

ABSTRACT

The European Union has always influenced the States members, imposing obligations and influencing the various aspects (from economics to the justice, from security to the public administration acting , and even the behavior of individual citizens) .

When they are guilty to haven't done these obligations, the Member States are kept to infringement proceedings (art. 258 ff TFEU) in order to ascertain the non-compliance. Among the obligations imposed by the EU there is also the transposition of a directive: a normative act that has to be transposed within a period and obliges the Member States to achieve a certain result, leaving them to choose the way.

Sometimes, the legislator fails to comply it timely or does it in a partial or incorrect way, causing damages to the citizens that they could gain an advantage by timely transposition .

My work seeks to analyze, precisely, the situation of a State non-compliance with the obligations community and its aftermath , trying to answer , first, to the question concerning the possible liability of the State (be it legislator, government or Court of last instance) and the damages' compensation (as a remedy residual and subordinate to the experiment of conforming interpretation) .

In the first chapter, we will talk about the analysis of the general principles and sources of european law. You will discover that we'll have same forms of liability even when the State doesn't do its international obligations or under the ECHR .

Particular attention will be given to the relationship between European and national legal order, in order to identify the nature of the liability . Follow the monistic theory rather than dualistic one, will guide the doctrine and jurisprudence, respectively, to the nature of the contractual or non-contractual liability.

The second chapter will talk the analysis of the case law on the liability of the State as legislator, Public Administration and Court of last instance for failure of european obligations, in general, and, in particular, for breach of a directive.

Even the Public Administration and the judge, in fact, can cause damage to the individual when a Directive isn't transposed. It is just a consequence of the legislature behavior: it has been asked, in fact, what can happen when the PA or the judge cause a damage to someone, enacting measures from the content corresponding to a rule which has implemented the directive in a partial or incorrect .

We will study the verdict of the European Court of Justice and the italian Cassation on the theme, from the original *Francovich* and *Bonifaci* to those about the scholarship of medical specialists between 1983 and 1991; the judgment about the AGM Cosmet Köbler / Ferries in the Mediterranean, and more.

The third chapter talks to the nature of the liability and the aspects that arise: the prescription (and the identification of the *dies a quo*) and the psychological element.

Will propose the main judgments in favor of the non-contractual nature (Court of Cassation sentt . 7630/2003 and 12814 /09) , with consequential liability, and the contractual ones (Court of Cassation 10617/1995 , SSUU 9147/2009 and 10813/2011), harbinger of an obligation , however, the indemnity .

Of course, considering the responsibility of the State as a contract or tort will product its effects with respect to the limitation period to predict (10 or 5 years , with particular attention to the starting date of commencement) and the mere allegation or proof of the subjective .