

THE FORMS OF TORT LIABILITY AND THEIR CLASSIFICATION

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Abstract :The author analyzes the issues proposed by doctrine and jurisprudence on tort liability forms and their classification. If we examine the whole legislative panel in this matter shows that there are several hypotheses or cases of tort or contractual. Tort assumptions are of two kinds: some covered in the new Civil Code and other legislation developer regulated Civil Code.

Key-words: classification tort liability, cases of tort or contractual liability, tort liability in the Civil Code, forms of legal tort liability.

The legal regime of legal tort liability is the rule in civil liability.

Tort liability can be defined as that form of legal liability which consists of a report of obligations under which a person is indebted to repair injury caused by his action or, in cases provided by law, the injury caused by his action or in cases provided by law, the damage for which it is responsible.¹

New Civil Code (art.1349) provides that any person may be held liable, and if this person has discernment, then she will have overall responsibility for all damage caused, regardless of whether the act generating the damage is an action or inaction.²

A person will respond but only for his own deed, but also vicarious, for workers, animals or ruin the building, where appropriate, and if required liability for damage caused by defective products, it must be founded on the basis of special laws.³

If we examine the whole picture law in this matter shows that there are several hypotheses or cases of tort or contractual. These assumptions make up what might be called tort liability system and can be sorted by several criteria, including mind: classification after the legal headquarters of the regulations that apply to the classification after their foundation.⁴

¹ I. Albu, V. Ursa, *Răspunderea civilă pentru daune morale*, Dacia Publishing, Cluj Napoca, 1979, p.23

² Aida Diana Dumitrescu, *Despre prejudiciu, condiție a răspunderii civile delictuale, din perspectiva Noului Cod Civil*, Analele Universității Constantin Brâncuși din Târgu Jiu, Law Science Series, No.3- 2011, p.130.

³ Ibidem, p.130.

⁴ <http://legeaz.net/dictionar-juridic/felurile-raspunderii-civile-delictuale-si-clasificarea-lor>

Tort assumptions are of two kinds: some covered in the new Civil Code and other legislation developer regulated Civil Code.

A. Assumptions tort covered in the new Civil Code (Article 1349 and Article 1357 to 1380). New Civil Code regulates three cases of tort liability: Liability for damage caused by the wrongful act own liability for damage caused by vicarious and liability for damage caused by animals, things and ruin the building.

a) Liability for damage caused by its own act (art. 1357-1371).⁵

Art. 1357 new Civil Code in conjunction with art. 1349 par. (1) and (2) establishes the rule of principle that the obligation to repair the damage caused in an unlawful act committed with guilt arises directly and immediately charged to the author of that act. Typically, each man responds only to its own facts. No liability for another, or else cannot return unless specifically provided by law. It is a known principle, logical and traditional in our civil law.

As an element of tort liability, wrongful act means any act by which, in violation of a legal rule, it causes damage to the subjective rights belonging to a person or its special interests. We must understand that according to the principle "who exercise their right not prejudice anyone," wrongful act, as part of tort is any act by which breach norms of law are caused harm subjective right or legitimate interests of a other people.⁶

b) Liability for damage caused by the actions of others.

New Civil Code drafters took into account and solutions doctrinal, jurisprudential and legislative really were and are promoted in this area and in other European countries, to respond promptly and effectively to social necessities. This explains the fact that the material is reorganized content of the new regulations. Tort liability, it is almost exclusively devoted almost an entire chapter (Chapter IV, Title II, Book V has, art.1349 and 1351-1395). Vicarious liability for his establishment in the Section 4, Article 1372 - 1374. Examination of these texts allows easy to state that covered only two cases or cases in which a person can be held responsible for damages caused to a third party by the wrongful act of another or others.⁷

The principle of liability for damage caused by its own deed may be sometimes insufficient, to the extent that its author is a person who has not held liable or questionable solvency. In such cases, the victim is likely not to obtain reparation which would otherwise be entitled. Therefore, in

⁵ *Legea 287/2009 privind Codul Civil* republished in Official Gazzette, Part I, no.505/15.July.2011

⁶ George Bârligeanu, Laura Mihaela Ștefan, Minodora Achim, *Răspunderea juridică*, Tribuna Economică Publishing, București, 1999, p.26-28.

⁷ Liviu Pop, *Reglementarea răspunderii delictuale pentru fapta altuia în textele Noului Cod Civil*, in „Dreptul”, no.5-2010, p. 11-38.

order to protect the victim, the Civil Code established alongside liability for the acts of its own, in some cases, self-responsibility and the responsibility of another person than the author harmful act.

Consecration contractual liability for damage caused by vicarious be explained by the existence of a special relationship between the perpetrator and the person called harmful by law to respond to repair that damage; These special relationship exists when the offender is harmful in the sphere of authority of the person responsible.

Liability for vicarious appears as an additional protection of the interests of the victim; sometimes it is added or may be added to its own liability for the acts and engage only in relations between the person liable and the victim injury. This accounts under certain conditions the right of recourse against the perpetrator of the person responsible illicit and harmful.

Romanian Civil Code regulates two cases of liability for damage caused by vicarious:

- liability of persons who are required supervision of a minor or a court banned for damage caused by the misconduct of a third party under the supervision of the (art. 1372 new Civil Code);

Art.1372 is established in a general injury liability for injury caused by the misconduct of a minor or a person placed under interdiction, liability which one who undertakes the responsibility under the law of contract or a judgment has obligation to supervise the offender harmful.⁸

- principal responsibility for damage caused by illegal acts of servant or tort (art. 1373 new Civil Code).

It should be noted that the principal responsibility for the acts of its servant or pepușilor governed by the new Civil Code art.1373 occurs only when servant causes injury to a third person by an unlawful act contractual, tort ie. Conversely, when the wrongful act and the damage is committed servant in the performance of a contract concluded by his principal to another person and thereby the other Contracting Party which is usually the creditor contractual and causes injury through failure to enforce the broad sense of the contractual obligations, we are in the presence of a contractual civil liability for acts of another, separate art.1519 expressly regulated in contractual obligations enshrined title.⁹

As regards vicarious liability, remember that this is a form of tort which consists in the obligation to repair the damage caused by the wrongful act committed by others. Such form can be held responsible for the acts of the minor or a person under interdiction, as well as its servants.

⁸ Ibidem, p.15.

⁹ I.Deleanu, *Grupurile de contracte și principiul relativității efectului contractului – răspunderea contractuală pentru fapta altuia*, in „Dreptul” no. 3-2002, p.15-17, I.Lulă, I.Sferdian, *Discuții cu privire la răspunderea contractuală pentru fapta altuia*, in „Dreptul” no.8/2005, p.75-96, L.Pop. *Tratat de drept civil.Obligațiile, vol.II Contractul*, Universul Juridic Publishing, București, 2009, p.694-707.

Liability for the acts of the minor or a person under prohibition means that a person who, under the law, a contract or of a court is obliged to supervise a minor or a person placed under interdiction, responsible for the damage caused by these people (ie may be required to repair the damage nature, pay compensation, etc.). This form of liability subsists even if the offender has no discernment and not responsible for his own deed. The person liable to supervision is released (exempted) from liability only if he proves that he could not prevent the harmful event. Parents or, as appropriate, tutors are exempt (exempt) from liability only if the child proves that the act is not the consequence of how fulfilled their duties arising from the exercise of parental authority, but is due to other causes.

Liability of the principal for servants assumed at that, pursuant to a contract or in law, exercise direction, supervision and control (principal) on the one who fulfills certain functions or assignments in his interest or of another (servant) is responsible for damage caused by the latter. Principal responsibility will be coached by proving that the victim knew or, depending on the circumstances, could know at the time he committed the prejudicial act, the servant acted without.¹⁰

c) Liability for damage caused by animals, things or ruin the building any connection with the duties or functions assigned purpose.

Social life has shown that a person can suffer damage which was caused them without human deed, for one thing, animal or ruin a building. If we apply the usual rules of civil liability in such cases, unable to prove that the damage sustained is the act of a person, the victim would find the situation unfair burden to bear that her injury. This explains the fact that in order to protect the interests of the injured, civil law established the responsibility for animals, things and ruin the building. This is a direct responsibility of the person who has legal guarding the animal, work or, where appropriate, the owner of the building that caused the damage.

The New Romanian Civil Code regulates the liability as follows:

- Liability for damage caused by animals is legal security man (art. 1375 in conjunction with art. 1377);
- Legal guardian liability for damage caused by working under his charge (art. 1376 in conjunction with art. 1377);
- A building owner's liability for damage caused by the ruin of that building (art. 1378).

B. Special assumptions of tort law governed developer Civil Code.

This category includes:

¹⁰ <http://www.ziaruldeiasi.ro/recomandari-zdi/formele-raspunderii-civile-in-noul-cod-civil-ni7r83>

- Liability of public authorities for damage caused by acts of power (administrative) illegal (Law no. 554/2004 on administrative);
- State liability for damage caused by judicial errors (art. 96 of Law no. 303/2004 and art. 505-507 C. pr. Pen.);
- Liability for damage caused by defective items (Law no. 240/2004);
- Liability for damage or environmental damage (Government Emergency Ordinance no. 195/2005 on environmental protection);
- Liability for Nuclear Damage (Law no. 703/2001);
- Torts healthcare professionals and providers of medical goods and services, healthcare and pharmaceuticals for damage caused patients (Law no. 95/2006 on health reform). In principle, the responsibility of doctors and medical units for medical malpractice is contractual; But there are several situations in which civil liability for damage caused by tort patients have a legal regime that requires putting into question.

Each of the specific situations of tort in the above list shows some peculiarities regulatory regime that gives legal part derogatory to the general arrangements of this responsibility which has its headquarters in art. 1357-1371 New Civil Code, which sets out the conditions of liability for damages caused by a person's own act.¹¹

Depending on its fundamental criteria, tort liability is divided into: subjective liability and strict liability:

A. Subjective tort liability. The new Civil Code system, as in the old Civil Code, tort is based in principle on the idea of guilt proven. Thus, according to art. 1357 new Civil Code: "(1) Whoever causes injury to another by an unlawful act committed with guilt, is obliged to repair it. (2) Author injury easiest answer for misconduct ".¹² Text governing the liability of any person for its unlawful conduct and injurious; this is the general rule and natural value principle. And as for his own deed liability is based on his culpability, it follows that, in principle, tort law is subjective. All other cases of liability, apart from liability for damage caused by his own deed, are particular assumptions of liability, derogatory nature.¹³

B. Objective tort liability. Tort liability is there and is committed without proven or presumed guilt of the person responsible. Its objective foundation is the idea or obligation to guarantee objective, which is to support, as appropriate, the risk of power or risk activity. The idea warranty sometimes

¹¹ *Legea 287/2009 privind Codul Civil* republished in Official Gazzette, Part I, no.505/15.July.2011

¹² *Ibidem*.

¹³ <http://legeaz.net/dictionar-juridic/felurile-raspunderii-civile-delictuale-si-clasificarea-lor>

longer attaches the idea of fairness. There are cases when the security objective is accompanied by the precautionary principle

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