CIVIL LIABILITY IN THE INTERNAL LAW OF THE EUROPEAN UNION MEMBER STATES

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Abstract: *The present paper presents the notion of civil liability within the internal law of some European Union Member States. The paper starts from the Romanian law, presenting the general notion of civil liability, its governing principles, its finality, as well as its two important subdivisions: contractual civil liability and delinquent civil liability. Starting from the Romanian law, the paper presents comparatively the civil liability in France, Belgium and Italy, the definition of the notion according to the legal norms of these states, the types of civil liability, the legislative bodies' goal.*

Key-words: *civil liability, compared law, member states.*

Within the juridical liability, the civil liability represents one of the most important braches. The civil liability is a form of juridical liability which consists in an obligations relation based on which a person has the obligation to repair the prejudice caused to another person by his deed, or in certain cases stipulated by the law, the prejudice he is responsible for. One of the main functions of the civil liability is the reparatory one, having as purpose the removal of all the negative consequences of the illicit deed, covering the suffered prejudice and restoring the patrimony of the prejudiced person in the previous condition.

The civil liability is based on two fundamental principles:

- The principle of repairing the prejudice in kind, meaning the repair by natural, adequate means, such as the restoration of the asset, its replacement with a similar one, the technical repair of the asset etc.

and

- The principle of the integral repair of the prejudice, representing the illicit deed author's obligation to remove all the consequences of his deed in order to cover the prejudice and restoring the victim in the condition previous to the commitment of the deed.

The Romanian Law

In the Romanian law, the civil liability has two forms: the contractual civil liability and the delinquent civil liability. The Romanian Civil Code subjects the two forms of the civil liability to slightly different juridical regimes. The contractual civil liability is the duty corresponding to the debtor of a contractual obligation to repair the prejudice caused to its creditor by not executing the owed performance. The delinquent liability is a person's obligation to repair the prejudice caused to another person by an extra-contractual illicit deed.

Although they are subject to different juridical regimes, there are no fundamental differences between the two forms of civil liability, both of them being implied if the following conditions are cumulatively met:

- A prejudice caused to another person;
- An illicit deed (contractual or extra-contractual);
- The deed author's guilt or fault;
- A causality relation between the illicit deed and the caused prejudice;
- Pursuant o the legal provisions in force, there are three types of delinquent civil liability:
- Liability for one's own deed;
- Liability for a third party's deed;

- Liability for the prejudices caused by things, animals or building ruin;
- According to its foundation criterion, there are three types of liability:
- Subjective delinquent liability, founded on the idea of guilt;
- Objective delinquent liability, founded on the idea of guarantee or risk;
- Within the subjective delinquent liability, the Civil Code regulates three categories of liability:
- Delinquent liability for one's own deed;
- Parents' liability for the prejudices caused by their minor children;
- Institutors or craftsmen liability for the prejudices caused by the pupils or apprentices under their supervision;

Within the objective delinquent liability, the Civil Code regulates three categories of liability:

Liability for the prejudices caused by things;

Liability for the prejudices caused by animals.

Therefore, we distinguish the liability based on an illicit juridical deed from the liability for infringing a predetermined existing obligation. There are also different forms of liability within the content of these relations. Thus, within the liability for an illicit deed, the subject having an illicit behaviour is not under any kind of previous juridical relation with the subject or the subjects whose rights he infringed. In such case, a lawful norm is directly infringed, a norm provided in order to protect absolute subjective interests and rights.

Regarding the liability, in order to infringe the rights and the obligations within an existing juridical relation, the illegal behaviour is reduced to the infringement of a relative right, to a deviation of the real behaviour from the model established by a juridical relation. In the civil juridical literature this distinction gets the expression of delimiting the contractual and delinquent civil liability.

The contractual civil liability is the duty corresponding to the debtor of an obligation born from a contract to repair the prejudice caused to his creditor by not executing in general the owed performance, meaning the delayed execution, inadequate execution or total or partial failure to execute.

The delinquent civil liability is a person's obligation to repair the prejudice caused to another person by an extra-contractual illicit deed or, if the case may be, the prejudice for which he has to answer by the law. The matter regarding defect products stipulates that, since the acquired good endangered the consumer's life, health and assets, the delinquent liability shall be applied, however, in case of a defect good by itself, which due to certain reasons cannot be used according to its destination, the contractual liability can be engaged.

The aim of the liability measures is to modify the parties' rights and obligations so that, in the final result, the initial goal should be obtained, while the losses and the prejudice caused by infringing the obligation should be repaired by the guilty person. Establishing the criminal clause or repairing the prejudice in case of not executing the contractual obligation under the conditions in which this execution is real, have as purpose obtaining the exact result.

Therefore, the liability for the infringement of the obligations within a juridical report has a goal to conform the real behaviour to the standard behaviour within a juridical behaviour.

Regarding the relation between the two forms of the civil liability, we mention that the delinquent civil liability constitutes the common law of the civil liability, while the contractual liability is a special character liability, derogating. Whenever the contractual civil liability is not the case, then the rules regarding the delinquent civil liability shall be applied.

The specialty literature gave birth to several theories regarding the juridical nature of these two forms of the civil liability, taking into account that they have common elements as much as they have different elements. Thus, many debates took place in the attempt to solve the respective issue; the answer was different and the result was two theories: the theory of dual civil liability and the theory of unitary civil liability. Given the fact that these theories are analysed in detail in the specialty literature, we shall not linger upon their description in this context.

In the present stage, the theory of unitary civil liability seems to be much more sustained by the theoreticians, as well as by the practitioners, being invoked even the hypothesis that the contractual guilt has the same nature as the delinquent one and it consists of the psychical attitude towards the illicit deed. This theory was more emphasized in the French specialty literature of the last years which sustained the abrogation of all the differences between the contractual victim and a third party's situation.

It is well known the fact that one of the characteristic principles of the contractual relations is the relativity principle, meaning that along the same line, the contractual liability regarding the products can be only invoked by the contractual parties. The third parties cannot invoke the contractual liability for the prejudice suffered following the failure to execute or the inadequate execution of a contract. In order to cover the suffered prejudices, the third parties can appeal to the delinquent civil liability, to the extent in which all the conditions for such liability are met.

However, the line of differences between the contractual liability and the delinquent one allows us to say that they exist within the unity of the civil liability.

The manner in which the legislative body chooses the liability form takes into account the functional specific of the contractual and delinquent liability, and that is why such situation shall be considered when improving the legislation regarding the consumers' protection.

When examining the juridical-civil liability as a manner to protect the consumers' rights, we have to specify its functions in order to establish the limits of the effective application and to accomplish the aimed objectives.

The functions are:

- The preventive function;
- The compensation function;

One of the functions can prevail to the other depending on the domains of the civil law. For example, in the case of the conclusion of the services performance contract, the preventive function prevails, because such contract is meant to provide a complete and multilateral satisfaction of the material and cultural needs of the citizens. But if we refer to the repair of the prejudice caused to the consumer's life, health or property by a dangerous and defect product, then the compensation function will prevail.

In the specialty literature the issue of the plurality of the contractual liability and the delinquent liability is very much debated. Of course, this issue can be debated only when there is a validly executed contract between the author of the prejudice and the harmed person and the non execution of the respective contract represents the prejudice.

The French and Belgian Law

In the French law, the civil liability represents the obligation to repair the prejudice caused to another party. The civil liability includes two forms: the contractual liability resulting from the failure to execute certain contractual obligations and the delinquent liability (or extra-contractual) which is not based on the existence of a juridical relation.

The civil liability is engaged if the following conditions are met:

- A prejudice caused to another person;
- An illicit deed (contractual or extra-contractual);
- The deed author's guilt or fault;
- A causality relation between the illicit deed and the caused prejudice.

The exoneration of liability requires the demonstration of the existence of a force majeure case, another person's deed or the deed of the victim himself/herself representing the cause of the prejudice.

The prejudice can be repaired by the equivalent in kind, but the repair always has to be integral.

The two types of liability exclude each other. As long as there is a contractual relation, the delinquent liability between the signing parties cannot be invoked. On the other hand, the relativity principle regarding the effects of the contract prevents third parties from requesting the delinquent civil liability as long as they are not parties of the contract. Unlike the French law, in Belgium a

person can ask the delinquent civil liability upon his/her contractual partner, but under certain circumstances.

The contractual liability intervenes whenever a contractual obligation is infringed by one of the signing parties. The delinquent liability intervenes in all the other cases.

The delinquent liability engages the deed author's obligation to repair the produced damage entirely. The victim shall also obtain damages for the material and moral prejudice suffered following the author's deed.

The delinquent civil liability is engaged if the following conditions are met:

- A prejudice caused to another person;
- An illicit deed (contractual or extra-contractual);
- The deed author's guilt or fault;

A causality relation between the illicit deed and the caused prejudice.

There are many types of delinquent civil liability in the French law:

- The liability for one's own deed;
- The liability for deeds;

The liability for a third party's deed meaning: an official in charge, a child or another person the liability is engaged upon;

The Italian Law

In the Italian law, within the general category of civil liability we can identify two distinct categories: the contractual liability and the delinquent liability. In order to define the application domain of the two types of liability, we only have to observe that, while the first type is based on the failure to fulfil the existing duty, the second type is engaged when a person causes a prejudice without a justified reason, without an existing contractual report.

Beside the two forms of civil liability, in the Italian law and in the doctrine there is a debate regarding the pre-contractual civil liability. Some authors integrate it in the vast category of the delinquent civil liability, while others in the contractual liability.

Thus, the conclusion of the contract can be preceded by different types and kinds of obligations during the negotiation and execution of the contract. The general rule is that the parties have the obligation to act in good faith regarding each other during the negotiations and during any other moment previous to the conclusion of the contract. They also have to exchange information, so that the negotiation should be transparent. The infringement of these rules shall imply the pre-contractual liability.

The first difference between the contractual liability and the delinquent liability refers to the test duty. In order to engage the delinquent civil liability, the test duty is covered by the victim, who has to demonstrate the existence of the illicit deed in all its elements:

- The suffered prejudice;
- The existence of the illicit deed;
- The deed author's guilt or fault;
- A causality relation between the illicit deed and the caused prejudice;

In case of the contractual civil liability, the test duty is inversed: in any case of failure to fulfil the contractual obligations, there is the presumption of guilt regarding the author which spares the complainer of the test duty. This is certainly a simple presumption which can be cancelled and the debtor can be exempted of any liability if he proves his lack of guilt and that it is impossible for him to fulfil his obligations due to causes independent of his will.

From the damages assessment point of view, there are supplementary differences between the two forms. In case of the delinquent liability, the victim has to be compensated for all the damages, whether predictable or unpredictable. In case of the contractual liability, there is the obligation to cover the predictable damages in the moment when the debt occurred.

Another difference refers to the default institution. Thus, on contractual background, the obligation debtor is rightfully in default.

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