

CONSIDERATIONS ABOUT THE FORMS OF JUDICIAL RESPONSIBILITY IN THE MATTER OF BUDGETARY EXECUTION

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The social life is developing in an organized way based on some social norms and regulations which are necessary for the good development of human activities in any domain, these norms establishing a certain way in which the subjects of social relations must respect them taking into consideration the ratio among them – the breaking of the rules by an improper behavior will involve the social responsibility of the guilty part, being obliged to support the different consequences of his actions.

According to the judicial norm which was broken, to the social danger level of the action, to the social values which were broken, there are different forms of judicial responsibility (penal, civil, contravention, disciplinary etc).

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The breaking of the financial judicial norms which regulate the process of the budgetary execution (practically the encashment of budgetary incomes and the payment of costs approved by the budget) involves, usually, the responsibility form of administrative-contraventional, civil, and even the penal form.

According to law²⁰ «it is contravention an action done with guilt, established and sanctioned by law, ordinance, Governmental establishment, or in some cases, by the decision of the local council of the community, town, city, of the sector of Bucharest, of the district council or of the General Council of Bucharest».

The administrative-contraventional responsibility exists in case of not-respecting of the norms regarding to the establishment of budgetary incomes and those regarding to the payment of budgetary costs, by the sequencers of budgetary loans. Among the actions which are considered to be contraventions by Law No. 500/2002 regarding to public finances²¹ we can mention:

- the registration, employment or making a payment, in case when a legal basis does not exists for that certain cost²²;
- the engagement, ordinance or payment of a cost by public funds, in case when these operations were not approved according to law and are no beneficiary of a budgetary foresight;

20 Law No. 180/11.04.2002 to approve Governmental Ordinance No. 2/2001 regarding to the judicial system of contraventions published in the Off. M. No. 268/22.04.2002.

21 Law No. 500/11.07.2002 regarding to public finances published in Off. M. no. 597/13.08.2002.

22 The budgets which are here foreseen are:

- the budget of state;
- the budget of the social insurance of the state;
- the budget of special funds;
- the budget of the treasury of the state;
- the budget of the self-governing public institutions;
- the budgets of public institutions financed integrally or partially by the budget of state, by the budget of social insurance of the state and by the budget of special funds;
- the budget of public institutions financed integrally by own incomes;
- the budget of funds from external loans contracted or guaranteed by the state and their reimbursement and other costs are assured by public funds;
- the budget of external funds with no reimbursement.

- not-respecting the obligation to approve the budget of the treasury of the state and the budgets of self-governing public institutions, in a period of 15 days from the publication date of the annual budgetary law or of the modifying law in the Official Monitor of Romania;
- the breaking of the legal dispositions about the conditions of elaboration of the technical-economical documentation in the domain of the investment objectives;
- not transmitting²³ by the main sequencers of loans to the Ministry of Public Finances of the situation of the transfers of budgetary loans;
- the engagement and ordinance of public costs without previous accord of prevention financial control;
- the breaking of the general principles which are the basis of budgetary execution;
- the breaking of the obligation to elaborate certain documents from the accountancy;
- not-respecting the norms which regulate certain aspects of the salary-process²⁴ in the budgetary sector;
- not-respecting the reimbursement period of the temporary loan, adjusted by a main sequencer of budgetary loans for some activities or public institutions created under the supervision of that main sequencer;
- the engagement and use of budgetary loans for other aims, than it was approved etc.

In the matter of establishing contraventions and applying amendments the following institutions have responsibility:

- Court of Auditors;
- Ministry of Public Finances;
- Other persons authorized, according to law.

Near the contraventional responsibility it can be engaged the disciplinary responsibility of the public agent, who is guilty of doing some things which are considered to be deviations from the work discipline. The disciplinary deviation is, according to law²⁵, «an action connected to work and which consists in an action or inaction done with guilt by the employee, through whom he had broken some legal norm, the internal regulation, the individual working contract, the applicable collective working contract, the commands and legal dispositions of the hierarchical leaders». When the action of the employee or public agent consists in a disciplinary deviation, through which the employer has to suffer, it is involved the patrimonial responsibility²⁶ of this employee too.

We must mention the fact that in the situation when there are produced some prejudices, because of the breaking of the regulations by some persons with budgetary activity (public agents), these persons will have patrimonial²⁷ responsibility (covering the whole prejudice), according to the request of the person in case.

In the activity of budgetary execution, it can appear penal responsibility too, the most serious form of judicial responsibility, in case when the action has all the constitutive elements²⁸ of an infraction.

23 According to art. 47 paragraph 10 from Law No. 500/2002 regarding to public finances, being the duty of the main sequencers of loans, it is established the obligation of monthly transfer to the Ministry of Public Finances, in 5 days after the end of the month, of the situation of transfers of budgetary loans.

24 According to the foresights of art. 53 paragraph 1 from Law No. 500/2002 regarding to public finances, the salaries in the budgetary system are paid monthly once, between 5 - 15 of the month for the previous month.

25 Art. 263 paragraph 2 from Law No. 53/24.01.2003 – Working Code published in the Off. M. no. 72/05.02.2003.

26 According to the foresights of art. 270 paragraph 1 from Law No. 53/2003 – Working Code «the employees have patrimonial responsibility, according to the norms and principles of the contractual civil responsibility for all the material damages caused by them and in relation with their work on the address of the employer».

27 Form of the patrimonial civil responsibility.

28 Elements which compose the structure of an infraction are: object – judicial, material/physical, subject, with objective view (the action or inaction is done against some social values protected by law; the sequel of this action is socially dangerous and the relational cause between infractional action or inaction and the sequel is socially dangerous), subjective view, content.

In Law No. 200/2002 regarding to the public finances there are two actions mentioned, which are the following:

- the exceed of the approved amounts for the costs through the component amounts of the budgetary system or the unitary budgetary system, through which payments are engaged, commanded and transferred;
- the engagement of some expenses from the unitary budgetary system, exceeding the maximal limit approved of the budgetary loans. The sanctioning system applied foresees the alternative sanction of prison from one to 3 months or of the amendment from 5.000 lei to 10.000 lei.

In the same time through Law No. 273/2006 regarding to local public finances are incriminated the followings:

- the engagement, commandment or transfer of payments above the maximal limit of the approved amounts for expenses, through the budgets of public institutions financed integrally or partially by local budgets, by the local budgets of communities, cities, towns, of the sectors of Bucharest, of districts and of Bucharest, through the budgets of public institutions financed integrally by their own incomes, through the budget of external and internal loans, to which the reimbursement, the rates, the commissions and other costs are assured by the local budget, by the budget of external funds with no reimbursement;
- the engagement of expenses from the earlier mentioned budgets above the limit of the approved credits;
- the exercising by the main sequencer of credits or by the deliberative administrative-territorial unit being under the process of insolvency²⁹ in any kind of financial matter which is under the responsibility of the administrator named by the union-judge.

The sanctioning system applicable for the first infraction foresees the alternative sanction of prison from one to 3 months or of the amendment from 5.000 to 10.000 lei, and in the case of the other infractions it is foreseen prison from one to 3 months or an amendment from 10.000 to 25.000 lei.

Another action which breaks the legal dispositions regarding to budgetary discipline, having as a result the disturbance of economical-financial activities or could cause even material damages, is incriminated in the content of the Penal Code, article 302¹- the infraction of defalcation³⁰.

The infraction of defalcation contains even a more severe variant³¹. We can notice that the judicial object of this infraction is represented by those social relations which are connected to the sphere of the financial discipline – material resources, financial funds must be used according to their legal destination. The material object of the infraction is represented by those funds or financial resources which were defalcated through the action of the active subject. The quality of subject of the infraction can have that person who has the *right*, according to the special attributions of duty, to arrange the destination of some financial funds. We remark that in case of this infraction it is possible the penal participation, by any form – instigation, complicity.

The objective part of this infraction takes into consideration:

- the material element of the infraction consists in the action of changing the destination of some material resources (this way the resources being used for other destinations as those initially foreseen in the budget);

²⁹ According to law, the administrative-territorial unit is considered to be under insolvency in the following situations:

- not-paying of obligatory payments, cash and demandable, older than 120 days and which are above 50% from the annual budget, without taking into consideration the contractual litigations;
- not-paying the salaries foreseen in the budget of incomes and expenses a longer period than 120 days.

³⁰ According to article 302 Penal Code «the changing of destination of money funds or material resources, without respecting the legal foresights, when the action caused a disturbance of the economical-financial activities or it caused a damage by an organization or institution of the state or by other units..., it is punished with prison from 6 months to 5 years».

³¹ According to the foresights of article 302 paragraph 2 of the Penal Code: «if the action described in paragraph 1 had particularly severe consequences, the punishment is prison from 5 to 15 years and the prohibition of some rights».

- the action of changing the destination of some material resources is done without respecting the legal foresights;
- the consequence of the action consists in the disturbance of economical-financial activities or in causing a damage to an organization or institution of the state.

The infraction can be done with direct or indirect intention.

The sanction system is represented by the punishment of prison from 6 months to 5 years and for the more severe form of the infraction, which has as a result the production of some very serious consequences³², it is foreseen a punishment of prison from 5 to 15 years and the prohibition of some rights.

At the end we must accentuate the importance of respecting the legal dispositions in the matter of budgetary execution. The protection of the financial interest of the state, this way is a priority for the authority in charge.

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32 According to art 146 Penal Code «through very serious consequences we understand a material damage higher than 200.000 lei and a severe disturbance of the activity, in the function of a public authority...».