

# LEGAL EFFECT OF THE SELF-LIABILITY DECLARATION THE COVID-19 PANDEMIC. INTEGRITY AND FREEDOM OF CONSCIENCE

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**Abstract:** This paper analyzes the legal consequences that the declaration on one's own responsibility of an individual can produce in a limited period of time and in special conditions, namely, those related to the current situation, pandemic period - COVID-19. The topic is a current one, there have been debates from other perspectives, not in terms of the legal consequences of this statement. Finding that there is a legal basis that has sometimes been misinterpreted or misunderstood by those to whom the law is addressed, but sometimes also by those who apply the law, I set out to find as many explanations as possible regarding the legal effect of the people's actions. And because people's statements may have certain legal constraints, I linked my research topic to integrity and freedom of conscience.

**Keywords:** *statement, liability, legal effect, pandemic, integrity, freedom of conscience*

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## **Introduction**

The phrase "declaration on one's own responsibility", "self-declaration" or "self-liability declaration" is the statement that a person makes about a situation that is known to him/her. This type of statement is encountered

in several circumstances or areas and, once given, it can produce a number of consequences / effects, including the legal effects.

In the continuation of this paper we will analyze the legal effect that the declaration on one's own responsibility can produce in the pandemic situation, and our analysis relates the declared responsibility, liability and accountability to the person's integrity and to the freedom of conscience.

## **1. Opinions on the definition and meaning of the terms and expressions used in this paper**

The words and expressions that we will use during our research are not specific only to the legal field or the medical field. We chose the interdisciplinary analysis in order to be able to identify and interpret objective, qualitative aspects related to the chosen research topic.

Following these, we will further present the analysis of the terms used, as follows:

### **1.1. Legal effect**

The effect is defined as a phenomenon that necessarily results from a certain cause, being in an indestructible connection with it. Synonyms of this word are: consequence, result.

The legal effect represents the consequence produced by the legal acts and facts which, in their turn, benefit from effectiveness, within the limits and conditions established by law.<sup>1</sup>

### **1.2. Statement on one's own responsibility<sup>2</sup>**

**1.2.1. Brief linguistic analysis.** This phrase implies some comments, both from a linguistic perspective (which raised the issue of the existence of a pleonastic construction that should not be maintained in the existing wording<sup>3</sup>), but also from a legal point of view.

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1 Stelian PARIS, Rodica SÎRBU, Emin CADAR, Aneta TOMESCU, Cristina-Luiza ERIMIA, Conflict – a necessary evil, European Journal of Social Sciences Education and Research, (EJSER), Jan-Apr. 2016, Vol. 6, Nr. 1, ISSN 2411-9563 (Print), ISSN 2312-8429 (Online), pp. 64-69.

2 <https://www.mai.gov.ro/declaratie-pe-propria-raspundere-stare-de-alerta/>

3 <https://www.juridice.ro/356010/declar-pe-proprie-raspundere-ca.html>, Avocat Maria Bornea, Baroul Arad.

As a linguistic analysis, there have been opinions that the phrase “self-declaration” implies a pleonasm because no one can make any statement without taking own responsibility for the content of what he declares. It is also considered that no one can make any statement by engaging the responsibility of another person.

Consequently, this formula is perceived to be archaic, specific to times when the level of education of the population was low, and maintaining the phrase to nowadays would be nothing more than an lack or an error of the legislator.

The quoted source makes an extensive analysis of this opinion, referring to several branches of law where this phrase is encountered (procedural law - witness testimony, criminal law, notarial statements, etc.).

The opinion was opposed from a legal point of view, recognizing the pleonastic character of the phrase, but noting that it is necessary to maintain this wording in order to determine the person making the statement to be careful, conscientious, but also to warn its about it the (legal) consequences that a false statement can have.

By comparison with the Romanian linguistic construction, we also note that the English terminology uses two different expressions referring to the declaration on one’s own responsibility, regarding as “declaration on one’s own responsibility” or “self-responsibility declaration”.

1.2.2. *The relationship between liability and responsibility.* Also from a legal perspective, we need to analyze the difference between the notions of (legal) responsibility and liability.<sup>4</sup>

Legal liability is the obligation incumbent on a person to be held accountable for violating a rule of conduct, a legal rule. It is a form of social responsibility as it concerns the behavior of people who have the opportunity to choose, to choose the reaction they will have in a given situation and according to personal or group interests.<sup>5</sup>

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4 Mădălina Botină, Alina Georgiana Pangrate, *Some Problems of Jurisprudence concerning the difference between delictual liability and contractual liability*, în *Ovidius University Annals (Analele Universității Ovidius, Seria Științe Economice)*, Volume XII, Issue 2, Ovidius University Press, Constanța, 2013, pp. 83-87.  
<http://stec.univ-ovidius.ro/html/anale/RO/cuprins%20rezumate/volum2013p2.pdf>.

5 Mariana Mitra, *Dreptul la viață și protecția sa juridico-penală*, articol publicat în volumul *Sesiunii de Comunicări Științifice cu tema „Cercetarea academică la început de secol XXI”*, Constanța, Universitatea Spiru Haret, ediția a XV-a, Editura Europolis, Constanța, 2008, ISBN 978-973-676-306-9, pp. 218-240.

When identifying the legal responsibility, the individualization of the deed, of the form of guilt and of the degree to which the legal norm or the legal rule was disregarded is taken into account. After the stage of establishing these elements, we move on to the sanctioning stage. The Romanian legislator did not give a definition of the forms of legal liability, but establishes the conditions and principles that attract this liability, so that it does not appear as a simple obligation to bear the appropriate sanction for disregarding the law, but to be the framework for manifesting state coercion against the person who disregarded a legal act and violated the rule of law.

Liability is identified with responsibility by some dictionaries or by some law practitioners, without the two notions being identical at least in origin.

Responsibility is the person's attitude to assume the consequences of his social activities towards other individuals<sup>6</sup>. Analyzing this notion from the point of view of the legal field, the responsibility represents "fixing, measuring the consequences of a hypothetical act, by law", the term "bringing into question the fact that by virtue of a law and in the conditions of a normal psychic capacity, one can be made responsible for an act committed by him, for an action taken"<sup>7</sup>.

1.2.3. *Declaration of conformity.* We also chose to mention this type of statement, given the support we encountered in discussions on the chosen topic, including with some legal professionals. Therefore, we define the declaration of conformity as the statement made by a manufacturer or service provider that he informs, on his own responsibility, that a product or service complies with a regulatory technical document. From here we conclude that the declaration of conformity also includes

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6 Mirela Cristiana, Nilă Stratone, *Sociologie juridică. Elemente de bază*, Editura Hamangiu, București, 2013, p. 99, citat de Teodora Elena Zaldea în lucrarea *Problematika responsabilității și răspunderii juridice în doctrina juridică contemporană*, Revista Universul Juridic, <http://revista.universuljuridic.ro/problematika-responsabilitatii-si-raspunderii-juridice-doctrina-juridica-contemporana/>

7 Elena Emilia Ștefan, *Răspunderea juridică: privire specială asupra răspunderii în dreptul administrativ*, Ed. Pro Universitaria, București, 2013, p. 6, citat de Teodora Elena Zaldea în lucrarea *Problematika responsabilității și răspunderii juridice în doctrina juridică contemporană*, Revista Universul Juridic, <http://revista.universuljuridic.ro/problematika-responsabilitatii-si-raspunderii-juridice-doctrina-juridica-contemporana/>

a declaration on one's own responsibility, given in connection with the professional activity carried out.<sup>8</sup>

### 1.3. *Pandemic (COVID-19)*

*The pandemic* is defined as an epidemic<sup>9</sup> that extends over a very large territory, covering several countries, continents. In our particular case, we will refer to coronavirus, known as COVID-19 or SARS-CoV-2 or Severe Acute Respiratory Syndrome Coronavirus.<sup>10</sup>

Not having enough knowledge in the medical field, I will not continue with the analysis of this notion, leaving those who have professional specialization to solve the problems related to the notion of pandemic. I sought a simple, necessary and sufficient definition that would allow me to justify the legal effects of a declaration on my own responsibility, in special cases, as recognized by national law and at international level.

### 1.4. *State of emergency and Alert status*<sup>11</sup>

First of all, we must mention that both the state of emergency and the state of alert were regulated in the Romanian legislation before the appearance of the coronavirus COVID-19.<sup>12</sup>

According to the will of the Romanian legislator, *the state of emergency* is one of the exceptional measures that are established in cases determined by serious dangers to the defense of the country and national security or constitutional democracy or to prevent, limit and eliminate the consequences of disasters.

The state of emergency represents the set of measures of political, economic, social and public order, instituted throughout the country or in certain areas or in some administrative-territorial units, in the following situations:

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8 Cristina-Luiza Erimia, Rodica Sirbu, Stelian Paris, Falsified medicines – A problem of regulating the pharmaceutical legislation by standardizing the european law, 2th International Multidisciplinary Scientific Conference on Social Sciences and Arts SGEM 2015, 26 Aug.-01 Sept. 2015, Bulgaria, Book 2, Vol. I, ISBN 978-619-7105-46-9, pp. 561-568.

9 Extension of a contagious disease in a short time, through contamination, to a large number of people in a locality, region, etc.

10 <https://umfcd.ro/ce-stim-despre-sars-cov-2-si-covid19/>

11 <https://lege5.ro/Gratuit/giztqnzv/ordonanta-de-urgenta-nr-1-1999-privind-regimul-starii-de-asediu-si-regimul-starii-de-urgenta>

12 O.U.G. nr. 21/2004 on the National Emergency Management System.

- a) the existence of threats to national security or constitutional democracy, which makes it necessary to defend the rule of law institutions and to maintain or restore the rule of law;
- b) imminent occurrence or occurrence of disasters, which makes it necessary to prevent, limit and eliminate their effects

Also according to the Romanian legislator, *the state of alert* represents the immediate implementation of action plans and measures for prevention, warning of the population, limitation and removal of the consequences of the emergency situation. The state of alert is declared in the conditions laid down by a normative act, most likely, by an emergency ordinance, which allows the establishment of urgent rules, in special situations, which do not allow waiting for the whole procedure that involves the entry into force of a law.

Regarding the extension of COVID-19 to all continents, one of the authorities that issued opinions on the state of emergency was the European Commission for Democracy through Law, known as the Venice Commission. This committee drew up a compilation of the opinions and reports it expressed on the state of emergency.<sup>13</sup>

### *1.5. Integrity and Freedom of conscience*

The notion of *integrity* is the quality of being honest, incorruptible and closely related to freedom of conscience. In turn, *freedom of conscience* is defined as a principle that allows the person to act according to his own will, to do what he wants, to express himself without any constraint.

However, there are situations in which the rules of good coexistence or the rules imposed by the legislator limit the person's freedom. John Stuart Mill said that "your freedom ends where the other's freedom begins." A limitation of a person's freedom or rights is determined by the current situation facing all peoples of the world: the coronavirus pandemic. Starting from these complex ideas, expressed so simply, we will move on to the next section of our study, to analyze the legal effects that a person's statement can produce, during the restrictions of his rights and freedoms.

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<sup>13</sup> <https://rm.coe.int/venice-commission-compilation-on-states-of-emergency-ro/16809e85ba>

## 2. Angajarea răspunderii juridice prin declarația pe proprie răspundere în perioada actuală

*Standard form entitled "Declaration on own responsibility - alert status".* From the date of Romania's entry into the state of alert, generated by the coronavirus infection, the freedom of movement of Romanians and other persons, on the territory of our country, has suffered a series of limitations. Thus, at the beginning, it was forbidden for people who did not justify a well-founded reason to move inside or outside the cities to leave their homes.

In order to establish the conditions in which people could leave their homes, the Romanian legislator drafted a series of normative acts and imposed a travel program to and from work, another program for the elderly, as well as for accompanying pets and a few other activities. A special category of people who could move during the alert period were people who did volunteer acts and charitable acts.

These persons were required to complete and sign a standard form, which had to be renewed each time the person left the home. The aforementioned form contained the following information:

- name surname;
- date of birth;
- home address;
- the statement: "the address of the dwelling in which the person actually lives shall be completed, regardless of whether or not it is identical to the one mentioned in the identity document";
- place (s) of travel
- the statement: "the places where the person travels will be mentioned, in the order in which he intends to travel";
- the reason for moving outside the locality / metropolitan area;
- the situations in which persons were allowed to leave the dwelling were listed, namely:
  1. professional interest, including between home / household and the place (s) where the professional activity takes place and back;
  2. for humanitarian or voluntary purposes;
  3. carrying out agricultural activities;
  4. for the marketing of agri-food products by agricultural producers;

5. the care or administration of a property from another locality; issuing documents necessary to obtain rights;
  6. participation in programs or procedures in treatment centers;
  7. medical assistance that cannot be postponed or performed remotely;
  8. individual recreational-sports activities carried out outdoors (cycling, hiking, running, rowing, mountaineering, hunting, fishing and others) with the participation of up to 3 people;
  9. participation in family events, with a limited number of people and compliance with the rules of social distance;
  10. for the acquisition, service, performance of ITP or other vehicle maintenance operations, activities that cannot be performed in the place of residence;
  11. other justified reasons (such as: care / accompaniment of children / family members; care of a relative / relative or dependent; assistance for the elderly, sick or disabled; death of a family member, provision of goods covering the basic needs of persons and domestic animals).
- date of declaration;
  - the signature of the declarant.

The lack of this form attracted a contravention sanction. Like any contravention, it could be challenged within a certain period established by law - in the present case, the appeal period started from the date on which the state of alert ceased.

Against the lack of a definition of the state of alert, as well as the lack of a time limit for the same state of alert, the institution of the Romanian People's Advocate notified the Constitutional Court of Romania.

We also mention that after the end of the state of alert, our country passed a new stage that allowed those sanctioned for contravention for lack of standard form or for non-compliance with those declared on their own responsibility in that form, to file a complaint against the sanction received. Those cases were partially resolved by admitting the complaints by the courts.

Law no. 55/2020 on some measures to prevent and combat the effects of the pandemic COVID-19 imposed a new sanctioning system



applicable during the alert state. Of all the types of liability that this normative act presupposes (civil, criminal, disciplinary, contraventional liability), we will analyze very briefly the contraventional liability, it being the one that already has a judicial practice behind it (the Romanian courts have already pronounced in some of those cases).

There were contradictory discussions about these lawsuits in court: some argued that it was normal to sanction those who did not comply with the legal provisions of the time, who gave false statements about the unjustified leaving from of the home during the alert. Others appreciated that the document appeared as a result of a situation of “legislative vacuum”, which prevented the authorities from applying sanctions.

The Constitutional Court of Romania held that the normative act that restricts / affects fundamental rights and freedoms of citizens or fundamental institutions of the state falls within the scope of the prohibition provided by art.115 paragraph (6) of the Constitution. Therefore, respecting the constitutional framework resulting from the revision of the Fundamental Law of 2003, a regulation with such an object can only be a law, as a formal act of the Parliament, not an ordinance of the government, as was the one under which -applied the sanctions.

## Conclusions

In conclusion, compared to those shown above, we believe that responsibility and accountability must characterize all platforms, be they individuals or state authorities. The statements that the person makes, on his own responsibility, must agree with the responsibility that characterizes a person.

As for the special situation in which the Romanian state and all the other states in the world found itself, it generated the issuance of normative acts that would restore the rule of law in a society hit by a real misfortune.

I believe that in such situations, both individuals and state authorities must show good faith, respect the legal order and civil rights and freedoms, and remember that “my freedom ceases where the freedom of another begins.”

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