# *THE PLACE OF TORT LIABILITY IN LEGALLIABILITY AS A WHOLE*

**Maricica Văleanu, Lawer, Mrd, "George Bacovia" Universityof Bacău**

*Abstract: Liability may have various objects: moral, political, social. Legal liability is recognized by the laws in force and may have private manifestations in the various areas of law: civil law, criminal law, administrative law, banking law, international law, etc.*
*Whatever its form of expression may be, it is based on interdependent rights and obligations that arise as a result of committing an illegal act, is established by the public authorities and is manifested through the application of a sanction or by requiring repair of injury.*
*Civil Legal liability is a complex institution of civil law which is based on the obligation to repair the damage that a person causes another, in order to restore balance and to replace the aggrieved party in case it would have been found if the injurious act has not taken place. It comes in two forms: a common law liability, general called tort and a special responsibility, derogatory, known as contractual liability.*
*Tort liability occupies in contemporary society, a considerable place: legal relationships between people multiply, becomes complicated, so that the content of this institution should be viewed in a manner that goes beyond mere compensation for damage caused to another.*

**Key-words*: liability, Civil Code, obligation, common law liability, contractual liability*.**

In Roman law, the legal liability appeared at first in the form of voluntary pecuniary composition and then, slowly, of legal pecuniary composition. Therefore, liability as a social fact was legally consecrated. Its foundation was objective, the mere causing of a damage of other injury giving rise to the entitlement to legally established fine. [1]

The legal rules with general nature that govern the juridical regime of the tort liability can be found in the Civil Code. Most of the provisions in the Book V, Title II, Chapter IV, determine its scope, as well as juridical regime of some assumptions appropriate to this form of liability. To these texts there are also added the provisions of Article 219 - 220 of the same code in which there is regulated the liability of legal persons under public and private law for illicit acts of management bodies in the functions entrusted to them, as well as liability of territorial-administrative units and of the state. There are also special laws that regulate some cases of tort liability that have certain particularities related to dispositions of the Civil Code.

The Civil Code regulates three forms of tort liability: the liability for the damage caused by its own deed (Article 1357-1371 Code civil), the liability for the damage caused by someone else's deed (Article 1372-1374 Civil Code) and the liability for the damage caused by animals, things, or by the crumbling of the edifice (art 1375- 1378 Civil Code).

The liability for its own deed expresses the well-known principle according to which each human being is responsible only for his/her deeds. The damage caused to another person by his/her own illicit deed gives rise to the obligation of the author to integrally repair it. To employ this form of tort liability there have to be met four constituent elements: damage, the illicit deed, the relation of causality between the illicit deed and the damage, the guilt of the author of the injurious and illicit deed. The evidence of these conditions may be made by any

means of evidence regulated by law. The evidence rests with the damaged victim that acquires the quality of plaintiff in the case.

The consecration of tort liability for the damage caused to another person is explained by the existence of an authority relation between the one called by the law to answer and the author of the injurious deeds. The liability for somebody else's deed appears as an additional way of protecting the victim's interests. Sometimes, it is added, or may be added to the liability for its own deed and is used only in the relations between the liable person and the victim of the damage [2] giving rise to the right of downfall of the liable person against the author of the injurious illegal deed.

In the current regulations there are two cases of liability to injury caused by someone else's deed: the liability of the persons that have the obligation to supervise a minor or a legal forbidden to injury caused to a third party by the illicit deed committed by the one under surveillance and the liability of the author for the damage caused by the illicit deeds of the prepositive. The employ the liability of the person who has the surveillance obligation it is not necessary to meet all the conditions for the own deed of the author of the illicit and injurious deed. In this hypothesis, the tort liability will also be included in the presumed or proved judgement of the author when committing the deed.

The third form of tort liability has as its object the compensation for damage caused by animals, things, or through the crumbling edifice by that one who has their legal guard. In order to protect the damaged ones, the legislator has introduced a fair solution for the situations in which it cannot be proved that at the origin of damage is the deed of a person. The assumptions governed by general Civil Code are: the liability for any damage caused by animals under legal care of the human being, the liability of the legal care-taker for the deed caused by the thing under his care and the liability of the owner of an edifice for the damage caused by its ruin. To these cases foreseen in the chapter on civil liability, there are also added the provisions of art. 630 Civil Code that regulate the liability for the damage caused by illicit deeds in the context of neighbouring relations of the owners of fixed assets.

Together with the general assumptions on civil liability covered by the Civil Code, there are cases of tort liability with derogatory character, regulated by special laws, such as: the liability of public authorities for the damages caused by illegal administrative acts [3], the state liability for damages caused by judicial errors [4], the liability for any damage caused by faulty products [5], the liability for environmental damage [6], the liability for nuclear damage [7], the tort liability of the medical staff and suppliers of medical, health and pharmaceutical products and services for damages caused to patients [8] and so forth.

Although it may be defined as a general category of law, the legal liability is consecrated by the laws in force and studied through its concrete, specific manifestations within the framework of the different branches of law: civil law, criminal law, administrative law, etc. [9].

Civil liability and criminal liability and two initial ways of legal liability, of great importance both in the past and today, and around them gravitates the entire issue of providing the by right order. [10]

Retrospectively, the two main forms of legal liability were confused, the compensation for damage having at the same time the character of punishment. In the Roman there has

never been made a clear and complete distinction between them. [11] In the European law of the early Middle Ages, the payment which had to be made to the victim for any illicit deed had a double role: punishment and repair. Their differentiation started in the Renaissance period, being legislatively transposed in the Romanian Countries by adopting Calimah Code (1817) in Moldova and of Legiuirea Caragea (1818) in the Romanian Country, in initial form, and, later on, it was developed legislatively by the Romanian Civil Code in 1865.

The tort liability aims at compensating for the unjust damage caused by natural persons and legal persons. Criminal liability has as main finality the punishment, in the general interest, of the persons who commit dangerous deeds for the public order and social life. Committing a criminal offense brings prejudice to the by right order, in the first place, and the latter can be restored only by criminal sanction of the criminal. [12] The first is against the patrimony of the liable person while the latter seeks the punishment of the criminal, usually aiming at the person.

There are important distinctions between the two forms of legal liability. The tort liability will find application in case of committing any illegal deeds, as well as in the case of legal acts by means of which there has been caused a certain or potential unjust damage to a person. The criminal liability will be engaged only in the case of committing a deed foreseen and sanctioned by the criminal law, being based on the self-incrimination legality principle.

The form and the degree of guilt within civil liability play a secondary role. There are assumptions in which the civil liability is objective, the guilt being presumed by the legislator, such as: liability for someone else's deed, liability for the prejudice caused by animals or things, liability for the ruin of the edifice or the liability for the damage caused by the faults of products. The criminal liability is conditioned by the form and the degree of guilt, this representing a constituent element of offense.

Civil liability has mainly patrimonial character, consisting in the obligation to repair the injury suffered by the victim or in an obligation to pay a sum of money or to carry out certain works for preventing and reducing the risks that endanger the life, health of people or natural environment, in the latter assumptions having a preventive form. The criminal liability has, in principle, non-patrimonial and non-transmissible character, ceasing with the death of the criminal. The criminal fine, although it has patrimonial character, does not have repairing function. In the case in which, after the commitment of their crime, there has been caused a prejudice, its recovery will be the subject of the civil side of the trial.

The ability of civil liability is acquired b natural persons at the age of 14 in tort liability, and 18 in the case of contractual liability, with certain exceptions. The criminal liability intervenes in the case of the minors with the age 14-16, being conditioned by the proof of the fact that he/she committed the deed with judgement. In the case of the minors aged 16, the criminal liability is complete, the judgement being presumed.

As the tort liability has particular interests, the action in repairing the injury is governed by the availability principle, the parties agreeing on the repairing of the damage or the behaviour of the liable person. The criminal responsibility is always established by court order. The penal is exercised by the Public Ministry, with some exceptions, strict and limiting foreseen by the law, when the penal trial can start only with the previous complaint of the damaged person

The two forms of legal liability may be aggregated. Due to their different purpose, the employment of the one does not exclude the employment of the other. [3] In the assumption that the illicit deed causing injury is, at the same time, crime, the damaged person has two possibilities to obtain the conviction of the person liable for repair. This may be a civil part in the criminal trial, bringing the action of repairing the damage of the criminal deed or can introduce a civil action, separately.

The prescription terms of criminal liability are usually longer and begin at a different time than in the case civil liability. In accordance with Article 1394 Civil Code, in the situations in which the compensation derives from a fact under criminal law of a longer prescription than the civil one, the prescription term of criminal liability is applied to the right to action in civil law.

If the damaged person was established as a civil part in the criminal trial, he/she does not have the right to promote subsequently a civil action with the same object, in accordance with the principle *electa una via, non datur recursus ad alteram.* Any dissatisfaction with regard to the solution of the civil part of the criminal trial may be carried out by means of appeal against the order given by the court on the trial. An exception to this rule is the situation in which the court left the civil unsolved or if the victim of the prejudice requires the repair of prejudices on another judicial basis or damages made or discovered after the final and irrevocable court order.

In the case when the reclaim of the prejudice was required separately with civil appeal, before the pronouncement of a penal definitive decision, the trial will be suspended until the definitive solution of the criminal case. The decision of the criminal court has the authority of res judicata for the civil court with regard to the existence of deed, of the person who committed it and his/her guilt.

As consequence, if the criminal court has made a definitive and irrevocable decision of condemnation of the criminal offense author, by virtue of the principle of res judicata of the decision of the criminal court over the civil trial, after the retrial of the cause, the civil court will force the liable person to repair the prejudice brought to the plaintiff.

Yet, the authority of res judicata of the criminal decision on the civil trial has its limits. When the acquittal of the accused in the criminal case was pronounced because the deed does not exist or it exists but it was not committed by the accused, the court will reject the reparatory action promoted by the plaintiff. In all the other cases of acquittal or if the criminal case ceased, the decision of the criminal court does not hinder the action of the tort liability, as the meeting of their existence and employment is not excluded.

Within civil liability, the regime of tort liability is general and is applied whenever the law does not provide for special rules for certain situations. The legal texts express, in accordance with the judicial regime, the well-known dichotomy: the tort liability and the contractual liability.

Regarded as principal institution of private law, the civil liability has two branches: tort liability and contractual liability. There are distinctions of judicial regime between these two but also common points that allow them establish a complementary relation, creating thus a regime of common law, appropriate for tort liability and a special, derogatory one, specific to contractual liability. In all assumptions where the special regime of the contractual liability

is not applied, there will operate the norms that compose the judicial regime of common law, that of tort liability, no matter the origin and aetiology of the broken obligation.

The tort liability is employed every time an unjust prejudice is caused to a person, besides any contractual relation between the victim and the liable person, as well as in the situation when a person is prejudiced in the conditions stipulated by law, by a judicial deed not related to human behaviour. The latter hypothesis has in view the liability for caused prejudices, without the illicit deed of the human, things or animals under our care, by the faults of products, for come environmental damages, for nuclear accidents and so forth.

To synthesise, the Civil Code defines this form of civil liability as an obligation relation foreseen by law which exists between the liable person and the victim of the prejudice and whose content reflect for the first the obligation to repair the unjust prejudice suffered by the one whose rights and legitimate interests were broken.

The contractual liability is the obligation of the contractual debtor to repair the prejudice caused to the creditor by his/her deed, consisting in the non-provision of the due service in accordance with the contract concluded with the creditor. By the non-execution *lato sensu* of the due service, it is understood the delayed execution, the inappropriate execution or the total or partial non-execution.

The origin of the tort liability is in law, as a manifestation of power and public will and the origin of contractual liability is in the contract, in the agreement between the private wills of the contracting parties. This duality of origin explains the fact that the tort liability is meant to provide the observance of law, that is of public will, and the purpose of contractual liability consists in the observance of contracts of private wills. [14] From this point of view, the norms that are applied to the tort liability have an imperative regime while, in the case of contractual liability, the interests and wills of contracting parties are a priority.

Another distinction between the two forms of civil liability is the way of quantifying the repair for the caused damage. In the case of tort liability, the repair of the prejudice is integral, and in the case of the contractual liability, the repair of prejudice is usually limited to the value of the predictable value.

In the case of tort liability, the guilt keeps its position of foundation of civil liability. The one who causes a prejudice by an illicit deed, committed by guilt, can be forced to repair it. In accordance with the legal norms, the author of the prejudice is liable for the easiest guilt. In the case of civil liability for minors or judicial forbidden, of the doers for the preposed as well as the liability for the prejudice caused by animals, things or the ruin of the edifice, the guilt is replaced with the idea of objective guarantee that has as support the activity risk or the authority risk. [15] Every time a person is liable for the prejudice caused by somebody else's deed, the personal liability is added to the liability of the prejudice author, having the role of guarantee towards the victim. In the situations when there is no author of the illicit deed causing prejudice, the tort liability of the judicial guardian will be unique.

In the case of the contractual liability, the debtor's guilt is usually presumed by law in the case of obligations of result. In the case of obligations of means or diligence, the debtor's guilt must be proved by the creditor to be able to use the legal liability and to force the contractual partner to repair the prejudice.

The tort liability has a considerable role in our contemporary society. The extension and the change of liability are the consequence of the evolution and the changes of the industrial society, and the application field of this institution is a vast and complex one. The sphere of incidence of this institution overcomes the classical reparatory purpose. In the current regulations, there is aimed the accentuation of the preventive function of tort liability, which becomes a future-oriented liability and which makes the human being the guarantee of life, health and environment preservation. [16]

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