful act represents a difficult challenge, given the complexity of the psychological process involved, determined by the interaction between the intellectual and volitional factors that define the structure of guilt (Baltag, Stahi, 2017, p. 12). The court is tasked with making a value assessment of the unlawful behavior and the damage caused, aspects that, although objective in nature, require a detailed analysis of the circumstances of the case. In this context, the court must establish not only the existence or non-existence of guilt, but also the concrete form in which it manifests itself. Since the legislator did not provide explicit criteria for determining guilt, this responsibility fell to judicial doctrine and practice, which outlined various theories (Baltag, 2006, pp. 18-22) and interpretative guidelines intended to facilitate the correct application of legal norms in the field of liability, including within the framework of land liability.

The evolution of the institution of liability for damages, and here we also consider civil or patrimonial legal liability in land law, reflects the need to adapt legal mechanisms to the dynamics of social transformations and the diversification of damage-generating situations. It has been found that the substantiation of patrimonial liability, including in land law exclusively on the criterion of guilt, no longer always corresponds to the reparative function, since the main obstacle is the difficulty - sometimes insurmountable - of proving fault, and implicitly of establishing the causal link between the perpetrator and the damage (Baltag, Stahi, 2017, p. 16).

Paradoxically, the concept of fault, once considered a progress in legal thinking, today risks becoming an impediment to the effective realization of the right to reparation, given that in more cases its absence would mean that the innocent victim would bear the harmful consequences of the unlawful act (Boilă, 2009, pp. 35-36).

So, in these circumstances, the question legitimately arises whether: can guilt still be considered an essential condition of patrimonial liability or tortious civil liability or, on the contrary, should we witness a transition to objective forms of liability, focused exclusively on damage and the causal relationship?

The main objective of engaging civil (property) liability in land law is to repair the damage, regardless of whether it represents a violation of a subjective right or a legitimate interest, whether it was caused by fault or not. We believe that from this perspective, regarding property liability in land law, unlike criminal and contravention liability, the degree of guilt is not legally relevant. The author of the unlawful act must repair the damage regardless of whether it was caused intentionally or through fault.

The specific essential condition for patrimonial liability in various branches of law, including land law, is however the existence of patrimonial damage. Damages are considered the most serious consequences that can be produced either by intentional or mistake, or by imprudence or negligence, or independent of any fault. This rule is based on the nature of civil liability to have as its aim the compensation of the damage to the victim (Adam, 2004, p. 298).

By conceptually analyzing legal liability in land matters, we could specify a series of defining features that differentiate it from other forms of legal liability, and we could provide an answer to the question raised above in our research: *what are the defining features of legal liability in the land domain?*

1. Land liability is intrinsically linked to the specifics of legal relations regarding the ownership and use of land, a natural resource with major economic and ecological value. Thus, liability in this area has a complex character, combining elements of protection of the public interest with those of defending the rights of landowners.

2. Land liability manifests itself in multiple legal forms (criminal, contraventional, civil, patrimonial), each of which regulates certain types of illicit acts and specific sanctions. This plurality indicates the need for an integrated and flexible approach, which allows for the appropriate sanctioning of violations that may occur in the management and use of land.

3. Land liability is characterized by a strong preventive and reparative nature. On the one hand, legal norms aim to discourage the commission of acts that may affect the integrity and value of land; on the other hand, it imposes the obligation to repair the damage caused, thus ensuring the restoration of balance in land-ecological relations.

4. Land liability involves a series of procedural and institutional particularities, determined by the specifics of land legislation and the role of the competent administrative authorities in supervising compliance with legal norms, which we do not find in other branches of law.

5. Conclusion

We present a few conclusions regarding the importance of liability in the field of land law:

First, in the land legislation, including the new Land Code of the Republic of Moldova, there is no express definition of land legal liability or land illegal act. Given the significant negative impact on future generations, this is imperative, because the abuse of land, viewed as a natural object and strategic resource, directly affects the

public interest and state security, given the central role of soil in agricultural production, in ecological balance and in ensuring economic and food security.

Secondly, legal liability in the land sector is an objective legal phenomenon that arose as a need to protect private and public interests. It has all the main features inherent in legal liability and performs a special task - to protect the interests of present and future generations, as well as guarantee the constitutional rights of citizens. The effectiveness of these measures directly depends on a combination of factors, among which the main role is played by the improvement of current legislation, legal culture and environmental education of citizens in the spirit of respect for the law and nature.

Thirdly, unfortunately, land legal liability is currently not reaching its full potential. Current legislation does not always adequately reflect the seriousness of the consequences of violations. However, certain shortcomings can be corrected through timely legislative adjustments and a coherent application of existing norms.

Considering the aspects analyzed above, it is necessary to review and improve the Land Code of the Republic of Moldova, as this normative act must include clear, unambiguous provisions that ensure a correct and uniform application of the norms in the land field, so as not to allow divergent interpretations in practice. In this regard, we consider it justified to expand paragraph (1) of article 4 "Subjects of land relations" of the Land Code of the Republic of Moldova, in the following version: "*Subjects of land relations are land owners, natural and legal persons, public authorities in the process of land use*".

A more detailed formulation would contribute to a better delimitation of the categories of subjects in land legal relations and to increasing legal security in this area.

This complexity underscores the need for in-depth doctrinal development and additional legislative clarification, aimed at strengthening the regulatory framework and facilitating the coherent and effective application of legal liability in the field of land law.

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