

The Civil Legal Liability – Social Implications

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Abstract:

The common meaning of the notion of liability is that of an obligation to bear the consequences of not conforming to a specific rule of conduct by the party guilty to have committed an act contrary to the rule and who is always subject to social disapproval of such a conduct. Therefore, the legal liability is defined as a legal situation specific to the public constraint entailed by the breach or non-compliance of the legal norms in effect. Having regard to the need for the legal liability as a constraint legal relation that arises following the breach of a legal provision by a natural or a legal person, one may consider the legal liability to be the complex of rights and related obligations which, according to the law, arise following the making of an illicit act, and constitute the framework for performing the public constraint by way of applying the legal sanctions for the purposes of ensuring the stability of the social relations and guiding the members of the society towards complying with the order of law.

Keywords: *liability; order of law; the legal liability; legal norms; the public constraint.*

1. Social determination of the civil legal liability

The legal liability can be defined [1] as that form of social liability prescribed by the State as a result of the breach of the rules of law by way of an illicit act which entails the bearing of the appropriate consequences by the guilty party, including through the use of the compelling force of the State for the purposes of reinstating the order of law prejudiced this way. The notion of liability is not exclusively specific to the law; it is also used in all domains of social life. The liability may be of the following nature: political, moral, legal, religious, etc.; and it has a correlative, and a political, moral, legal, religious, etc., feature, respectively. Through the initiation of the liability and the bearing of the consequences deriving therefrom, the violated order of law is reinstated. The legislation and jurisdiction do not define the notion of legal liability, the lawmaker prescribing only the conditions in the presence of which a person may be held liable, namely, the principles of liability, nature and extent of the sanctions likely to be applied and the limits thereof. The situation is similar also in the legal practice, which does not give a definition of the legal liability or of any of the forms thereof; however, the practice has brought a valuable contribution to the explanation thereof and clarification of the conditions and forms of the legal liability.

According to some authors [2] [3], the legal liability is the obligation to repair the prejudice and the criminal liability is the obligation to bear and execute the penalty. Therefore by defining the liability this way, namely, by identifying it with the sanction, the scope of the liability is reduced. Another opinion considers that the legal liability occurs only in the case of a breach of a rule of law and is followed by the application of the public constraint by means appropriate to the degree of social hazard of the act committed.

Therefore, the legal liability is defined as a legal situation specific to the public constraint entailed by the breach or non-compliance of the legal norms in effect [4]. Having regard to the need for the legal liability as a constraint legal relation that arises following the breach of a legal provision by a natural or a legal person, one may consider the legal liability to be the complex of rights and related obligations which, according to the law, arise following the making of an illicit act, and constitute the framework for performing the public constraint by way of applying the legal sanctions for the purposes of ensuring the stability of the social relations and guiding the members of the society towards complying with the order of law.

From a linguistic perspective [5], the liability is a personality acknowledging their duty in relation to the society, a community, understanding the meaning and significance of their behaviour.

In jurisprudence [5], this term has acquired another meaning, different from that of the usual language, namely: it highlights the negative consequences occurred when an illegal act is committed by a natural or legal person.

The legal liability includes, in itself, only those consequences of the breach of law which are translated into the occurrence of a new obligation or other means of obligations occurred within the already existing legal relation.

These means, as well as the newly occurred obligations must be in relation to the negative consequences unsatisfactory for the person having breached the order of law.

The evidence of the liability as a special legal system, beyond the application of the constraint measures for the execution of the existing obligation, relates to the contents of the relations that occur in a specific case.

The constraint to execute the obligation cannot be considered as liability, because the public constraint applies only for guaranteeing the obligation. By means of the public constraint, the participants to the relation are in the position of having to be in compliance with the legal requirements.

Through its remedial function, the civil liability aims at restoring the patrimony of the prejudiced person to the previous condition, by removing all harmful consequences of the illicit act. The rules on which the legal practice and the specialized literature, but especially, the civil law is based as the core principle of the civil liability, relate to the remedial obligation.

As part of the liability for the breach of the rights and obligations within an existing legal relation, the illegal behaviour is reduced to the breach of a right relating to a deviation of the real behaviour of the model, consolidated by means of a legal relation. This difference existing in the civil legal literature receives the expression of the delimitation of the contractual civil and tort liability.

The contractual civil liability is the obligation of the debtor of an obligation under a contract to repair the prejudice caused to the creditor thereof or by the fact of not complying, to a broad extent, with the provision owed, namely, the late, inappropriate or actual non- execution thereof, in whole or in part.

The civil tort liability is a person's obligation to repair the prejudice caused to another one by an off-contract illicit act or, as appropriate, the prejudice for which it held under the law liable. Regarding the relation between the two forms of the civil liability, please note that the civil tort liability represents the common law of the civil liability, while the contract liability is a liability having a special, derogatory feature. Whenever it is not about the contractual liability, the rules on the civil tort liability shall apply.

The range of differences between the contractual and the tort liability allows, however, to claim that they exist as part of the civil liability unit. By establishing certain limits to the application of the tort or contractual liability, the lawmaker position on which of these forms is capable of being as effective as possible able to influence certain peculiarities of the civil relations, stimulating thereof to making optimal decision in specific situation. The lawmaker's choice of the form of liability is performed with due regard to the functional specificity of the contractual and tort liability and, for this reason,

this situation is to be taken into consideration when improving the legislation on enhancing the victim's protection.

When examining the legal and civil liability as a means of protecting the victims, the functions thereof must be underlined, because it allows the determination of the limits for the actual application for the purposes of achieving the envisaged [7] objectives.

The specialised [8] literature examines to a large extent the issue of the combination between the contractual and tort liabilities. Certainly, this issue may be discussed only when, between the party having caused the prejudiced party a contract that is duly concluded exists, and the non-execution of which has caused the prejudice.

A principle that is needed in the legal practice is that it is not possible to make any combination within a mixed action, of the rules that apply both as part of the tort liability, and of the contractual liability, nor to apply, as a supplement, to the contractual action based on which compensations have been awarded.

2. The legal liability conditions

1.1 The prejudice

Among the core elements of the legal liability, the prejudice is the one the existence of which entails the least discussions. The expression of the prejudice belongs to the current language and signifies the injury, damage, harm of honour, of reputation, of the reputation of a party.

The term prejudice has two meanings: a traditional one, which, in the broad sense, derives from the Romanian law and designated the prejudice or the injury, and another one, relating to the compensation. The first meaning is the correct one, because the compensation relates to the value of covering, of replacing the damage.

The prejudice [9] repairing is characterised by the fact that the wealth passes from the patrimonial area of a participant to civil legal relations (the prejudicing party) into the patrimonial area of another participant to civil legal relations (the injured party). For this reason, the prejudice repairing is, in itself, the liability of a participant to the relation before the other one, and, for this very reason they are different from other forms of the legal and civil liability, which are directly connected by the lack of a right

somewhat civil (for example, the seizure, for the benefit of the State, of what a party has received by concluding a covenant contrary to the interest of the State).

The prejudice may be considered from a social and legal perspective. In its social sense, any breach of the law entails a prejudice, because it has a negative effect on the social relations. In the legal sense, the breach of the law may also not entail a prejudice.

The prejudice may be caused both to the person and to the goods thereof; we may mention that, in the former case, the prejudice is to be repaired only if it was caused to a specific natural person.

If the prejudice caused to the victim can be appraised by means of money, it is a patrimonial prejudice. The prejudice caused by way of damaging or destroying a good or the prejudice caused to a person who has lost in whole or in part the working capacity, are typical examples.

If the prejudice is not likely to be appraised by means of money, it is a moral (non-patrimonial) prejudice.

The patrimonial prejudice has two components:

- the actual loss suffered;
- the unrealised benefit.

One of the principles of prejudice repairing is the full repairing thereof.

The actual loss suffered consists in a reduction of the active value of the consumer's patrimony, while the unrealised benefit is the lack of the increasing patrimonial asset that would have occurred should the illicit act not have happened.

The manner of the compensation in kind or in the form of money is selected by the court of law in correlation to the actual circumstances of the case. Certainly, the interests of the natural persons are also relied on. The repairing in kind of the prejudice as a result of the legal liability implies selecting the means most appropriate for the form and seriousness thereof.

The repairing in kind is the activity of removing the prejudice suffered by a person by way of using practical means and procedures (such as the replacement of destroyed goods by other goods of the same type, making technical repairing, etc.) which, depending on the specificity and seriousness of the concerned prejudice, are able to

lead, to the largest extent, to the accomplishment of the principle of the full repairing of the prejudice and to the restoration to the previous condition of the injured person [10].

Within the contractual liability, the repairing manner differs according to the nature of the obligation non-performed, performed late or performed in a faulty manner.

2.1 The illicit act.

The illicit act represents the objective condition of the legal liability. The behaviour is illegal if it violates a rule of law regardless of whether the concerned subject did or did not know they were violating such rules. The rules of the civil law establish different requirements for the behaviour of the participants to the civil circuit, also including for the economic agents and consumers.

Then, the illicit act is examined as an element of the civil tort liability, and the objectivity, the exterior manifestation of an attitude of conscience and will of a certain person is implied.

The illicit act consists in actions and inactions. The specialised literature mentions that both the actions and the inactions are characterised by the same internal signs. From the legal perspective, the inaction cannot be reduced to the mere passivity of the subject, but it represents the non-execution of those actual actions to which they were bound under the law or the contract. Therefore, the inaction is the illicit act; whenever the illegal rule binds a certain person to act in a certain manner, the legal requirement has not been observed. This interaction would represent a specific behaviour, an action against the law, likely to engage the liability of the author thereof. It is possible that the same illicit behaviour of an economic agent meets, at the same time, both illicit actions and inactions.

2.2 The causality relation

For a person's liability to be engaged, it is sufficient for an illicit act and a prejudice suffered by a person to simply exist, but it is necessary for a causality relation to exist between the act and the prejudice, namely, the act to have caused the concerned prejudice[11].

Often, the causality report in terms of the prejudice caused to the consumers may be easily established. Some other times, the concerned report is harder to

establish, especially when the effect has been preceded by a multitude of human actions or other circumstances.

Although any human action is an unitary action of a physical and physical feature, it expresses not only an objective exteriorisation, but also, an attitude of conscience, affectivity and will; however, when it comes to analysing the causality relation between the illicit act and the prejudice, abstraction is made of the subjective attitude. The psychological matters form an important element for liability establishment: guilt. [12]

2.3 *Guilt. Grounds for the exoneration of the liability for products.*

The current legal literature [13] defines guilt as representing the psychological attitude the author had when making the illicit act or at the moment immediately prior to the illicit act, in relation to the act and the consequences thereof.“

This wording relates, on the one hand, to the elements of intellectual and volitive order [14] (physical attitude) and, on the other hand, it proves the connection of this subjective side of the man and the act thereof to the consequences thereof, i.e., the objective element.

It is to be mentioned that guilt is a physical attitude in relation to the illicit act and the consequences thereof, but it is an attitude negatively subjective, ignoring the legal rules established within the community, which are considered valid and accepted as valuable at a specific time. It is not any subjective attitude that constitutes the deed, but only the attitude involving the acknowledgment of the social significance of the deed thereof, of the antisocial feature thereof and the guilt to have committed the act and undertaking the consequences thereof.

As a psychological process, the structure of the civil guilt includes the intellectual and volitive element. The psychological processes, as components of the guilt, are not different from those constituting the psychological basis of any human action. From an intellectual perspective, the voluntary act of the man contains a complex cognitive process that involves knowing the object, acknowledging the needs, wills, valorising the reasons, purposes, means and correlating thereof through the prism of the requirements of the own self and of such objectives. [15]

The individual cannot be held liable in a civil manner if they have not known the social significance of the acts thereof [16]. Man must realise that the deeds thereof are likely to injure the subjective rights of the other members of the community, i.e., they have to acknowledge the antisocial feature of the conduct thereof.

The volitive factor – relating to will – represents the physical activity oriented towards the reaching of certain purposes, which involves the deliberation and decision-making in relation to a specific behaviour to be followed.

Guilt may be approached from the perspective of the forms of expressing thereof, putting an emphasis on its structural elements (intellective and volitive). This is the point of view from which the degrees of guilt are analysed, i.e., the form of the intention of the non-intended form. Although the degree of guilt does not have a specific legal relevance in civil law, however, in some cases, the seriousness of the guilt causes specific legal effects, which are briefly outlined below.

1. The courts are oriented towards appraising the prejudice extent more broadly, when it is about an intended act or committed by way of imprudence, and, in this case, there is a tendency for the extent of the repairing to be larger.
2. If non-liability clauses are accepted in the matter of the civil tort liability, they will be valid only for the slight negligence, and, on the contrary, they will not apply when it is about intent or gross negligence.
3. In the case of the combination between the civil tort liability and the contractual liability, in some cases, the solution depends on the seriousness of the guilt.
4. When, additionally to the guilt of the perpetrator, the guilt of the victim is also found, the degree of the perpetrator's guilt is important in terms of establishing the prejudice they are to repair.
5. In the matter of the hidden flaws, the effects may be different for the hidden flaws that were not known and the flaws hidden by fraud. Unlike the illicit act and the causal connection as objective elements of the civil liability, the guilt (generating legal liability) represents the subjective condition. As the physical attitude of the subject in relation to the act thereof, the guilt may be found both for the natural persons, and the legal persons.

The guilt of the legal person is reviewed through the guilt of the collaborators thereof during the professional obligation execution, according to the position held or the specificity of the work performed. Since the legal person is a debtor, the actions of the debtor's workers for the purposes of executing the obligations thereof are considered to be actions of the debtor.

The legal and legal practice doctrines in the field [17] admit to the existence of a form of civil tort liability without guilt.

The contractual civil guilt is the reproachable subjective attitude of the debtor of the contractual obligation in relation to the act thereof (and the consequences thereof) consisting in the non-execution, inappropriate execution or late execution of the obligation incumbent thereupon.

The volitive factor in the contractual matter consists in the contractual debtor's will to making the illicit act, choosing a conduct contrary to the law or the contractual clauses.

In the case of the civil tort liability, the perpetrator's act [18] is connected to an act having defeated the lawmaker's will, breaching the obligations established by the latter. In the case of the contractual civil liability, guilt is connected to the obligations arising from the contract, being a type of guilt modulated to the contractual condition and cannot exist outside thereof. According to the civil legislation [19] in the contract matter, the debtor is liable regardless of the form of the guilt thereof, i.e., regardless of the fact that the non-execution of the obligation or the inappropriate execution thereof was intended or merely by imprudence.

Conclusions

Therefore, it can be concluded that it is not any psychological attitude of the man that may entail the qualification thereof as guilty, but only the negative one that is reprovved by the law, which reflects the ignorance of the legal rules established within the community, and which are considered valid and accepted as valuable at a specific time, in the general axiological system of the specific time. It is about the psychological position of the individual, which involves acknowledging the social significance of the act thereof, of the antisocial features thereof and of the will to commit the act and undertake the consequences thereof, as part of the rule of law. As a consequence, the author of an

illicit act is guilty because they violate a command, an order, a stipulation of the law, considering that they would have had the possibility to conform, therefore exhibiting a flaw of the will, because they are held liable for the results of the behaviour thereof. Therefore, it can be said that guilt remains, also for the future, the idea that explains the engagement of the civil liability for the parties' own acts, taking into consideration the actual capacity of the perpetrator to understand and appraise, in full, the significance of their acts in the social projection thereof, by comparing the perpetrator's behaviour to their usual conduct which is, in fact, the subjective criterion for the appraisal of the perpetrator's guilt, according to which, only in the event that they, with due regard to their individual attributes, were not entitled to consider that the damaging results would not occur or could have foreseen the antisocial consequences thereof, they shall be liable for their act.

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