

Research program:
“The employment relationship among formation, competence, competition, and protection of the business know-how”

Annex C Code 1

Department of Law

Tutor: Prof.ssa Gabriella Crepaldi

Program

The aim of the project is to study the damage that functionary of judicial system can cause to the public finance (so-called “danno erariale”)

Despite the name given to the liability of whom that administrate justice by Italian law and doctrine, starting from the reforms of the 80s the civil liability of judges is set on two different actions. The damaged person can take the central administration to civil court and then the Administration can sue the magistrate. This last action would be an action for retaliation within the jurisdiction of civil court or (only if the damage is a consequence of a crime) an action for recovery according to the rules of civil servant's liability (art. 13, comma 2 L. n. 117/1988).

Someone has referred to this liability as a liability of the State and has spoken in terms of an action for recovery or retaliation that seems a specific type of civil servant's liability for damage to public finances. The atypical liability of judges (rectius, of magistrates) is included in a regulatory context usually studied by different scientific sector. Nevertheless, this regulatory context does not provide different rules for magistrates compared to those for other civil servants. Also Italian Constitutional Court (Corte Cost., sent. 14 marzo 1968, n. 2) assumed that the art. 28 of Italian Constitution could include also those engaged in the courts. Even the art. 52 r.d. n. 1214/1934 states that the “civil servants employees and agents, civilian and military, including the judicial order” are subject to the jurisdiction of “Corte dei Conti” for loss or damage caused to public finances.

The same analysis will be made also on foreign law and jurisdiction, with particular reference to France law.

Object of the research:

Assuming that there are few essay on the liability for damage to public finances caused by magistrate, there is no evidence that this type of damage has been used as a general category for the so-called civil liability of judges or for other liability originated by administration of justice.

Legislator has never written a whole system of rules on this matter. Indeed, he preferred insert punctual and miscellaneous law to regulate singular case of liability for damage to public finances. Court of Cassation – in his decision – stated that there is a closed number of hypothesis in which there is jurisdiction for damage to public finances (Corte Cass., SS.UU. civ., 27 maggio 2009, n. 12248).

The aim of the research is to delineate a figure – hopefully unitary – of damage to public finances caused by administration of justice and to understand which jurisdiction would be able to judge on this liability.

Finally, the candidate has to verify if the jurisprudence about damage to public finances could be considered overtaken with an enlargement of the jurisdiction of “Corte dei Conti”, also considering the new law (n. 18/2015) amending the previous L. n. 117/1988. This reform – suggested by decision of ECJ – augmented the possibility to take legal action for people damaged. More, the new art. 2, par. 3-bis L. n. 117/1988 stated that the action of liability for damage to public finances remains actionable and there is provided a new case of liability (art. 13, par. 2-bis L. n. 117/1988).