

CIVIL LIABILITY FOR THE LEGAL PERSON'S OWN ACT

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Abstract: *In order to offer a better protection to the victim, the legislator established besides the natural person's responsibility also the responsibility of the legal person. This article presents in general, the elements of the civil liability with reference to some points of differentiation from the legislation of the other European countries and in particular, the civil liability of the legal person in terms of Romanian law.*

Because of the increased number of the illegal acts committed by people who end in causing damages to the others, the civil tort liability is very often seen in the juridical practice. Therefore, anyone who commits an act that causes to another person a damage is obligated to repair that damage. This is also the obligation of the legal person, which through its authorities may cause prejudices to other persons. Every victim has the right to faire compensation, as the judge considers in each particular case.

Key words: *civil tort liability, legal person, illegal act, damages*

Civil liability for the legal person's own act

The legal liability is a historical, alive institution which has been formed in civil societies along time. Though juridical, it is far away from the total separation of the moral influence, since at its foundation lies the idea of guilt (mistake). The word liability has a total different meaning in the jurisprudence than in the every day language, that is: it emphasizes the negative consequences occurred after committing illegal acts by a natural or a legal person.

The civil liability institution has a historical feature and despite the use of the same notion it has been given by different societies, its content is different from one society to the other, the final form it has today is the result of an evolution, of a continuous change, labelled by qualitative changes. Thus, from the primitive stage of the private liability has been reached, through a long evolution, at the nowadays meaning, which is characterized by a general rule and not by an enumeration of cases as it has been in the past.

To the form it shows today, the idea and the institution of the liability have known several stages of development: from the idea of revenge, private revenge to the right of the state to apply the penalty. By case, the state applied injury or pecuniary penalties and at the request of the victim, it provided compensation for the damage caused. This evolution is known in the Roman law (The law of the XIII trays) as well as in the Athenian legislation.¹

In the Roman law, the evolution went from the collective, objective, criminal liability to the individual, subjective, civil one. The family solidarity has been removed, the focus has been put on intention rather than on the material causal and the repair has been separated from the penalty of the guilty.

This evolution has continued in the old French civil law and it has been expressed in the Napoleon Code from 1804. At the end of the feudal organization "The law of Caragea" (September 1st, 1818) and "Calimach Code" (1817) are revelled in the Roman law, real legal monuments that settle, such as the legislation of the western Europe, the general principle of the civil liability. The main source of inspiration of the Calimach Code is the Austrian civil Code and it consecrates a whole chapter to civil and contractual liability. Here we can find for the first time the idea of liability for one's own act.

Along the historical evolution we reach the Civil Code from 1864, which establishes the civil liability in chapter V "About crimes and cvasicrimes" (art. 998-1003), from which art.998 and

¹ Constantin Stănescu, *The civil liability for the act of another person*, Scientific and Encyclopedic Editing House, 1984, p.11

art.999 represents the legal basis of the liability for one's own act. The liability is all the time legal, no one can make himself justice. That is why the liability is a legal one.

Romania, as well as France, German and Russia, whose legal system had as a foundation the roman legal traditions, being a written law and having a fundamental law – the Constitution- a hierarchical system of sources and rules, sanctions the person who caused an illegal act and provoked damages according to the legal regulations. Unlike these countries whose main source is the law, the Anglo-Saxon countries solve a civil conflict using the judicial precedent. The country in which this system has been born and developed is England.

Trying to define the civil liability, we may say that it is that form of the legal liability which consists in the duty of any person who caused a damage to another person to repair it. Its main aim is to bring the injured person's assets to its previous stage, eliminating all the bad consequences of the illegal act.

Allied to other form of liability (criminal, administrative, internal law) through what it follows and, in a certain extent, through the means it uses, the civil liability distinguishes itself from the other kinds of liability, making at the same time distinguish between the agreement liability and the tort liability.

The agreement liability is the duty of the debtor of an obligation from the convention to repair the damage he caused to the creditor because of the non-performance, the improper performance or with delay of a certain labour conscription.

The civil tort liability is the duty of a person to repair the damage he caused to another person by an illegal and non-conventional act. Regarding the connection between the two types of civil liability, we mention that the civil tort liability forms the common law of the civil liability, while the agreement liability has a special, depart nature. Every time there are no indicators for applying the agreement liability, the rules of the civil tort liability are to be applied.²

The legal liability operates directly only to the guilty person who made the illegal act, and the extent of the legal liability is established according to the personal circumstances of the guilty person. Because of this principle, the rule is that only the person who violated the law is subject of the penalty, and for a single illegal act only one penalty may be applied and only once. From this principle, there are some exceptions, and these are: joint responsibility with another, responsibility for the act of another one.

From the Civil Code results that, some conditions must be respected in order to apply the civil tort liability. These conditions are:³

- The existence of damage
- The existence of an illegal act
- The causal report between the damage and the illegal act
- The guilt of the one who caused the damage

Once these four conditions are accomplished, the one who suffered damage may call the civil responsibility of the one who caused it. Before we go on analyzing when the legal person is responsible for the damages it causes, a breath presentation of each of those conditions is going to be made.

The damage, as an element of the tort liability, consists in the result, the negative effect suffered by a person, as a result of an illegal act made by another person.⁴ In the judicial practice the duty to compensate the injured person has been accepted, even when the loss suffered was because of the violation of a simple interest. Even though, all this time there have been controversial discussions related to the moral compensation and whether these should be given to the injured person or not. Nowadays, this problem is no more a subject of dispute. As an example, we may give the Law nr. 29/1990 of the contentious administrative matters which says that, when the annulment application of the administrative document or the admission of a violated right is

² Constantin Statescu, Constantin Barsan, *Civil Law. The general theory of obligations*, 7th edition, Allbeck Editing House, 2002,pp.145-151

³ Ibidem,p.154

⁴ Ibidem, p.155

admitted, the court decides both upon the material damages and the moral ones, required by the injured person. Furthermore, Law nr. 11/1991 regarding the prevention of the unfair competition requires that, if the unfair competition acts cause material or moral damages, the injured person has the right to ask his justice into the court. At the same time, several authors⁵ have argued the possibility of according pecuniary compensation for the moral damages suffered by the juridical person, for example following an illegal strike. Consequently, the compensation that is given in case of civil tort liability can be both pecuniary and moral one, named “moral damage”. The rule is to offer a pecuniary compensation, by a compensation in nature of the damage or giving the equivalent amount of money for the damage. If the damage caused to a person can be valuable in money, it is a pecuniary loss. The damage caused by deteriorating or destroying a good or the damage caused to a person who has lost totally or partially the work capacity are typical examples. If the prejudice is not suitable of pecuniary evaluation, it is a moral prejudice.

The pecuniary/patrimonial prejudice has two components:

- actual loss suffered
- the unfulfilled benefit

One of the principles of the reparation of the prejudice is the full compensation of it. The actual loss suffered consists in diminishing the active value of the consumer's goods, while the unfulfilled benefit is the lack of the assets' active of increase which would have occurred if the illegal act wouldn't have been committed. In other respects, the real damage consists of those expenses, which the victim, whose rights are violated, has suffered or is going to suffer them in order to come to the initial stage, before the violation of rights or the destruction of the goods. The unfulfilled benefit includes the incomes, that the victim would have received taking part normally to the civil legal relation, if his/ her rights wouldn't have been violated. Concerning the juridical persons, the unfulfilled benefit which gives the right to compensation can take place as “the snowball” by rolling, taking into consideration that the meaning of the trade consists in a continuous investment of the benefit.⁶

Also, the harm of a person and his health may cause, besides the costs of the medical care also the loss of total or partial work capacity, and the prejudice as an unfulfilled income represents the income the victim should have received during the entire period in which he was incapable of working.

Another principle is that of compensation in nature, which can be done by equivalent when it is not possible otherwise, by means of compensations. The compensation by equivalent can be done by offering a global amount of money or by offering regular benefits with temporary nature.⁷ The court is the one which chooses the way of compensation, in nature or the pecuniary one, analyzing the concrete facts of the case.

In order to obtain the reparation of the prejudice, it must be certain, that is certain both regarding its existence and its possibility of evaluation and it mustn't have been repaired yet, because it is not possible to repair twice the same prejudice and by the same person. The one who has to repair the prejudice is the person who committed the illegal act, but there are some exceptions such as: when the damage is paid by the Social Insurance, by the Insurance Company or by a third person who doesn't have the duty of paying the prejudice. When the prejudice is paid by the Social Insurance or the Insurance Company, the victim has the possibility to ask to the guilty person only the difference that hasn't been paid by one of those. When the third person paid only because he wanted to help the victim, this one has the right to pretend the entire compensation from the guilty person, as well.

⁵ S.Beligradeanu, *Is it proper to repair the moral damage caused to company in case of a strike that is declared and continued illegally?* Law, nr. 2/1993

⁶ Gabriel Ungureanu, *The European Law of Competition*, 2nd edition, Cernaprint Editing House, Bucharest, 2009, p.198

⁷ Constantin Statescu, Constantin Barsan, *Civil Law. The general theory of obligations*, 7th edition, Allbeck Editing House, 2002,p.170

In terms of reparation the prejudice, parties may agree by mutual consent, over the compensation and the ways of repairing it. Only when, there is no consent, the victim may start proceedings against the person who created the damage.

The illegal act represents the objective condition of legal liability. The civil laws establish different ways of behaviour for the participants to the civil law, as well as for the economic agents (companies) and the consumers. The illegal act, as a component of the civil tort liability is defined as being any act, through which damages to the subjective right of a person are caused, by violating the objective right. When we examine the illegal act, as component of the civil tort liability, we understand the objectivity, the external behaviour of a person who is conscious of his/her act. The illegal act consists of actions and omissions. Therefore, the omission refers to the lack of an activity or not taking measures, when they should have been accomplished by a person, according to the law.

The legislator has thought also about the situations and circumstances when the person is in such a condition that he/she is incapable of acting as the law requires. As a result, there are some cases which remove the illegal nature of the act, these are: self-defence, state of necessity, the performance of activities required or permitted by law or the order of the superior, the performance of a subjective right, victim's consent.

The causal relation between the prejudice and the illegal act. In order to hold somebody responsible the simple existence of a prejudice suffered by somebody and an illegal act is not enough, it is necessary that between the act and the prejudice to be a causal link; in the sense that, that illegal act caused that prejudice.⁸

In the doctrine and in the legal practice from the Western countries, there have been some criteria suggested for the determination of the causality report. Such a system is *the equivalency of conditions system*, according to which, if the cause of the prejudice can't be precisely established, equal causal value will be attributed to all facts and events which preceded that prejudice. *The proximal cause system* considers the last action as the cause, the action which is immediately prior to the effect. But, from a practical point of view, this system can lead to an excessive and arbitrary limitation of the circle of persons that would be held responsible for the prejudice, leaving out the person who should, objectively, be held responsible. A latter system is that of the *adequate cause*, according to which, in the determination of the causality report, only the antecedents which embody the "sine qua non" quality of condition will be kept, antecedents that are typical, that are ordinarily liable to produce such an effect.⁹ Each of these systems has been criticized in one way or another, as the Romanian law partakes in the indivisibility of the cause with the conditions thesis, according to which the external conditions which have contributed to the realization of the damaging or socially dangerous effect, form together with the causal circumstance, an indivisible unity, in which this kind of conditions gain, through interaction with the cause, a causal character.¹⁰

Guilt represents the psychological attitude the culprit had at the moment of perpetration of the illegal action, more exactly, at the moment immediately prior to its perpetration, towards the action and its consequences. Guilt always implies a certain degree of knowledge, of perception of the social significance of the actions and their eventual consequences. Thus, responsibility implies perpetrating the illegal action feeling guilt. The lack of guilt eliminates responsibility, even if the action was perpetrated and, through it, a prejudice was caused.¹¹

Guilt presents itself in two forms: intention and fault. The intention can be direct or indirect, and the fault can be with or without prevision. We must remember that the civil delinquent responsibility mainly operates for the easiest fault, and that, no matter the weight of the guilt, the

⁸ Ibidem,p.193

⁹ Constantin Statescu, Constantin Barsan, *Civil Law. The general theory of obligations*, 7th edition, Allbeck Editing House, 2002 ,p.197-200

¹⁰ M.Eliescu, *Civil tort liability*, .Academiei Editing House, Bucharest, 1972,p.131

¹¹ Constantin Statescu, Constantin Barsan, *Civil Law. The general theory of obligations*, 7th edition, Allbeck Editing House, ,2002,p.207

prejudice must be fully repaired, because the quantum of the recovery does not depend on the degree of guilt.

The guilty person can be held responsible only if he/she has a clear judgement, that is, a delinquent capacity. More exactly, we refer to the intelligential factor of guilt, to the mental ability of the person in understanding the significance of the action, to discern between what is legal and what is illegal. Moreover, judgement underlies the delinquent capacity, meaning that, sometimes, its presence determines the presence of “the ability of the person to be aware of the illegal character of the action he/she is committing and its legal consequences, the capacity to discern between legal and illegal”.¹² Therefore, only a responsible person can be charged with committing an action and the negative consequences on legal order, because a person who lacks judgement doesn't have, when committing an illegal action, “a will which is so much guided by reason, so as to be able to tell between, to discern between social and antisocial, good and evil.”¹³

Guilt can be determined on a natural person, as well as on a legal person. The guilt of a legal person is looked at in terms of his collaborators' guilt in the process of enforcement of their duty obligations by virtue of the job they have or of the speciality of the work they do. If the legal person is a debtor, the actions of the workers of the debtor in point of enforcement of his/her obligations are considered actions of the debtor. For example, a mobile phone company which in the manufacturing of a new model has used inadequate components, more so, of a clear low-quality. Also, the responsible persons are guilty too, those who accepted the production and didn't take the necessary measures to avert this kind of situation. In the end, the rights of the consumer are violated.

In the judicial literature, as well as in the judicial practice, some causes that remove guilt have been determined: the action of the victim; the action of a third party, for which the perpetrator is not held responsible; the *stricto sensu* act of God; the major force case.

The member countries of the European Union, by transposing in their internal legislations the no. 374/1985 Directive regarding the responsibility for the damaged products, have established the principle of responsibility of the manufacturer in case of a prejudice caused through the defect of a product and the removal of any differences between victims. As a matter of fact, the directive stipulates limiting exoneration causes. The project of the new civil code of the Republic of Moldova stipulates in the same way the responsibility of the manufacturer for the defective products, no matter his/her fault.

Making a better analysis of the legislation of the states which provided as a basis of the delinquent responsibility the responsibility for the products (Germany, France, Holland), we can mention that the problem of responsibility exoneration is treated differently.

In the civil legislations of the mentioned countries, there are other bases for exoneration of responsibility of the manufacturer, namely:

- the product will not be brought into commerce
- according to the circumstances, it can be considered that the product did not have the defect which caused the prejudice at the time the manufacturer brought it into commerce
- the defect consists of the fact that the product, at the time the manufacturer brought in into commerce, corresponded to some legal required conditions
- the defect, in report with the level of science and of technology at the time the manufacturer brought in into commerce, could not be established

The delinquent responsibility for the legal person's own action brings forward the bodies of the legal person as his/her inherent parts. Thus, there aren't two judicial independent entities – the legal person and his/her bodies, but a single entity – the legal person – which expresses himself/herself through his/her bodies. This fact is stated in article no. 35 from the 31/1954 Decree which represents the foundation of this idea because “the judicial actions made by the bodies of the legal person, within the powers they have been given, are the actions of the legal person” (paragraph 2),

¹² V. Beliș, *Mental capacity –Discernment – Antisocial potential*, Anals of University of Oradea, Medicine, nr.2, Oradea, 1996, p. 40-48.

¹³ M.Eliescu, *Civil tort liability*, .Academiei Editing House, Bucharest, 1972,p.224

and “the illegal or legal actions of the bodies compel the legal person, if the actions were made by exerting their function” (paragraph 3). Consequently, the civil tort liability of the legal person will be employed every time his/her bodies, in the practice of their function, will commit an illegal action which causes prejudices.

The civil patrimonial responsibility of the legal person can be either an agreement responsibility, or a delinquent responsibility. The delinquent civil responsibility can also be a responsibility for an inherent action (art.998-999 Civil Code), a responsibility for someone else’s action (art. 1000 Civil Code) or a responsibility for the prejudices caused by the possessed things, structures or animals (art. 1000, paragraph 1, art. 1001, art. 1002 Civil Code). Here, we will focus on the civil tort liability for an inherent action.

The regulations of the 31/1954 Decree must be correlated with the texts regarding the activity of the autonomous administrations and of the companies, namely Law no. 15/1990 regarding the organisation of the economic state units as autonomous administrations and companies, Law no. 31/1990 regarding the companies, Law no. 36/1991 regarding agricultural companies and other forms of association in agriculture and Enactment no. 26/2000 regarding organisations and trust companies.

There has to be taken into consideration that, the representatives of the legal persons who commit an illegal act while executing the duties they are entrusted with, will suffer the consequences for their act and also the legal person is responsible for the acts of the others.

At the same time, the illegal act has to be committed by the authorities of the legal person while they are in duty, the act has to be in connection with that job, even though the legal limits were exceeded. Still, the illegal act, even abusive, committed by the authorities of the legal person, has to be related to the legal person’s own interests. If the act has been committed abusing of their position, having in view personal intentions or of the others, only that person will respond for her/his act, even though that person is part of the authorities of the legal person.

The principle of the special capacity of use of the legal person, established by article 34 from Decree 31/1954 specifies something. In this decree the limits of validity of the juridical documents are specified, but exceeding these limits by committing illegal acts by the authorities of the legal person, the author of the prejudice will be responsible.

Regarding the proof of the liability’s elements, the general rule is applied, according to which, the one who has to prove the existence of the prejudice, the illegal act, the causal relation and the guilt of the authorities of the legal person is the victim.

The legislator, in order to protect the victim established also the responsibility of the legal person, but this doesn’t eliminate the responsibility of the persons are part of the authorities of the legal person. On the contrary, these persons have a personal responsibility for the acts that caused prejudices, a responsibility both for the victim and for the legal person. Article no. 35 from Decree no. 31/1954 mentions that the illegal acts of the authorities of the legal person “involve the personal responsibility of the one who committed them, both for the legal person and for the third one”. As a consequence, the victim of the prejudice has the following possibilities: to sue only the legal person, or only the natural person, or both the legal person and the natural person.

When only the legal person is sued and after it pays the damages to the victim, it has the right to pretend to the person who committed the illegal act to return everything it paid, because the guilty person is the one who has to pay for the damages. This legal remedy has its basis in art. 1108 (3) Civil Code “The subrogation is done directly by law in the benefit of the one who, being obligated for the others or with others to pay the debt, is interested in fulfilling it.” Applying the article to this situation, we realise that the legal person subrogates itself in the victim’s rights when it pays the compensation, in order to recover what it has paid.

With reference to the law of companies, in its content it speaks also about the responsibility of the general partnership and the limited partnership. The general partnership is responsible with its own patrimony for the non-observance of the obligations assumed. Responsible are also the partners, who will pay with their mobile and immobile, present and future goods. There has to be

mentioned that, the partners responsibility is auxiliary, the creditor of the company can sue them only when the company doesn't have the possibility to pay.

Like in the case of the general partnership, mainly the company and auxiliary the partners have the responsibility for the obligations of the limited partnership. There are some elements of differentiation, such as: the creditors may sue only the general partners, whose responsibility is unlimited and joint, and not also the dormant partners, whose responsibility is limited to their financial contribution in the company. Taking into consideration that the value of the dormant partners' contribution is absorbed in the social assets, they don't have a personal responsibility to the company's creditors, like the general partners.¹⁴

The radical changes that have occurred on the political, economical and social stage in central and Eastern Europe have included also a fundamental reform of the legal system in each of these countries. The development of the global economy drew to the formation of an adequate setting for the accomplished of the legal procedures regarding the elimination of the bankrupt companies which together with an anti-trust legislation and the elimination of the state monopoly lead finally to a free and more secure economy.

All in all, the rule according to which no one, natural person or legal person, has the right to violate the rights of another person, causing through their actions or inactions damages, thought in terms of civil law says that: anyone who commits an act that causes to another person a damage is obligated to repair that damage; the same obligation of compensation has the person who doesn't accomplish or fulfils his/ her obligation with delay under an agreement.

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¹⁴ Stanciu D. Carpanaru, *The Romanian commercial law*, 7th edition, Universul Juridic Editing House, Bucharest, 2007, p.318

