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THE IMPACT OF NEW REGULATIONS OF CIVIL RIGHT ON SOME FORMS OF LEGAL LIABILITY

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Abstract
We approach the issue of legal liability as it appears in the branches of the private law, in terms of the monist conception which underlies the New Civil Code. This concept implies that in our legal system, the Code mentioned represents a common law for all relations of private life, thing which means that to the subject regarding traditional civil right, were added the other branches of private law, which in one way or another belonged once to the civil right. It is about the individual regulations, on family relationships, commercial relationships or those of private international law. The option for the new Civil Code is a monistic vision which accomplishes the effort of reshaping and reassessment of the traditional institutions of the old regulations, to make them able to respond to the demands of the new realities of Romania’s statute as an European Community’s member.

Among the fundamental institutions of the Romanian law, strongly influenced by the monistic conception, is included the institution of legal liability, as it appears as a direct consequence of violating the norms of private law. We will emphasize the particularities that the responsibility presents, in some areas of private law such as: the Civil Code, commercial, family law, labour law.

We shall insist upon the most significant aspects of general nature- the detailed ones are going to be developed later by the legal science.

Keywords:
private interests, legal liability, civil liability

Classification JEL: J51, J52, J 53

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I. INTRODUCTION

The entry into force of the two codes from the area of civil law calls for a comparative analysis of these provisions with the previous ones regarding the various institutions of private law for illustrating this branch dimensions in the area of private life. Among them, a very special place is occupied by the institution of the legal liability, which has a history as old as the history of law and state. We will try to decipher the current legislature’s inclination toward conservatism or novation, in other words, if overall the rules regarding legal liability and the forms it is found in the social life, represents a legislative progress or a plenary untapped opportunity in order to reform the institution, so as the institution itself to face the challenges of internal order or international conjuncture. As for us, we start from the idea that the two codes are introducing us in the ambience of a genuine reform by recoding, especially about the general concept upon the uniform regulation of the private law relations, especially for reasons of modernization and globalization of law. No less important, for the reform and reformulation of some demands of human behaviour, are the significant changes of the era that we are crossing, concerning the content of the regulations imposed by the social dynamism.

Therefore, in the Romanian legal landscape, legal liability appears as a powerful institution marked by the monistic conception and the need to “bring on the right track” and to reunify the new Civil Code with institutions which once belonged to it, which were abandoned in favour of some independent law branches and which return enriched by the values of the contemporary world, global, European (generally), and in particular of those from the area of European integration. This explains the fact that in addition to the traditional materials belonging to civil law, the new Civil Code is a common source of regulation for areas with a special history and evolution: commercial law, regulations regarding the person and family, in labour law, provisions on relations of civil law with foreign elements.

It was a very complex operation which involved, in addition to formal and technical aspects, also the homogenization of certain issues that were treated differently in the traditionally civil law, from the other domains which are currently under the rule of the new Civil Code.

4 For details about the monistic conception of the regulations from the private life, see Elena Iftime, „Introduction in the study of civil law”, Suceava 2014.
5 Although labor law is not expressly mentioned as a branch absorbed by the new Civil Code (as it happens in the case of other branches mentioned above, it is provided as a common law) see art278, par 1,2 Labor Code.
In the light of these regulations and the proposed objectives, we will stop eventually, upon the impact of the new Civil Code and the new Code of Civil Procedure on some forms of legal liability of the private life.

The patrimonial liability of the employees is specific to labour law and consists in the obligation to fix, in certain conditions, the material damages produced to the employer from their fault and in connection with their work\(^6\).

In the field of the execution of state’s budget- achieving revenue and spending- patrimonial liability may arise both in what concerns the employees of the companies and other economic agents that are taxpayers, as well as the clerks from the financial bodies responsible for tracking and execution of the debts to the state budget.

Thus for example, the full non-payment to the legal terms of the amounts of money owned to the state budget, are sanctioned by increases which are attributable to the persons who calculate and disburse these amounts in the accounts of the respective unit. The same applies in cases when the unit is sanctioned with fines imposed for violation of tax laws, relating to the incomes and budget expenditures.

So in the situations where delay penalties or fines are applied to the companies, resulting from the negligence of the personnel, in theory measures are taken for recover the amounts from the guilty, by punishing them according to the labor laws.

In the same way, the financial bodies in charge with the tracking and execution of the state budget debts, assuming that was not their fault in collecting the debts, they will have to be responsible not only for the equivalent of the taxes, contributions, but also for the late payment applied by the competent bodies.

Regarding civil liability in what concerns the public finances we should note that only tort liability occurs when the obligation imposed by law is infringed. For instance, due to a illicit conduct of some payers or taxpayers, either are not made completely and on time the budget revenues, either are used allocations from the state budget, without meeting the legal conditions. In such situations those amounts will be recovered by the way of tort liability.

This form of legal liability can be drawn, for example, a natural person who by using fraudulent means, receives a financial aid for emergency situations improperly\(^7\).


\(^7\) Emil Bălan, *Drept financiar*, Ediția 3, Editura All Beck, București 2004, p. 273
II. FORMS OF LEGAL LIABILITY WHICH PROTECT PRIVATE INTERESTS

II.1. Legal liability in civil law. Forms of civil liability

A prestigious Romanian author said that “civil liability is without doubt, one of the most important and common manifestations of legal liability and at the same time a category and a complex institution of civil law”\(^8\). The statement is even truer, after the entry into force of the new Civil Code (2011) based on the monistic conception which states that, in our legal system, the new Civil Code represent the common law (jus comunes) for the legal relations of the private life\(^9\). In order to give concreteness and effectiveness to this concept it was necessary relocation and reassessment of the traditional institutions of the old Civil Code and of the complementary legislation, developer of some of its provisions. This explains the fact that the matter belonging traditionally to the civil law were added the other branches of private law which returned to its “source” because in one way or another belonged once to the civil law. It is about the regulations concerning: the person, the family relationships, commercial relationships and those of private international law.

Seen in the context of this reality, civil liability is the source for all the aspects of the aspects of this kind which appear and need solutions in the shown areas.

The limited space of this chapter does not allow us to solve the issue of the civil liability, in the broad sense of the notion. Therefore, we will make brief reference to the peculiarities of this form of legal liability and its components, as they appear in the traditional regulations of the civil law, which took shape and concreteness after the autonomisation of the other branches of private law.

Conceptually must be noticed the lack of a legal definition of the civil liability in both, the old and new regulation. It remains, therefore, for the doctrine and practice of private law, an open question about clarifying the concept of civil liability and the formulation of a comprehensive definition of a maximum generality which should capture its essence.

It should be noted that in the context of modern society, the concept of civil liability (in its two forms, tort and contractual) experienced a dynamic and separately evolution. The very term of contractual liability (today in use) came recently in the legal literature and practice of this area.

In the old Civil Code, contractual liability only appears incidentally in the regulation of some particular contracts. The obligations for indemnification of the creditor for damage caused by the failure or improper performance of the contract, was regulated separately by the tort liability, in the chapter devoted to the effects of obligations. Tort liability was placed in the chapter of delicts. Due to the placement of contractual rules and delictual of the Civil Code of 1864, the classic concept starts from the duality of civil liability. It is a traditional concept mirrored in the doctrine and practice of the civil law, which deals separately the contractual liability from the tort liability. It is estimated that in the contractual liability, the obligations are related through a pre-existing report, arose from the contract of which improper performance or failure generates compensation from the creditor. On the contrary, in tort liability the illicit deed causing damage, generates a legal obligation thing that makes from this form of civil liability a source of obligations. This point of view has been subjected to critics who invoked that in civil liability and tort liability, the problems regarding the source of obligations must be treated, but also the aspects regarding their effects. In what concerns us, we opt for the idea of uniqueness in diversity of civil liability given the fact that both are based on the obligation of compensation, for a material or moral damage caused by non-fulfilment of the obligations arising from a legal fact, seen in the broad sense of the notion by which the law links the juridical effects. Such a circumstance may be the illegal deed (in the narrow sense) or non-fulfilment of the contractual obligations, on the other hand, the obligation which arises from the contractual liability is not the same with the obligation which arises from the contract. The valid signed contract arises the obligation of execution in its specific nature and just how the parties have agreed, which is not the same with the obligation that arise from the contractual liability. If a part fails its obligation or performs them improperly, and from this results a loss for the other part, arises a new obligation which replaces the existing obligation, either entirely or partially. The extend of this repair obligation is not necessary in a relationship with the extent of the unexecuted obligations, which represent the compensation of the damage by non-fulfilment. Therefore, the obligation of performing the contract and repair the damage,

10 Are illustrative in this way, art. 1434, 1435 of the Civil Code of 1864 on the liability of the lessee ‘of damage and losses happened during the use’, or by fire, if he can’t prove that the fire happened by accident or by major force. Similar provisions includes the art. 1475 concerning liability ‘of the carriers and captains of ships, the loss and corruption of things entrusted to them’.
11 See chapter VII, Titul III, Cartea a III-a of the Civil Code of 1864.
12 See chapter V, Titul III, Cartea a III-a of the Civil Code of 1864.
13 In connection with this source of civil obligations, there are some clarifications to be made. The illicit deed may be a illicit conduct of the person in the cases and conditions provided by law or “circumstances(events) that are not human, such as the damages caused by natural events, of a thing, animal, nuclear event or a malfunction of a thing. For details, see L.Pop, IFPopa, SIVidea, op.cit. 2012, p.380 ff.
caused by non-fulfilment or improper performance are two distinct and successive obligations, even if one is the result of the other and can’t exist without it.

From the above, results that the uniqueness and the common essence of the two forms of civil liability is focused on the existence of a legal report of obligations and of a “responsible person who is obliged to repair the damage suffered by another person”\textsuperscript{14}.

As for the new Civil Code, should be noted that it builds its domain on the uniqueness of civil liability, with the differences between the legal regime of tort liability and legal regime of contractual liability\textsuperscript{15}. The source of these regulations is in the Fifth book about the obligations, Title II, entitled “Izvoarele obligatiilor”, Chapter IV entitled “Răspunderea civilă”. The first two articles of this chapter talk about an only civil liability, as an institution of private law in which have to be identified two form: tort liability and contractual liability. The first two articles of this chapter announce that there is only one civil liability, as an institution of private law, in which must be identified two forms: tort liability and contractual liability. The article 1349 introduces in the content of the new Civil Code, tort liability, not so different as regulation of the Civil Code of 1864, starting from the duty of any person to respect the rules of conduct imposed by the law and does not undermines through its actions or inactions, the rights or interests of other persons.(paragraph 1). The person which acting with discernment breaks the regulations mentioned above and causes to other damage, has the obligation of full repairing of this one(paragraph 2). It is a direct responsibility for the damage caused through its own act, which represents the rule in what concerns tort liability. As in the previous regulation, the new Civil Code establishes an indirect tort liability for damage caused by the deed of other’s deed or otherwise than by human action (damage caused by things or animals under his guard, as well as ruin a building al. 3). A certain category of things, namely defective products are removed from the provisions of the new Civil Code, to be subjected to some special regulations\textsuperscript{16}.

The contractual liability received a distinct regulatory in Chapter V, Article 1350 which states that “Any person must fulfil the obligations which they contracted (paragraph 1). When without any justification, fails to fulfil its duty, it

\textsuperscript{14} For the definitions of civil liability synthetically formulated L.Pop, IFPopa, SIVidea, op.cit. p.380; S.Neculaiescu. Reflecţie prin fundamental răspunderii civile delictuale în dreptul 11/2006 p.41
\textsuperscript{15} It is therefore a unique responsibility but inconsistent from this point of view fits in the intermediary or electic theory regarding the legal status of the two forms of liability. The othe two theories: the one of dual civil liability and the one of unit civil liability, “seem to be exagerated ” because either sustain fundamental differences and irreducible (duality theory) either denies the existence of some differences which should be irreducible (unit theory). For more details see L. Pop, I. F. Popa, S. I. Vidu, op.cit. 2012 p 391-394.
\textsuperscript{16} See Law no. 240/2004 regarding faultyproducts
is responsible for the damage caused to the other party and is required to repair this damage, according to the law.

Comparing the articles which provide general legal framework of civil liability under the two forms, we can find different sources of the compensation obligations. In the tort liability, the illicit deed consists in breaking the obligation to respect the rules of conduct, prescribed by law or by the local custom, when in the contractual liability the illicit deed represents breaking of some obligations from contractual obligations signed by both parties, if the failure is not legally justified. As regards contractual liability, the new Civil Code adds unless the law provides that, none of parties, can’t decline to apply this form of liability, to choose other rules which may be more favourable.

To sum up, on how the new Civil Code regulates the forms of civil liability, must be made some observations and distinctions. Firstly, must be retained the clearly express consecration of the two forms of civil liability, with separate legal regimes but with enough common notes to coexist within this frame. Secondly, both forms of liability are based on “the idea of reparation for an unfair damage caused to a person” which certifies the classical orientation, traditional, concerning the finality of the civil tort reflected in its reparatory function. Thirdly it is specifically devoted the impossibility to cumulate the two forms of liability, but also the prohibition of derogation from the rules of contractual liability in favour of other rules, through a more favourable solution. Regarding the relationship between the two forms of legal liability, it must be noted that although are from a “common core” these follows different ways. Tort liability is meant to provide “the common law” to civil liability, when contractual liability has a special character and derogates from the common law. In the Romanian civil law, we don’t deal with a contractual liability, the only ones which will be applied will be the rules concerning tort liability. Although being different as forms of manifestation, civil liability remains unique in its essence, having the configuration of some legal institutions which cover a wide range of legal relations, regulated by civil law.

II.2. Legal liability in labor law

In labor law, liability bears the imprint of this branch of law, reflected in the relations that they govern. There are relations arising between an individual, on one hand and as rule, a legal person on the other hand, resulting of performing an activity by the first person in behalf of the second one, which in turn, is obliged to remunerate it and to create the necessary conditions for performing this task.  

17 N. Eliescu, Răspunderea civila delictuală, Edit. Academiei, București 1972, p.61-62

Fulfilling its social functions, it entailed regulations of the various, starting from the constitutional regulation to the organic and common ones.

The Romanian Constitution\textsuperscript{19}, enshrines fundamental rights concerning labour and labour relations: the right to free association in unions, employers and professional associations (art.9); right to work and social protection of labour (art.41), interdiction of forced labour (art.42) and the right to strike (art.43).

In the category of organic laws which regulates labour relations, an important role has it Law no.53/2003 concerning Labour Code. It has undergone numerous modifications, the most recent and important being brought by Law no. 40/2011\textsuperscript{20}

From the category of ordinary laws, we mention: Law nr62/2011 concerning social dialogue; Law nr.319/2006 concerning safety and health in labour; Law nr.467 of 18\textsuperscript{th} December 2006 establishing a general framework for informing and consulting employees; Law no.67 of March 2006 on the protection of employees rights in case of a company’s transfer, a unit or some parts of it; Law no.344 of July 24\textsuperscript{th} 2006 on posting the workers within the transnational provision of services.

At this level may be violations of the law which can determine specific sanctions: warning, demotion, reduction of wages and even the termination of labour contracts.

In the research of this vast and complex issue of labour law, we must start from two considerations:

a) Although is a branch of private law, labour law has some extensions in the sphere of social life, there were general interest appear (public)\textsuperscript{21}.

Entwining these interests (public-private) requires some special regulations, which fills the most part of the new Labour Code. Of course, the mentioned code is complemented where the realities of the legal life imposed other regulations more detailed. We remind, in addition except the organic and ordinary laws mentioned above: the collective agreements (for example the collective agreements at unit level, at the level of the unit and branch level), professional and disciplinary statutes (eg: teacher status, status of civil clerk, status of a policeman), job description and internal regulations.

\textsuperscript{19} Adopted by referendum in December 1991 and amended by Law no.429/2003.

\textsuperscript{20} Law no.40/2011 was published in the Official Gazette no.225/31 March 2011, republished in the Official Gazette no345/ May 2011.

\textsuperscript{21} Classification of the labor law in one of the two subdivisions of the the legal system – private/public sparked controversy over time. Since the comunist regime, employement was based on distribution and not on the agreement between employer and employee, labor law was classified as public law. Currently, employment is widely considered as being a branch of the private law, although the employer is in a privileged position over the employee, doe not make this branch one of public law. See Costel Gîlcă, \textit{Codul muncii comentat şi adnotat}, Ed.Rosetti Internaţional, Buc.2013, p.4
b) On the other hand, we should not relate our discussion and monistic conception which provides the basis of the New Civil Code and the New Code of Civil Procedure. All the regulations of the private life have its common source in this code. Although labour law is not mentioned expressly as a branch absorbed by the civil law (as it is in the case of the commercial law, family law, private international law), we consider that in this case the Civil Code it is provided as a common law. One indication of this would be art.278 paragraph 1 and paragraph 2 according to which: "The provisions of this Code shall be completed with the other provisions of the labour law and in the case in which are not incompatible with specific of the employment relationships provided in the new Code, with the civil law. The provisions of the present code are applied by common law also to those legal relations of work, ungrounded on an individual employment contract, to the extent in which the special provisions are not complete and their application is not inconsistent with the specific labour relations."

Also the art 275 of the Labour Code refers to the Code of Civil Procedure “the provisions of the present title shall be completed with the provisions of the Code of Civil Procedure.

So, whenever in the labour legislation are not included specific provisions, will be applicable those of the common law, the civil law.

In labour law the disciplinary heritage and the patrimonial one coexist, but from case to case, can be involved some other forms of liability such as: disciplinary liability, criminal liability, contravention liability and civil liability.

II.3. Disciplinary liability

Disciplinary liability consists in penalizing the violation of guilt by any employed person with obligations under the employment contract.

According to art.247, paragraph 1 of the Labour Code, the employer has the disciplinary prerogative, having the right to apply according to the law, disciplinary sanctions to their employees whenever notices that they have committed a disciplinary misconduct. This privilege includes the right of the employer to apply sanctions to the employees subordinated to him, on the bases of the existent employment relations.

This type of legal liability of one of the contract’s party, for improper fulfilment of the obligations or failure under the contract, is unique in the legal landscape, no other branch does not know any possibility, created by law in favour of one party, to sanction directly the contractor for failure or improper performance of the duties assumed.

22 E. Iftime, Teoria general a dreptului, Ed.Didactică și Pedagogică, Buc., 2013, p.305
23 S. Ghimpu, Al. Țiclea, Dreptul muncii, Casa de Editură și presă Sânsa SRL Buc., vol. 1
24 Costel Gîlcă, op.cit, p.587
The disciplinary prerogative is recognized as a principle of the Labour Code in the art.40 paragraph 1, letter e, but finds its consecration in art.247 par 1 from the same law which clearly states that that employer is able to apply sanctions to the contractor whenever he commits a disciplinary offense. Therefore, the conditions for the presence of misconduct are:

- committing of an offense in relation to work
- the act to consist in an action or inaction
- only the guilty of the employee may draw its responsibility
- infringement of some laws, of the inner procedure, the individual employment contract, collective agreement, job description, the orders and dispositions of the superiors, etc.

We believe that the violation of any internal rules, regardless of the deed, constitutes misconduct.

Such facts, known as misconduct, attract specific sanctions: warnings, reduction of salary, rank demotion, termination of employment. In terms of the source and its object (social relationship to which it protects) disciplinary responsibility has a contractual nature, because it occurs in case of violation of the contract obligations assumed.

The article 248, par 1 of the Labor Code expressly and imitatively lists the penalties that can be applied and in par 2 it is specified that only by special laws or other statutes may provide another sanction regime.

The disciplinary sanctions listed in the Labour Code are:

- written warning;
- demotion, providing the wage according to the function in which demotion was disposed, for a period of not exceeding 60 days;
- reduction of the base salary for a period of 1 to 3 months by 5-10%;
- reduction of the base salary and where applicable, of the management allowance for a period of 1-3 months by 5-10%;
- disciplinary termination of the individual employment contracts.

Article 249 of the Code, states that disciplinary fines are prohibited.

We find that the disciplinary sanctions listed above may have a preponderant character (eg. warning) or mainly pecuniary. The dosage of the penalty is at the hand of the employer, according to the seriousness of the offense, the sanctions scale and the results of the prior research.

One other feature of the disciplinary liability is that the disciplinary sanctions shall be cancelled through a written decision of the employer if within 12 months from the date of application, the employee has no other penalty in this term (art 248, par 3). In theory, a question arose, whether this deletion can target dissolution of the individual labour contract, and reached to the conclusion that is not possible the deletion in this case for the reason that, in the case we would
accept that deletion, the disciplinary dissolution may operate after a period of 12 months, this would mean that the decision to sanction would no longer produce the legal effects and the employee after those 12 months should come back to work, as a result of the penalty’s cancellation. Or such an interpretation would be inadmissible.

II.4. Patrimonial responsibility of the party’s employment relationship

The patrimonial liability has replaced the old material liability regulated by the old code of labour which was a defined form of legal liability, imposed to the employees that were forced to repair under the law the damage caused during the execution of the contract, by an unlawful act in connection to their work and committed with guilt. As in the case of civil liability, the material liability involved damage of material nature, a delict, a causal link between the deed, prejudice and the guilt. But unlike the civil liability, legal, administrative which can return to any person who has broken a rule as the kind shown above, material liability could be put solely to an employed person and only if the illicit deed was related to its work.

Regarding this form of legal liability, the Labour Code of 2003 brings an essential modification. The material liability of the employees was basically removed, instead was regulated both for the compensation of employee and the employer, a patrimonial liability.

In the conception of Labour Code, the patrimonial responsibility has it both the employee and the employer, on the basis of non-fulfilment of their contractual labour obligations. In the previous version, only the employee was responsible.

As it results from the analysis of the art.253 par 1 corroborated with the art.254 par 1 of the new Labour Code, patrimonial liability, of this area is based on the norms and principles of the contractual liability. “It is clear that, with this form of legal liability, we find ourselves on the ground of civil contractual liability which will bear the mark of the specific particularities of the work relations that are required.

Regarding the employer’s liability according to art.253 he is obliged to indemnify the employee in the situation when this one has suffered a material or moral damage because of the employer’s obligations, regarding his duty. The employer who paid the compensation can direct his actions against his employee which is guilty of the damage made, as the art.235 of Labour Code states.

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25 In the old Labour Code, there is no legal definition of the material liability, the defining elements of this one can be drawn from the content of the art.102, par.1. For other details concerning the material responsibility of the employees, see A. Țiclea, C. Tufan, Dreptul muncii, Edit. Global Lex, București, 2001, pg.657;
As for the moral damage, the initial form of the Labour Code of 2003 does not include any provision in this way, this requirement being introduced by the Law no.237/2007 by modifying the Labour Code.

The employees are responsible based on the norms and principles of the civil contractual liability for the damage caused to the employer, in connection with their work. According to art.256 of the Labour Code, the employee which received from the employer, an amount of money that did not belong to him was not forced to repay it. If the employee has received goods that did not belong to him and can’t be returned anymore or he did not provided for the services which were not justified, he has the obligation to bear their counter value.

Thus, the employer through a note an evaluation of the damage will be able to recover the value of the damage through an agreement of the both sides, through a deadline which can’t be shorter than 30 days from the date of communication, counter value that can’t be more than 5 minimum gross wages on economy.

If the employee does not agree with this evaluation of the damage, the employer will be able to address to the competent court and the recovery of the damage could be achieved only in the basis of a court’s decision.

**III. INTERFERENCES OF VARIOUS FORMS OF LEGAL LIABILITY**

Regardless of the general interest protected of group or individual, any form of legal liability is in connection and interdependence with other forms, firstly because of the common elements expressed in the functions they perform and in the general principles these are based on. Any other form of legal liability can bear the influence of other forms. Criminal liability, for example influences civil liability through its suspensive effect of the criminal investigation, on the civil side (where such thing exists).

Article 19, par 2 of the old Criminal Procedure Act, established the rule that “criminal procedure holds back the civil one” saying that “the judgment in civil court is suspended until the final resolution of the criminal case will be reached”; the rule appears also in the new Criminal Procedure Act.

In the labour law can be applied the suspensive effect of the criminal investigation of a disciplinary action, such as termination of employment.

In the regulatory sphere of some law branches can appear several form of liability. If we stop upon the administrative law, we will notice the interference with many forms of liability with three categories of liability relations, specific to this branch of law: administrative responsibility, disciplinary responsibility and contraventional liability.

Where the circumstances require may appear also criminal or civil liability.
There are situations in which the rules governing a certain form of liability, completes as a norm of common law the provisions applicable to other liability forms.

In the material liability of labour law, for example the norms which regulate the civil liability are applied alternatively, whenever one aspect or another of the material liability can’t find its legal regulation. In this case, however must be investigate the rule according to which the application of common law norms is alternative and possible only if does not contradicts the institution’s specific, as it results from the assembly of the principles and legal provisions to which the institution belongs.

The idea of correlation that exists between the different forms of legal liability takes shape also in the case of cumulating several form of liability such as: legal liability with criminal liability or material liability with disciplinary liability. Such overlapping can be admitted only if the mixture of law principles “non bis in idem” which prohibits applying of several penalties for the same delict.

As shown, there can’t overlap a contravention with a criminal penalty because in its essence this deed represents a low degree of social danger in relation with the crime. The same deed could not be contravention and criminal penalty in the same time.

Likewise could not be cumulative, civil liability with tort liability for the reason that tort liability represents is the basic one and contractual liability is the exceptional situation. So, tort liability, has its source in a deed caused by damages is a liability of common law, applicable whenever the parties don’t have a contractual relation. If the damage is caused in performing a contract, based on civil liability this can be only a contractual one. The one who suffered material damage could not choose between the tort and the contractual liability.

In the practice of legal life, there have been raised the question of a law of option between multiple backgrounds of the legal liability, but only in the same forms, such as civil liability, contractual or tort. The victim of a tort could choose, for example between the two bases of liability. In case of a damage caused by animals of an owner, guarded by an employee could be claimed the compensation for the deeds of employee, but there could exist a compensation on the ground of owner’s liability for the “animal’s act”\(^\text{26}\). This option is possible because the guilt presumptions are at the base of different form of indirect civil liability, which were imposed in favour of the victim.

Without prejudice the principle “non bis in idem” some forms of legal liability can coexist, for example in the labour law may co-exist the disciplinary

\(^{26}\) See article 1001 of the Civil Code of 1864, taken from the article 1375 of the new Civil Code, according to which the owner of an animal or the one who serves is responsible for him, regardless the any negligence, damage caused by the animal even if it is out of his guard.
liability with the criminal one or with the contravention one. And each of the forms mentions could be cumulative with patrimonial liability.

For a contravention which caused a material damage it is normal that besides the contravention sanctions imposed, the offender is required to repair the material damage caused to the victim.

CONCLUSIONS

A careful and thorough analysis of new regulation’s impact, on the legal relations from the sphere of private life shows among other things, the reformation’s effort of many of the civil law institutions, including legal liability.

This process was imposed by the new Civil Code for the monistic conception of regulating the social relations from the sphere of private life, by giving up to put them together in several areas of the law such as: commercial law, family law, international private law (excepting labour law). The most pronounced aspect, of reforming the provisions of private law, represents abandoning of dualism Civil Code- Commercial Code, and integrates the basic rules of the commercial law in the new Civil Code. Under this sign of reformation on behalf of modernization, I realized a brief outline of the particularities of liability in areas such as: civil law, family law and labour law.

In civil law, for example we could see a very special dynamic and evolution, which were found in an express consecration, without any doubt, of the two forms of civil liability with distinct regulations and with sufficient common notes, which make possible their coexistence inside the frames of civil liability.

The idea that fundaments both forms of legal liability remains as in the old regulation, the one of repairing the damage caused to another person. It is obvious the trend of the new Civil Code towards the classical solution, traditionally founded on the exercise of reparatory function, and by prohibiting the cumulative function of the two forms of liability.

The liability’s relation of the labour law with the regulations of the new Civil Code is one a bit more special. Although it is a branch of private law, labour law has extensions in the sphere of social life beyond the area of private law, because has some interests of general and public order. Although labour law is not mentioned as an express branch, absorbed by the new Civil Code, its regulations offers an alternative of common regulations, where the law is not sufficient, obscure and incomplete.
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