

MANAGEMENT OF VALUES: ALIGNING LEGAL RESPONSIBILITY WITH THE NEED FOR PROFIT

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Abstract: According to the dictionary and the common language, responsibility and liability are usually described as equivalent concept. However the social sciences cannot accept such equivalence. Liability cannot be separated from responsibility, as the notions are complementary. Liability implies the idea of imposition. The external obligation can be imposed only by the organisms of the state, accordingly with the law.

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1. Responsibility and legal liability as different concepts

As it has been shown, responsibility surmises the idea that the individual feels responsible even for the consequences that are not perceived as obligations by a rule, a commandment, a law (A. Hlavek, 1975, p. 161). Liability, concept that is specific to law, is in fact a juridical obligation, established by a normative act. We can ascertain that responsibility is a notion primarily related to morale; the attitude of the individual is manifested towards a value, not towards a rule (M. Bădescu, 2002, p. 65). Responsibility may be considered as part of the moral phenomena. However, law itself cannot be appreciated only by the possibilities that it has to intervene when the harm has already been done, as it must also have the possibility to contribute to a cultural attitude that the individual must manifest towards the law (N. Popa, 2008, p. 99). In conclusion, the law

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cannot be reduced only to an instrument of punishment, because it is also as a protector, and even a promoter of values.

Social responsibility occurs given that the individual deliberately chooses a social behaviour; it implies the existence of an autonomy regarding the choice of means of his action (D. S. Luminosu, V. Popa., 1995, p. 205). In the state governed by the rule of law, neither the individual nor the legal entities may be regarded as machines that lack the freedom to act, as they see fit, within the limits of the law. The freedom of decision making, of developing a certain type of behaviour, of building a distinct personality is a fundamental right and, at the same time a fundamental premise for a free, democratic society, that is able to ensure the free development of its citizens, as well as economic development.

Non-legal sanctions have the effect of maintaining, replacing or creating values. On the other side, legal sanctions have the effect of consecrating value judgements. From a strictly legal point of view, everything that is not forbidden is allowed. Other social norms have a similar function; however they permit a wider freedom of choice.

Unlike responsibility, which is an internal obligation, liability appears as an external imposition. Establishing legal liability implies an official decision, made by specific state organisms. Liability is not an internal dimension of the agent, but phenomena which the authority attributes to the agent as an external factor, accepted as an obligation (M. Bădescu, 2002, p. 56).

2.2. Legal and social responsibility of private juridical persons

Legal responsibility is not inherent only to the state and the individual, but also to private legal entities. A strong, efficient societal system is an intrinsic requirement for the existence of a democratic legal system. Both non-governmental organisations that do not aim to make a profit and commercial organizations have social responsibilities, including ones of a legal nature. Concepts such as responsibility, integrity and ethics may apply in different contexts, thus we can speak not only about individual responsibility, but also about corporate social and legal responsibility. Different activities or different professions share certain values, of whose compliance responsibility and integrity depend upon.

For over thirty years managers are struggling with problems arising from social responsibility of the commercial companies. Traditionally, the

sole purpose of a corporation was to maximize its profits, as its responsibilities existed only towards the shareholders. It has become obvious however that the commercial activity must follow certain social rules. Grasping a concept such as corporate responsibility is difficult. Keith Davis was defining this concept as the decisions and the actions that are undertaken based on reasons that are not necessarily connected with the technical or economical direct benefit. Corporate responsibility is, however, a difficult process. Environmental protection agencies, for example, are a surprisingly recent creation. Such entities have become a necessity for any developed society, as they help guaranteeing environmental protection and consumers and employees rights. Recent debates even consider philanthropic activities as a component of responsibility.

The very fast evolution of commercial relations leads to a significant growth of corporations. According to Milton Friedman –Nobel laureate- (M. Friedman, 1970), “the discussions of the social responsibilities of business are notable for their analytical looseness and lack of rigor”. According to this author, the sole responsibility of the corporation is towards its stakeholders. Although not entirely against the concept of business responsibility, Friedman underlines the necessity of free will regarding social activities; however, according to the same author, a business does not have the right to use its monetary resources in social purposes, without a unanimous agreement of the stakeholders. Otherwise, any donation may be considered in fact, as theft, because the managers have the duty of maximizing, as much as possible, the profits, and not to use financial resources in other purposes. Also, according to Friedman, the managers of the corporations lack the necessary competences in order to accomplish complex social projects. Many of the statements above are, at the very least, arguable.

It has been shown that the argument of “competences” (argued by other economists as well) may be sustained as long as the businesses are involved in large, complex projects that may indeed exceed their capacities. However not many competences or skills are required in order to avoid discriminatory treatments inside the company or the protection of the environment (Robert C. Solomon, 2006, pp. 391-393). The concept of “stakeholders” (interested parties, all parties that are beneficiaries of social responsibility of the commercial activities, including the shareholders) has appeared as a reaction to the type of statements that Friedman was making.

The notion of stakeholders includes all the persons that have legitimate expectations regarding the activity of a company, covering also the community that the company is a part of.

Responsibility of the companies must also include the care towards the consumers, by providing products or services of good quality and that do not present any risks for their addressees. Responsibility also includes ethical or philanthropic aspects. However the most important aspect is the legal responsibility.

The society provides to the companies the possibility to undertake a certain activity in order to obtain profit, but expects, at the same time, for this activity to be conducted within the limits of the law. Both managers and the shareholders of the companies must accept the fact that ethic and moral impact of their decisions will rarely be a neutral one (Domenec Mele, Manuel Guillen, 2006, p. 15). Rational behavior and business ethics are becoming essential components for any commercial activity. Ethical aspects are subjective contributions, sociological restrictions, external obligations or assessments of value, attached and subordinated to economic rationality (Domenec Mele, Manuel Guillen, 2006, p. 15). Corporate responsibility towards their customers and the natural environment is an essential requirement for a rational economic behaviour. Catastrophic disasters such as Chernobyl (or more recently – though far less serious – Fukushima) are a sad reminder of the consequences that one mistake can have over the entire environment. According to the Stockholm Declaration [3] the protection and improvement of the human environment is a major issue which affects the well-being of peoples and economic development throughout the world; it is the urgent desire of the peoples of the whole world and the duty of all Governments. Therefore, environmental protection is an essential aspect of responsibility. The principle “the polluter pays” was first formulated in the OECD Recommendation nr. C (72) 128 from 1972. According to the principle, the polluter needs to pay for the measures taken by the public authorities in order to cleanse the environment. Without forcing the polluter to pay for his act, the society as a whole would have to pay in order to remove the effects of pollution. According to the principle, the persons that are generating pollution are forced to use filters, to adopt the latest environmental friendly technologies. Such measures can sometimes imply great costs for the polluter, however without this obligation, the “cost” for the environment would be a lot larger. The main objective of the

international and European legislation regarding pollution prevention is to harmonize national legislations. The principle was recognized in the Single European Act (signed in 1986), title VII, art. 130 R, paragraph (2), which stipulates that environmental measures are based on the principle of preventing pollution at its source, remedy and on the principle according to which the polluter pays. The Rio Declaration reiterates the principle, at art. 16, according to which, the national authorities must make efforts in order to promote the internationalization of the costs for environmental protection and for the utilization of economic instruments, taking into consideration the approach according to which the polluter must cover, in principle, the cost of pollution, with regard towards the public interest and without affecting commerce and international investment. The principle was also recognized by The Paris Convention from 1992, according to which the polluter must cover the expenses for preventing, reducing and fighting against pollution. However, the most poignant manifestation of responsibility regarding environment protection is the precautionary principle, according to which, there is an obligation to intervene before the harm is done, before any damages are done to the environment. It is well known that the best way to fight pollution is to prevent it, meaning to evaluate all the possible risks and actions. Although implementing newest technologies, filters etc. (without involving excessive costs) can be very expensive, the costs that polluters would have to pay after pollution has occurred is generally much larger. Sometimes the effects on environment are irreversible. According to the Stockholm Declaration (art. 7), less developed countries should be helped in their fight against pollution, as the negative effects on environment are global. Art. 17 stipulate that national institution must plan, manage and control the main resources of the states, in order to improve the quality of the environment. Also the latest technical and scientific developments must be applied on a large scale in order to avoid and control environmental risks and to find solutions for environmental issues (principle 18).

Corporate responsibility has become a major factor in the activity of any company. Its importance is also underlined by several worldwide reports, surveys or statistics. In a survey (KPMG Survey of Corporate Responsibility Reporting 2013, p. 14) it is shown that more companies see opportunities than risks: 81% of reporting companies identify business risks from social and environmental factors, whereas 87% identify commercial opportunities. However, “reputation risk” is the most commonly cited type

of business risk, mentioned by 53% of reporting companies. Therefore we can ascertain that corporate responsibility may in fact prove to be profitable not only for the stakeholders, but also for the business itself.

Conclusions

It has been shown that perceiving a company as socially responsible by the public (by potential customers) leads to a revenue growth. It is certain that the corporations have important responsibilities towards the community (otherwise we could not ascertain that they have legal liability, which would be unacceptable). At the same time, however, the main goal of any activity is to obtain a profit (obtaining profit is a general principle in commercial law). Forcing the companies to contribute, in a great extent, to the needs of a community would be a serious mistake. Accepting ideas that the sole purpose of a commercial entity is to obtain profit, regardless any environmental or social factors would be an even greater mistake.

Faith in the validity of a norm depends, in a great extent, of the personal experiences of the social actors, but also on the information that they receive from other sources. Therefore we can talk about the responsibility about the persons or entities that are informing the public regarding daily events, including norm violations. Mass-media for example, is gaining an important role in the relation that exists between the individual and the social norm. Responsibility, in the case of the commercial companies, could also apply to the way that they choose to advertise their products; however such a discussion would exceed the scope of the present paper.

A company or a corporation does not exist in a void, sterile environment, separated from the community. It is obvious therefore that it can be neither better nor worse than the society where it operates, as it is a reflection of the values and standards of that specific society. Corporate responsibility may in fact prove to be profitable for companies, excepting perhaps the companies which activities generate highest pollution (such as oil, gas, construction, building materials etc.). However, in the long term, social and environmental changes may affect their activity as well.

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References

- Bădescu, M., (2002). *Sanctiunea juridică în teoria, filosofia dreptului și în dreptul românesc*, Bucharest: Lumina Lex Publishing House.
- Friedman, M., (1970). *The social responsibility of business is to increase its profits*. New York Times. http://doc.cat-v.org/economics/milton_friedman/business_social_responsibility.
- Luminosu, D. S. & Popa, V., (1995). *Sociologie juridică*, Timisoara: Helicon Publishing House.
- Mele, D. & Parra, M. G., (2006). Intellectual evolution of strategic management and its relationship with ethics and social responsibility. *IESE Business School Working Paper*, No. 658.
- KPMG Survey of Corporate Responsibility Reporting 2013*. <https://www.kpmg.com/Global/en/IssuesAndInsights/ArticlesPublications/corporate-responsibility/Documents/corporate-responsibility-reporting-survey-2013-exec-summary.pdf>.
- Popa, N., (2008). *Teoria generală a dreptului*. Buchares: C.H. Beck Publishing House.
- Solomon, R.C., (2006). *Etica relațiilor de afaceri*, in: *Tratat de etică* (coordinator Peter Singer). Bucharest: Polirom Publishing House.