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Damage in the Context of the Liability for the Actions of Others

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Damage in the Context of the Liability for the Actions of Others

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Abstract

The guiding principle in the field of civil liability is the liability for one's own conduct according to which every person is held liable for her own acts. As it was stated under the former Civil code, this principle is not always sufficient, since the total or partial insolvability of the one that has to repair the damage could prevent the establishment of civil liability. This is the reason for which, in the aim of protecting the legitimate interests of the persons, the legislator has regulated, besides the direct liability for one's own act, another liability, indirect, complementary, that belongs to another person. The main novelty brought by the Civil code, in relationship to the analyzed text are the extension of the range of persons for the actions of which others are imposed liability, the extension of the range of persons that are imposed liability and the alteration of the ground of the liability for the actions of the minor (bearing in mind that in the majority opinion, under the 1865 Civil code, the parental liability for the actions of their children was regarded as a subjective liability).

The new Civil code brings a series of alterations to the matter of the liability of the employer for the damages caused by his employee. The new code defines the employer, allows the clear detachment of the definition of the employee, provides the sources of subordination, states a liability that is not conditioned by guilt (neither in the case of the employer nor in that of the employee). The special conditions did not suffer alterations, and neither did the ground of liability. That concern the damage within liability for animals/ goods in general/ ruin of building, the new code, unlike the old regulation, states the fact that liability is independent of any fault. What is novel is the legal definition of legal guardianship, from this point of view the new regulation being superior to the previous one.

Keywords:

damage; liability; liability for the acts of the minor or of the person interdicted; he employers liability for the actions of their employees; damage within liability for animals/ goods in general/ ruin of building

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Liability for the acts of the minor or of the person interdicted

Current regulation

The guiding principle in the field of civil liability is the liability for one's own conduct (3rd section, Chapter IV of the Civil code), according to which every person is held liable for her own acts. As it was stated under the former Civil code, this principle is not always sufficient, since the total or partial insolvability of the one that has to repair the damage could prevent the establishment of civil liability. This is the reason for which, in the aim of protecting the legitimate interests of the persons, the legislator has regulated, besides the direct liability for one's own act, another liability, indirect, complementary, that belongs to another person. This latter liability is added to and completes the liability of the direct author of the damage (Stătescu C., (1984) :6-19) All these considerations are valid and applicable also to the new regulation of the Civil code.

The 1865 Civil code regulated the parental liability for the damage caused by their minor children, the employer's liability for the actions of his employees, the teachers and craftsmen liability for the damages caused by their pupils, namely minor apprentices under their supervision. These cases of liability are integrated in the liability for the actions of others or vicarious liability, regarded as a species of civil non-contractual liability. The aforementioned special cases of liability were considered (Costin M.., (1980) :434) derogatory from the reference law on the matter and taking the form of presumptions of liability assigned by the law to certain persons (parents, teachers, craftsmen, employers) for the harmful deeds of others (children, pupils, apprentices, employees) that are under their supervision, education, guidance or at their disposal.

The main novelty brought by the Civil code, in relationship to the analyzed text are the extension of the range of persons for the actions of which others are imposed liability, the extension of the range of persons that are imposed liability and the alteration of the ground of the liability for the actions of the minor (bearing in mind that in the majority opinion, under the 1865 Civil code, the parental liability for the actions of their children was regarded as a subjective liability).

The liability for the actions of the minor or of the person interdicted is the first (in the order set by the legal text) of the cases of liability for the actions of others regulated by the Civil code. Article 1372 contains the field of application of the rules of liability for the actions of

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minors or of the persons interdicted; the range of responsible persons; the special conditions of liability and the ground of this type of liability. This legal text is enforceable to minors and persons judicially interdicted. The point of convergence for both situations mentioned in 1372 is the impossibility to manage one's own interests due to lack of legal capacity of exercise or reduced legal capacity of exercise ("Full capacity of exercise begins at the age of 18" – Article 38 paragraphs 1 and 2 Civil code; the person judicially interdicted is "the person that does not have the necessary discernment to manage his interests because of mental alienation or debility" – Article 164 paragraph 1 Civil code).

Article 1372 Civil code provides a general principle of liability for the damages caused by the wrongful actions of the persons presumed by law as having no discernment in non-contractual matters, as well as of the minors aged between 14 and 18 years(Costin M.., (1980) :470).

Field of application

The new Civil code provides that the liability for the damage caused to another person by a minor or a person interdicted is imputed to the person compelled to surveillance, either on the ground of law, a contract, or a court decision (Article 1372 paragraph 1). It results that the field of application of these provisions includes the minors and persons interdicted. In the case of the adult person interdicted, the liability of another person is not imputed on the ground of this article. The legal enumeration of the grounds of liability – law, contract, court decision – entitles the conclusion that the range of persons for the actions of which others are imposed liability, on grounds of Article 1372 Civil code, is wider than the one established within the former Civil code (when it regarded minors, pupils and apprentices).

Persons for the actions of which others are imposed liability

The New Civil code establishes liability for *minors*, namely for the persons who have not yet reached 18, and thus, do not have full capacity of exercise (Article 38 paragraph 2 Civil code: "The person reaches the age of majority at 18"). Within the area of liability, for the first legal hypothesis, are included the minors, namely the persons who, given the fact of biological age, require surveillance and guidance, firstly in the family space. The provisions of Article 1372 Civil code are enforceable in

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the case of the minor that benefits from parental care (Al. Bacaci, V.-C. Dumitrache, C.C. Hageanu (2009) :299; Anitei N., C., (2012) :217-238), as well as the minor that is protected through tutorship (O. Ungureanu, C. Jugastru, (2007) :230-231). This case of liability refers to both the minor born within the natural family, as well as to the adopted one (C.C. Hageanu (2012) :240-243; Anitei N., C., (2012) :217-223). In two situations the liability provided in Article 1372 Civil code does not occur: in the case of the minor that gets married before reaching 18 (he is no longer under parental authority because he gains full capacity of exercise) and in that of the minor that gains advanced capacity of exercise, according to Article 40 Civil code. In addition to this, the minor heard by the guardianship court, after reaching 16, can gain for solid motives, full capacity of exercise.

The terminology of the new Romanian Civil code is not unitary. Alternatively, the notions of "minor", "child" and "minor child" are used, without existing an identity. The term "minor" is wider in meaning than "child", being obvious that the terminological unification (Al. Bacaci, V.-C. Dumitrache, C.C. Hageanu (2009) :307; Anitei N., C., (2012) : 238) is imposed *de lege ferenda* especially for the delimitation of the field of application of the parental authority and alternative protection. We mention that minority, namely the statute of person interdicted, must exist at the moment the act was committed, even if afterwards, the person reached the age of majority or the interdiction was lifted.

The second legal hypothesis of liability for the actions of other is represented by the liability for *the person judicially interdicted (*A. Circa (2009) :410). The judicial interdiction represents the means of protection of the person, who lacks discernment because of mental alienation or debility, and results in her deprivation of capacity of exercise and the establishment of tutorship (O. Ungureanu, C. Munteanu, (2013) :264). The legitimacy of the liability imposed to another person consists of the absence of the discernment, due to mental alienation or debility (Article 164 Civil code). Under the incidence of this case of liability we can find the persons above the age of majority that were appointed tutors of the persons interdicted, but not the adults without discernment that are not interdicted[2]. The critic to this legal provision, already expressed in the doctrine, consists of the

[2] The minor that is under parental care at the moment the interdiction is issued, remains under this care until he reaches the age of majority, without being appointed a tutor (Article 176 paragraph 1 Civil code).

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fact that there exists the possibility of the person not interdicted (but placed under the supervision of a medical unite), of causing damage during the time when the procedure of the interdiction takes place. It was proposed the adoption as criterion, of the fact that the sick acted without discernment due to the mental disease, even if the procedure of the interdiction (which is complex and takes a lot of time) was not completed (L.R. Boilă (2013) :257-258).

Persons that are imposed liability

The range of those that are imputed liability on the grounds of the aforementioned text is wider than the previous regulation. All the persons that have the obligation of surveillance of a minor or person interdicted are bound to repair the damage caused by the latter. Article 1372, gives examples of the following categories of persons: the natural parents[3] (Article 483 and the followings Civil code); the adoptive parents[4] (Article 451 and the followings Civil code); the tutor of the minor (Article 110 Civil code); the tutor of the person interdicted (Article 164 Civil code); the teachers (P. Vasilescu, (2012) :643), craftsmen (those that teach the apprentices[5] how to practice a craft); the reeducation centers and penitentiaries in which minor felons are admitted (L. Pop (2010) :168); the specialized sanitary unities (psychiatric hospitals) in which mentally ill patients are hospitalized; the natural and physical persons hired for assuring supervision, guard, care of minors or mentally ill patients; the school camps; the persons that are entrusted with minors în urma dispunerii măsurii plasamentului familial, plasamentului în regim de urgență sau supravegherii specializate, (according to Law No.272/2004 on the protection and promotion of children rights).

In the case of entrusting/re-entrusting the minor to one of his parents through a court decision following a decision of divorce or dissolution of marriage and in that of entrusting the child from outside the marriage, the liability for the damages caused by the children subsists for both parents. In general, the parental authority after the divorce is

[3] "Both parents respond equally for the upbringing of their minor children" (Article 483 paragraph 3 Civil code); "The parental authority is exercised until the child gains full capacity of exercise" (Article 484 Civil code).

[4] "The adopter has in relation to the adopted child the rights and duties of the parent in relation to his natural child" (Article 471 paragraph 1 Civil code).

[5] The apprentice is the person that learns a craft under the guidance of a craftsman.

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exercised by both parents (even in case of separate homes), which means that the important decisions regarding the child's upbringing and education have to be taken with mutual consent. In the events of misunderstandings between them, these are solved according to Article 486 Civil code by the guardianship court. The procedure includes the hearing of parents, the psychosocial investigation and the hearing of the child, according to Article 264 Civil code (C.C. Hageanu (2012) :173-174; Anitei N., C., (2012) :217-238).

The situations of exception, when the parental authority is exercised by only one of the parents, are expressly mentioned in Articles 398-399 Civil code. Furthermore, Article 399 Civil code mentions the conditions in which the parental authority is exercised by other persons than the parents. In what concerns the responsible person, the text makes no distinction, so that both physical and natural persons are liable.

The new Civil code follows in what concerns the range of persons that are imputed liability, the provisions of the German Civil code. According to the provisions of Article 832 of the BGB, liability is assigned to any person that, on the ground of the law or a contract, has the obligation to supervise another, who due to minority or mental or psychical state, lacks discernment and needs to be supervised (L. Pop, I.-F. Popa, S.I. Vidu, (2012) :469).

Ground of liability

The differences of regulation, in comparison with the 1865 Civil code, are notable. Under the former code, the majority believed that Article 1000 paragraph 2, namely Article 1000 paragraphs 4-5 regulated cases of liability grounded on fault (M. Eliescu, (1972) :255-256; C. Stătescu, (2009) :26-32; 101-102). A few promoted the idea of a liability free of fault of the parents for the damages caused by their minor children, a liability based on the idea of guarantee, that has as a support the social risk or social solidarity (L. Pop, G. Hoffer (1982) : 45-49). Within the judicial practice it was seen a greater assessment of the faulty conduct of parents and an abstract interpretation of the condition of cohabitation, which led to the manifestation of rather a presumption of liability of the parents than a traditional presumption of fault (L.R. Boilă (2009) : 227).

In consequence, we can notice the fact that the new Civil code establishes the main, autonomous, direct liability of the persons that have

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the duty to supervise the minors and persons interdicted. The obligation of compensation is grounded on the breach of the obligation of supervision of the persons in question (the obligation of supervision established taking into consideration the biological age, namely the deteriorated mental state).

The old legislation, based on fault, is considered outdated, in clear contradiction with the realities of social life. The new regulation is a slim legal construction, more dynamic and better anchored in the realities of the modern society.(L.R. Boilă (2012) : 68-77).

On the other hand, there is a significant aggravation of liability of those that supervise the minors and the persons interdicted, as the obligation of compensation exists in all cases only on the ground of the obligation of supervision. The exceptions regard the causes mentioned in Article 1372 paragraph 3 Civil code.(L.R. Boilă (2012) :252).

Indeed, the objective grounding of the liability for minors (S. Neculaescu (2010) :48-50) and for the persons judicially interdicted represents a modality of superior, real and efficient protection of the victim of the damage.

Conditions of liability

General conditions. Article 1372 Civil code establishes as general conditions, the damage, the wrongful act, the causal relationship between the wrongful act and the damage. The text does not mention the guilt or fault of the liable person, and this transposes the discussion from the subjective frame into the causal one. The liability of another person is imposed every time she is compelled to supervise the minor or the person interdicted. The obligation of supervision mentioned in Article 1372 paragraph 1 Civil code is imputed to the one appointed by the law, contract or court decision. The parents will not be held liable if they prove that the obligation of surveillance was imposed to another person (physical or natural) at the moment when the wrongful act occurred. The new code does not provide the condition of guilt, it only enunciates the liability of all those that have the obligation of supervision. Thus, the objective liability for the damages caused by minors or persons interdicted is established. At the ground of the liability for the damages caused by minors or persons interdicted, lays the (social) risk linked to the exercise of authority (imposed by law, contract or court decision) over another person. In concrete, the peril is in relationship with the manner of exercise

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of parental authority, tutorship of the minor, tutorship of the person interdicted etc. another argument for the objective fundament of liability is the manner in which this liability can be removed. The exoneration from liability is not in relationship with the guilt of the liable one but with the proof of the foreign cause, according to Article 1372 paragraph 3 Civil code (P. Vasilescu (2012) :644).

Special conditions. According to the hypothesis discussed, the special conditions are the minority (namely, the legal situation of interdicted person) and the existence of the obligation of surveillance (imputed to the liable person) at the moment of the occurrence of the wrongful act. In what concerns the minor, it is no longer required, unlike the previous regulation, the condition of community of living spaces with the parents (Article 1000 paragraph 2 of the 1865 Civil code). Given the frequent realities, the condition of community of living spaces (L.R. Boilă, (2011) :132-155) was regarded by the courts rather in the legal meaning of cohabitation than in the given, material meaning (for example, it was believed that the requirement of community of living spaces did not end when the minor was admitted to a center of reeducation or entrusted to the other parent in case of divorce)[6].

Reparation of damage in special cases. Exonerations. The regress action

The author of the deed does not have discernment. If the author of the deed does not have discernment, (and thus he is not held liable for his own act), liability is imposed to another person according to Article 1372 paragraph 2 Civil code. This text is correlated with Article 1368 that stipulates the subsidiary obligation of compensation of the victim. If the author of the deed (minor or person interdicted) will be compelled to pay an equitable compensation to the victim, this will be ascertained according to the patrimonial state of the parties. In these circumstances, the author will only be compelled to payment if the liability of the supervising person cannot be imposed.

[6] See *Rapport d'information fait au nom de la Commission des lois constitutionnelles, de législatif, du suffrage universel, du Règlement et d'administration générale (1) par le groupe de travail (2) relatif à la responsabilité civile*, p. 58 (The report No. 558 was registered at the Senate at 15 July 2009 and can be consulted on the webpage of the French Senate, http://www.senat.fr/leg/ppl09-657.html (page accessed at 3 February 2011- page accessed at 10 April 2011).

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Cases of exoneration from liability. The exoneration from liability interferes if the one compelled to surveillance proves that he could not prevent the wrongful deed. In the case of parents and tutors, the proof consists of demonstrating a different cause than the manner in which they fulfilled their obligations linked to the exercise of parental authority. Article 1372 paragraph 3 identifies the ground of the liability for the actions of the minor and interdicted person. Thus, the objective liability, without guilt, is imputed to those that have the obligation of supervision of the minors and persons interdicted (L. Pop, (2010) :168-169). The only manner in which the liable one can exonerate from liability is the proof of the fact that he could not prevent the harmful deed. At first sight, it was outlined that the wording he could not "prevent the harmful deed" induces the idea that it is necessary the proof of a negative fact. In reality, "it is necessary a positive proof, meaning that it needs do be proved the foreign cause that placed the liable person in the situation of not being able to prevent the harmful deed. The foreign cause obviously consists of the force majeure, the victim's act and the third party's act. Thus, the exoneration from liability appears as a possibility that operates on the field of causality; and the causal relationship is an objective condition of civil liability" (L. Pop, (2010) :169).

The regress. It is regulated in Article 1384 Civil code that corroborates with Article 1366. Once the damage is repaired by the liable person, her right to regress against the author of the wrongful act is born. "That who is liable for the action of other can regress against the one that caused the damage, with the exception of the case when the latter is not responsible for the damaged cause" (Article 1384 paragraph 1 Civil code).

The employers liability for the actions of their employees Terminology. Conditions of liability

"The employer is compelled to repair the damage caused by his employees every time the act committed by them, is in connection to the attributions or scope of the functions entrusted". "An employer is the person that on grounds of a contract or the law, exercises the direction, supervision and control of the one that fulfills certain functions or tasks in the interest of the first or of another". The text embodies the definition of the employer and the conditions of his liability for the wrongful actions of his employees.

The employer is the (physical or natural) person that exercises the direction, supervision and control of the employee. *The employee* is the

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person that fulfills (under the direction, supervision and control of the employer) certain functions or tasks in the interest of the employer or of another person. The 1865 Civil code did not define these terms, using an archaic expression: "masters" and "servants".

The new Civil code brings a series of alterations to the matter of the liability of the employer for the damages caused by his employee. The new code defines the employer, allows the clear detachment of the definition of the employee, provides the sources of subordination, states a liability that is not conditioned by guilt (neither in the case of the employer nor in that of the employee). The special conditions did not suffer alterations, and neither did the ground of liability. We still talk about an objective liability having as support the idea of guarantee. We are referring only to the non-contractual liability, not to the performance of the obligations resulted from the contract. For the latter, Article 1519 Civil code operates: "If the parties do not agree otherwise, the debtor is liable for the damage caused by the fault of the person he uses for the performance of his contractual obligations".

The conditions of liability of employers for the actions of their employees. The general conditions are, as it results from Article 1373 paragraph 1 Civil code, the damage, the employee's wrongful act and the causal relationship between the wrongful act and the damage. We make a mention in what concerns the employee's guilt. Under the 1865 Civil code, the majority Romanian doctrine and jurisprudence linked the employer's liability to the employee's guilt (M. Eliescu, (1972) :293). Separately, it was stated that the three conditions – damage, wrongful act and causal relationship – are enough and must be met cumulatively (I.M. Anghel, Fr. Deak, M.F. Popa, (1970) :167-169; D. Chirică (1983) :29) . The new Civil code does not impose the requirement of the employee's guilt (E. Lipcanu, (1997) :26-27). The doctrine envisages a thorough and critical analysis of the texts of the new code, with a detailed presentation of the arguments for which the employee's guilt was not included among the conditions of the employer's liability (E. Lipcanu, (2010) :35-37).

If the employee is a minor, the liable person is the employer. Also, the employer that is the parent of the minor-employee that committed the harmful deed, is held liable for the damage but the victim has the right to choose the ground of liability (Article 1374 paragraph 2 Civil code).

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The special conditions of the employer's liability are the subordination relationship (a) and the occurrence of the act during the performance of the attributions or tasks entrusted (b).

a. The content of the *subordination* relationship is deduced from the definition of the employer. The subordination relationship represents, on the one hand the employer's authority, and on the other hand the employee's dependence (J. Flour, J.-L. Aubert, E. Savaux (2009) :246), in a correlation that flows from the contract or law. Without being the sole requirement of the existence of subordination, the dependence is essential in characterizing the relationship employer-employee (J. Flour, J.-L. Aubert, E. Savaux (2009) :246). On the ground of dependence, the employee fulfills the dispositions, orders, instructions of the employer, performing the attributions or tasks entrusted by the latter. The ground of the employer's prerogatives and employee's dependence is of contractual or legal nature. The subordination relationship has to exist at the moment when the harmful deed was committed. If at that time the quality of employee had ended, the employer's liability will not be held, if the attributes peculiar to this link were transferred, even temporary, to another person, liability will be imputed to the employer that effectively exercises that attributes. In this last case there apparently exists a duality of employers, but the cumulus of authorities of employers is not allowed (Ph. le Tourneau, L. Cadiet (1998) :849). It is provided that the entire conduct of the employee is performed in the interest of the employer or in that of another. (E. Lipcanu, (2010) :32).

b. *The occurrence of the act during the performance of the attributions or tasks entrusted* is the second condition of the employer's liability. The first mention is that, in a correct manner, the legislator imposed the condition of the link between the act and the employee's attributions or tasks. If the act has no connection to the work, the liability of the employer is not to be brought into question (for example, the action occurs during the employee's leave) (C. Stătescu, C. Bîrsan (2008) :257). The second mention regards the meaning of the current Civil code regulation. The wording the legislator resorted to indicates the establishment of the current doctrinal and jurisprudential opinion, namely the extensive interpretation of the condition of the occurrence of the act "within the entrusted tasks". This condition of the employer's liability results from two texts: "the committed act is connected to the attributions or scope of the entrusted tasks" (Article 1373 paragraph 1); the employer will not be

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held liable if the victim knew or could have learned about the fact that the employee's action had no "connection to the attributions or scope of the entrusted tasks" (Article 1373 paragraph 3). The diversity of interpretations has given birth, under the old regulation, to the restrictive conception (the wrongful deed did not exceed the limits of the entrusted task) and the extensive conception (liability is held even if the employers abused his position or his position was an occasion for committing the act). The employer is liable also when the employee exceeds the limits of the entrusted tasks, as well as when it exercises his position abusively – if the action is in connection to his attributions or entrusted tasks. The regulation of the extensive meaning of the second condition of liability requires maximum diligence in order for excesses not to occur (C. Stătescu, C. Bîrsan (2008) :258).

The employer will not be imputed liability if he proves that the victims knew, or depending on the circumstances, could have learned about the fact that, at the moment of the deed, the employee's action had no connection to the attributions or scope of the entrusted tasks. In what concerns the content of paragraph 3 of Article 1373, it was mentioned that the new Civil code introduces a criterion of differentiation between the situations in which the employer responds and the cases in which the employer is not held liable for the actions of the employees that act abusively or exceed the limits of their attributions or entrusted functions. If the victim believes that the employee acts under the guidance, direction and control of the employer, within the limits of the function and in his interest, liability will be imputed to the employer. Otherwise, when the employer proves that the victim knew or could have learned about the fact that the employee acted with no connection to the attributions or entrusted tasks, the liability settled by Article 1373 Civil code, will not be brought about. The resort to the ideas of "appearance" and "good-faith" lays at the basis of settling the problem of the employer's liability, in terms of the last paragraph of Article 1373 (L. Pop, I.-F. Popa, S.I. Vidu, (2012) :482-484).

This is the current orientation of the French doctrine and jurisprudence, which uses the theory of appearance and the notion of "legitimate belief" in order to circumscribe in reasonable limits the field of the employer's liability (C. Stătescu, C. Bîrsan (2008) :484).

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The ground of damage reparation according to Article 1373 Civil code

The ground of the employer's liability for the actions of his employees is an objective one. At the basis of the employer liability lays the objective guarantee, based on the risk of activity, which can be associated with the idea of equity. The employer has the obligation to ensure everybody security in what concerns his activity, to which he associates employees. Through the use of employees in performing the activities in his interest or in that of another, the employer introduces in the society the peril of causing damage to other persons due to the conduct of his employee (L. Pop, (2010) :179; E. Lipcanu, (1999) :39).

The mechanism of damage reparation

The victim has to possibility of obtaining satisfaction either from the employer (Article 1373 Civil code), or from the employee (Article 1357), or from both, in solidar (Article 1373 corroborated with Article 1357 Civil code).

Repairing the damage caused by his employee, the employer can return against him on ground of Article 1384. This is natural as long as the regulation of the employer liability has a role of protecting the victim.

When the conditions for the liability of another person having the obligation of supervising the minor, are met, the parents are no longer held liable. If the minor was also an employee at the moment of committing the act, the rules of the employer liability will be applied with priority. The victim of the damage does not have the option of the ground of liability if the same person meets both the quality of employer and that of parent of the minor author of the wrongful act (L. Pop, I.-F. Popa, S.I. Vidu, (2012) :488-491).

Damage within liability for animals/ goods in general/ ruin of building

Liability for animals (L. Pop, I.-F. Popa, S.I. Vidu, (2012) :662-663; P. Vasilescu (2012) :662-663).

Center of the matter. Field of application. The matter of the liability for the animals we keep under our guard has not suffered substantial alteration within the new Civil code in comparison to the 1865 Civil code. We are in the presence of an objective liability imputed to the person that has the legal guardianship of the animal. The new code, unlike the old

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regulation, expressly states the fact that liability for animals is independent of any fault.

The responsible person is, firstly, the owner of the animal, based on the fact that he disposes of the prerogatives of legal guardianship: power of control and surveillance of the animal- prerogatives which he freely exercises. The second category of persons that are imposed liability on grounds of Article 1375 Civil code is represented by those that received the legal guardianship from the owner (for example the lessee or tenant). What is novel is the legal definition of legal guardianship, from this point of view the new regulation being superior to the previous one. *The legal guardianship* belongs to the owner or person which, on the grounds of a legal provision, a contract or only in fact, freely exercises the control and surveillance over the animal and serves himself from it in his own interest. The legal guardianship must not be confused with the material guardianship. The material guardian is responsible for his own conduct on the grounds of Article 1357 Civil code (for example, the shepherd, the zootechnician- persons that don't use the animals in their own interest (I. Rosetti Bălănescu, Al. Băicoianu (1943) :101-102)). The material guardianship does not imply the right of use of the animal. If the animal was stolen, the liability for the damages caused by it, is imputed to the usurper. He is the one that keeps the power of direction, power which is not confused with the material guardianship of the animal. If the animal was lost, the liability belongs to the one that found it if he also keeps it in his effective possession.

The animals for which liability is imposed are the animals that can be supervised or taken in a certain form (Ph. Malaurie, L. Aynès, Ph. Stoffel-Munck, (2013) :91) domestic animals no matter the species; wild animals in captivity, in circuses, zoos, nature reserves or closed hunting parks. For the wild animals on the loose, the authority provided by the special law[7] is held liable.

Ground of liability. The liability for "the action" of the animal is objective, that is "free of any fault", as it states Article 1375 Civil code. The responsible person is compelled to ensure others for the behavior of the animal; the guarantee is also associated with the risk of activity. It is a liability of full right, the direction and control characteristic to the legal

[7] Law on hunting and the protection of the cynegetic estate No. 407/2006 (Of. M. No. 944/22.11.2006) embodies provisions on the fauna of cynegetic interest.

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guardianship offering freedom of action to the keeper. That for which the animal is a source of profit or a source of recreation bears also the harmful results of it behavior. The legal guardian is exonerated from liability if he proves the force majeure, the third party's act for which the legal guardian is not responsible, or the victim's act (C. Stătescu, C. Bîrsan (2008) :280).

However, the fortuitous case does not set aside the liability of the legal guardian. The new Civil code expressly provides the free of fault ground of liability, while the former code did not[8].

The victim of the damage will receive compensation if he proves: the damage, the causal relationship between the "behavior" of the animal and the damage and the quality of legal guardian of the defendant.

The conditions and effects of the liability are unaltered (from the former regulation), and the legal guard benefits of a legal definition. The victims will receive satisfaction if he proves: the damage, the causal relationship between the "behavior" of the animal and the damage, as well as the quality of legal guardian of the defendant.

The prerogatives of the legal guardianship are characterized by the power of direction, control and supervision, freely, in one's own interest, of that animal (Ph. Malaurie, L. Aynès, Ph. Stoffel-Munck, (2013) :91) [9], which result from Article 1377 Civil code.

The reparation of the damage will be requested from the legal guardian on grounds of Article 1375 or directly to the material guardian if the conditions of Article 1357 Civil code are met. This latter text grounds also the regress of the legal guardian against the material one.

Liability for damages caused by goods in general

Center of the matter. Representing a bone of contention for the doctrinaires and a source of jurisprudential hesitations, the liability for goods continues to remain under attention, especially because, along with the perennial aspects (which are reflected within the new civil regulation), it brings about complex problems and also reflects profound socio-economic changes. The new Civil code provides in Article 1376 paragraph 1, with a value of principle, the liability for damages caused by goods. The

[8] Even if an express provision did not exist, the majority doctrine and the jurisprudence embraced the idea of the objective ground of the liability for animals.

[9] See Cour de Cassation française, deuxième chambe civile, dec. of 8 July 1970, in *Bulletin Civil,* nº241.

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novelties can be grasped at the level of the definition of the legal guard of the good and at that of the express mentions regarding the vehicles collision.

Article 1376 Civil code establishes the general principle of the liability for the goods we keep under our guard. Along with this principle, a series of special regimes of responsibility take into consideration the liability for damages generated by defective products, the liability for nuclear damages, the liability for ecological accidents etc. The special regimes of liability maintain the same idea of objective liability, but this time, having as fundament the risk of exploration of certain goods within certain unlawful activities that present a high degree of peril.

According to Article 1376 paragraph 1, liability is imposed for the *good* kept under guard. The meaning of the word "good" remains the one known, until the entering into force of the new Code. No difference is made between the movable, immovable, dangerous and non-dangerous goods (I.M. Anghel, Fr. Deak, M.F. Popa, (1970) :189; N.D. Ghimpa, T. Munteanu (1967) :107-113) , goods operated by human force or that move by their own force (Ph. Malaurie, L. Aynès, Ph. Stoffel-Munck, (2013) :97) etc. In relation to the provisions of principle character of Article 1376 Civil code, we remark that they do not apply to goods that cannot become an object of legal guard, being impossible to own them (the air, natural radiations, sun light) and neither to those categories of goods that have a special regulation. It is the case of animals (Article 1375 Civil code); ruin of building (Article 1378 Civil code); goods that generated damages by dropping or throwing from a building (Article 1379 Civil code); nuclear installations (Law No.111/1996 on the safety performance of the nuclear activity, altered); defective products (Law No. 240/2004 on the liability of manufacturers for the damages caused by defective products).

The conditions of liability for goods in general. Effects. The general conditions of the liability for goods are the damage and the causal relationship between the "action" of the good and the damage. As a *special condition,* it is required that the good is kept within the legal guard of the one who is asked for reparation. Until proven otherwise, the presumption that the guardianship belongs to the owner, possessor or holder of another real right, operates.

As an *effect* of the meeting of the mentioned conditions, the victim can bring an action for reparation both against the legal guardian of the

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good and against the material guardian, if the good is in the hands of another person at the moment the damage occurred. After the compensation is paid, the legal guardian may resort to a regress action against the material guardian if the requirements of Article 1357 Civil code are met. By proving the force majeure, the act of a third or of the victim, the legal guardian will be free of liability.

The ground of liability is free of any fault, the liability for goods being a liability of full right, objective, based on the risk "of activity seen in itself" (M. Eliescu, (1972) :374). That who enlarges his activity by using goods, introduces in the society an increased danger of damage. It is, as it was outlined, "the risk of activity that the guardian […] has to bear, because the damage was caused by the extension of his own activity using goods" (M. Eliescu, (1972) :374; A. Ionaşcu, M. Mureşan, M. Costin, V. Ursa, G. Chivu, M. Banciu (1978) :103-108). As it was rightfully stated, the theory of the risk of activity must necessarily be related to the legal guardianship, "because only with its help one can ascertain the limits within which is equitable that the defendant bears the risk occurred. This is all the more true as sometimes it may happen that the one that moved the good had only the mere material guardianship of it" (I. Lulă, (1997) :292-293).

Under the 1865 Civil code, the discussion on the ground of the liability for goods in general, brought into opposition on the one hand, the principle of the liability on the ground of fault, and on the other hand, grounds free of fault. *The conception of the subjective liability* regarded fault as a condition of any form of liability, including that for goods. In a first version, an absolute presumption of fault of the good's legal guardian was established, and it could only be set aside by proving the force majeure or the victim's action (T. Ionaşcu, E. A. Barasch, (1972) :587). Another version of the subjective conception was the theory of fault in guarding the good, according to which Article 1000 paragraph 1 of the Civil code regulated a legal obligation of result of guardianship of the good, on the basis of which the owner had to prevent it from causing damage to other persons (.H., L. Mazeaud, J. Mazeaud, (1969) :500-501). If the force majeure, the action of other or of the victim were proved, the legal guardian was exonerated from liability. The *objective opinion* promoted the idea that the liability for goods was free of proved or presumed fault. Within the risk theory, that who benefits from the fruition of a good also assumes the risk to bear the reparation of the possible damages caused by

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it to another. However, this conception could not explain the liability for goods in certain situations, such as in the case of vehicles collision with unknown causes. Another version of the objective conception – the presumption of liability – was subject to critics, nevertheless, its practical value was recognized (liability, as obligation of reparation, cannot be presumed: it either exists or it does not). Certain authors opted for the idea of guarantee concerning the risk of activity (Article 1000 paragraph 1 provided the obligation to ensure others with the reparation of the damages caused by the goods kept under their guard (L. Pop, (2010) :301-302; I. Lula, (1996) :287-293)), other authors preferred the idea of guarantee engrafted on the presumed fault (C. Stătescu, C. Bîrsan (2008) :302), with the argument that the mixed, subjective-objective ground, is integrated in the system of the subjective civil liability of the 1865 Civil code.

In the case of vehicle collision or other similar cases, the provisions of the first paragraph of Article 1376 will apply. When each legal guardian of the vehicle collided is simultaneously a victim, he will repair the damage caused to the other legal guardian. The solution was supported within the doctrine and the practice of the courts from our country, being stipulated in the new Civil code. In such cases, the obligation of reparation of all damages will be imputed only to the one whose fault meets, in relation to the others, the conditions of the force majeure.

Guard of the good/ guard of the animal – special condition of liability

The guard of the good or animal belongs to the owner that, on the ground of a legal provision, a contract or just in fact, freely exercises the control and supervision of the animal or good and serves his own purpose with it. It results that the *legal guardian* is the one that has the power of command over the good in the moment when the damage occurred, the one that has the authority which he freely exercises even just in fact, in the absence of a legal relationship. In order for the liability to be imposed it is sufficient that the legal guardian has the intellectual direction of the good, even if he does not have the material, direct contact with it. The new code states, as a ground of the legal guard (R. Baciu (2000) :30-36), *the criterion of intellectual direction,* namely "the power of direction, control and supervision which a person can freely exercise over a good or an animal" ((I.M. Anghel, Fr. Deak, M.F. Popa, (1970) :190-196). Thus, it is explained

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the liability imputed to the persons that have illegitimately acquired authority over the good[10], the liability of the holder of the possession of the good[11], the liability of the holders of the dismemberments of property (usufruct, use, homestead, superficies), of the accessory real rights, co-owners and part owners ((F. Deak, (1966) :42; I. Lulă (I), Ş. Beligrădeanu (1981) :15-16; 17-20) as well as the split of legal guard[12]. The intellectual direction of the good represents the criterion used by the Romanian jurisprudence, however, over time other criteria were also used (risk-profit, legal direction) (Gh. Tomsa, (1973) :31-33; I Lula (1996) :18-20).

The new Civil code stipulates that *the legal guardianship is exercised in the interest of the legal guardian.* Frequently, the legal guard coincides with the material guard, but it is also possible that the material guardian is another person, for example the precarious keeper. *The material guardianship* consists of the power of decision, control, supervision exercised over the good by material contact, under the authority of the legal guardian. We mention that, most of the times, the legal guardian of the good is the same with the material guardian. The material guardian is held liable on grounds of Article 1357 Civil code, while in the case of the legal guardian liability is based on Article 1376 Civil code.

Liability for the ruin of building

The new Civil code regulates the liability for the ruin of building in a similar way to that of the 1865 Civil code (A. Tamba (2007) :73). In the

[10] In favor of the owner operates the presumption that he is the legal guardian of the good, since the right to property reunites all three attributes – possession, use and disposition. He can prove that, at the moment of the damage, the good was located under the legitimate or non-legitimate legal guard of another person. The quality of guardian does not end if the good is not used, is lost or abandoned as long as another person did not acquire power to freely exercise the direction, control and supervision of it.

[11] Trib. Supr., s. civ., dec. No. 2199/8 October 1974, in *Culegere de decizii ale Tribunalului Suprem* [Collection of decisions of the Supreme Tribunal], 1974, p. 146.

[12] The legal guard of the good can be transmited through legal acts: lease, loan, transport, enterprise, etc. Thus, the precarious keeper will exercise the control, direction and supervision of the good, under the authority of the legal guardian. In such situations a distinction is drawn between the legal guard of the structure of the good that belongs to the owner or possessor, and the guard of usage, for which the precarious keeper is responsible. It results that the guardianship of the good is split between the two. The obligation of reparation is imputed to the owner or possessor – if the damage is caused by a defect of structure – and the precarious keeper – if at the origin of the damage rests the manner of use of the good.

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same manner, it does not define the building, but only the ruin of building and establishes an objective liability of the owner. Article 1378 regulates a direct, special liability, derogatory from the provisions of Article 1376 Civil code.

The terms "building" and "construction of any type" refer to the same reality. By *building* (C. Stătescu, C. Bîrsan (2008) :281) we understand any work performed through the incorporation of certain material into the soil, work that thus becomes, for long, an immovable by its nature (a house, an addict, a dam). A land that slips, the rocks that fall from a career, a fire, the branches falling from the trees, the ornaments that detach from the building for other reasons than the lack of maintenance or a construction defect, arenot considered buildings (Ph. Malaurie, L. Aynès, Ph. Stoffel-Munck, (2013) :89).

The ruin of building means the demolition of the construction or the disintegration of the material that it is made of, both involuntary. The cause of the damage is the ruin of building. In order to invoke the liability grounded on Article 1378 Civil code it is necessary to find at the origin of the ruin of building the lack of maintenance or a construction defect. Any other modality of causing the damage – for instance, dropping or throwing things out of the building – is not subject to Article 1378 Civil code.

The responsible person is the current owner of the building. He is liable even if the use of the building is entrusted to another person, on contractual basis (lease, loan) or on the ground of a real right (usufruct, homestead).

The conditions of liability implies the proof of the damage, the ruin of building due to the lack of maintenance or construction defects and the causal relationship between the damage and the ruin of the building. The proof of these elements devolves upon the victim and can be done by any means of evidence. The owner is exonerated from liability if he proves the foreign causes mentioned in Article 1380 Civil code.

Other cases of liability for damage

These situations of liability are regulated distinctly from the ruin of building, as they have a different legal regime. The damage caused to another person by dropping or throwing a good from a construction imposes reparation to that who occupies the building, even without a title. The victim has the right of option if, simultaneously, the conditions

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required by the liability for goods are also met. If liability is imputed on grounds of Article 1378 Civil code, the cases of exoneration provided by Article 1380 are applicable. If the conditions provided by Article 1379 paragraph 1 and the conditions for the liability for damages caused by goods are simultaneously met, the option belongs to the victim for one or the other legal grounds.

Exonerations

In order to be safe from liability, the owner of the animal or that who uses it, the legal guardian of the good, the owner of the building or that who occupies it even without a title, can invoke certain elements extrinsic to the good, but that were decisive in producing the damage: the action of the victim, the action of the third party for which the owner is not responsible, the force majeure (but not the fortuitous case).

The new Civil code mentions that, in general, one cannot obtain reparation for the damage caused by the one that disinterestedly helped him or by the good, animal or building which he used costless. The costless and voluntary transportation of persons (known under the name of "hitch-hiking") rests among the situations referred to, but within the judicial practice other cases when the victim was harmed were taken into consideration as well (for example, the damage caused to the victim during some free tennis lessons or the costless use of a stairway to harvest fruits from a tree) (Ph. Malaurie, L. Aynès, Ph. Stoffel-Munck, (2013) :110). The victim will not be able to receive compensation unless she proves the intention or serious fault of that responsible. Under the former regulation, discussions have particularly regarded the possibility of the person that benefited from a voluntary and free service to obtain the reparation of the damage she suffered, with the differentiation of two situations. The existence of a contract between the victim and the legal guardian of the good, animal or building, draws the rules governing the contractual liability (first situation). In the absence of a contractual relationship (second situation) two opinions were expressed. According to the first opinion, the victim can obtain compensation on the ground on the liability for one's own conduct with the proof of the legal guardian's fault. The liability on the ground of the liability for goods in general, was considered burdensome for the legal guardian animated by the desire to do a disinterested service. According to the second opinion, the liability of the legal guardian of the vehicle is imposed on the basis of the rules of

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liability for goods, in general (Article 1000 paragraph 1 of the former 1865 Civil code) . Stătescu, C. Bîrsan (2008) :296-298). It was stated that the simple fact that the victim benefited from a free service does not justify the withdrawal of the right to claim compensation on the mentioned ground.

References

I., M., Anghel, Fr. Deak, M.F. Popa, (1970), *Raspunderea civila,* Editura Stiintifica, Bucuresti

N., C., Anitei, (2012), Dreptul familiei, [Family law], Hamnagiu.

Al. Bacaci, V.-C. Dumitrache, C.C. Hageanu, (2009), *Dreptul familiei (Family law),* Editura C.H. Beck, Bucharest.

R. Baciu, (2000), *Rapunderea civila delictuala pentru prejudiciile cauzate de fapta lucrului (Civil non-contractual liability for the damages caused by the action of the good),* Editura Lumina Lex, Bucharest.

L.R. Boila,(2009), *Raspunderea civila delictuala subiectiva* (Non-contractual subjective civil liability)*,* 2nd edition, Editura C.H. Beck, Bucharest.

L.R. Boila, (2009), Ra*spunderii civile pentru prejudiciile cauzate de minori si persoanele puse sub interdictie (The ground of civil liability for the damages caused by minors and interdicted persons),* in *Noul Cod civil. Perspective privind răspunderea civilă delictuală (The new Civil code. Perspectives regarding the civil non-contractual liability),* Editura C.H. Beck, Bucharest.

M. Costin, M. Mureşan, V. Ursa, (1980) D*ictionar de drept civil* (Dictionary of civil law), Editura Ştiinţifică şi Enciclopedică, Bucharest.

A. Circa, (2009), *Relativitatea efectelor convenţiilor (The relativity of the effects of conventions),* Editura Universul Juridic, Bucharest.

M. Eliescu, (1972), *Răspunderea civilă delictuală (Civil non-contractual liability),* Editura Academiei, Bucharest.

J. Flour, J.-L. Aubert, E. Savaux, (2009), *Droit civil. Les obligations, 2, Le fait juridique*, 13e édition, Dalloz, Paris.

C.C. Hageanu, (2012), *Dreptul familiei şi actele de stare civilă (Family law and civil status documents),* Editura Hamangiu, Bucharest.

A. Ionascu, M. Mureşan, M. Costin, V. Ursa, G. Chivu, M. Banciu, (1978), *Contribuţia practicii judecătoreşti…*(The contribution of the judicial practice…)., Editura Academiei Romane, Bucuresti.

E. Lipcanu, (1999), *Răspunderea comitentului pentru fapta prepusului*

Jugastru, C., (2013). Damage in the Context of the Liability for the Actions of Others, Jurnalul de studii juridice, Year VIII, No. 3-4, December 2013, pp:23-48

[Employer's liability for the actions of his employee], Editura Lumina Lex, Bucureşti.

E. Lipcanu, (2000), *reflecţii asupra reglementării răspunderii comitenţilor pentru prepuşi în noul Cod civil. român*...(Few reflections on the regulation of the employers' liability for the actions of their employees within the new Romanian Civil code).

Ph. Malaurie, L. Aynès, Ph. Stoffel-Munck, (2013), *Les obligations*… Edition LGDJ.

H., L. Mazeaud, J. Mazeaud, (1969), *Leçons de droit civil,* tome II, 4e édition, Paris.

M. Muresan, (2000), *Răspunderea independentă de culpă pentru repararea prejudiciilor cauzate de lucruri* (The free of fault liability for the reparation of damages caused by goods).

L. Pop, *Drept civil român.* (2008), *Teoria generală a obligaţiilor*…[*Romanian civil law. General theory of obligations…).*

L. Pop, I.-F. Popa, S.I. Vidu, (2012), *Tratat elementar de drept civil. Obligaţiile (Elementary treatise of civil law. Obligations),* Editura Universul Juridic, Bucharest.

I. Rosetti Bălănescu, Al. Băicoianu, (1943), *Drept civil român. Studiu de doctrină şi de jurisprudenţă (Romanian civil law. Doctrine and jurisprudence study),* Editura Socec, Bucharest.

C. Statescu, C. Bîrsan, (2008), *Drept civil. Teoria generală a obligaţiilor... (Civil law. General theory of obligations…),* Editura Hamangiu.

C. Statescu, (1984), *Răspunderea civilă delictuală pentru fapta altor persoane* [The civil non-contractual liability for the actions of others], Editura Ştiinţifică şi Enciclopedică, Bucharest.

C. Statescu, (2009), *Răspunderea civilă delictuală pentru fapta altor persoane,* Editura Hamangiu.

Ph. le Tourneau, L. Cadiet, (1998), *Droit de la responsabilité*, Dalloz, Paris.

O. Ungureanu, C. Jugastru, (2007), *Drept civil. Persoanele* (Civil law. The persons), Editura Hamangiu, Bucharest.

O. Ungureanu, C. Munteanu, (2013), *Drept civil. Persoanele, în reglementarea noului Cod civil… (Civil law. The persons within the regulation of the new Civil code…).,* Editura Hamangiu.

P. Vasilescu, (2012), *Drept civil. Obligaţii (Civil Law. Obligations),* Editura Hamangiu, Bucharest.

Revue, volum conferences

L.R. Boila, (2011), Paza juridică a minorului din perspectiva fundamentării

Jugastru, C., (2013). Damage in the Context of the Liability for the Actions of Others, Jurnalul de studii juridice, Year VIII, No. 3-4, December 2013, pp:23-48

obiective a răspunderii civile delictuale a celor care exercită supravegherea lui [The legal guardianship of the minor from the perspective of the objective ground of civil non-contractual liability of those that supervise him], in Dreptul, No. 6/2011.

D. Chirica, (1983), Este culpa prepusului o condiţie a răspunderii comitentului? [Is the employee's guilt a condition of the mployer's liability?], în Revista Română de Drept, nr. 4/1983.

Fr. Deak, (1966), Noţiunea de lucru şi persoanele între care se angajează răspunderea civilă pentru prejudiciile cauzate de lucruri, (I) [The notion of good and the persons that are imputed civil liability for the damages caused by goods] in Justiţia Nouă,[New Justice] No.10/1966.

N.D. Ghimpa, T. Munteanu, (1967), Contribuţii la o viitoare legiferare a răspunderii pentru prejudiciile cauzate de lucruri [Contributions to a future regulation of the liability for the damages caused by goods], in Revista Română de Drept, No.9/1967.

T. Ionascu, E. A. Barasch, (1972), Răspunderea pentru "fapta lucrului" – art.1000 alin.1 Cod civil [Liability for the "action of the good"- Article 1000 paragraph 1 Civil code], in Studii şi cercetări juridice [Legal studies and researches], No.4/1972.

A. Ionascu, (1983), Condiţionarea răspunderii indirecte a comitentului de dovedirea culpei prepusului [The conditioning of the indirect liability of the employer with the proof of the employeer's guilt], in Revista Română de Drept, No. 5/1983.

E. Lipcanu, (1997), Cu privire la caracterul principal – şi independent de culpa prepusului său – a răspunderii comitentului reglementată prin art. 1000 alin. 3 din Codul civil [With regard to the main – and independent of the employee's guilt- character of the employer's liability regulated in Article 1000 paragraph 3 of the Civil code], in Dreptul, No. 10/1997.

E. Lipcanu, (2010), Unele reflecţii asupra reglementării răspunderii comitenţilor pentru prepuşi în noul Cod civil roman [Some reflections on the regulation of the employers liability for the actions of their employees in the new Civil code], in Dreptul, No. 1/2010.

I. Lula, (1997), Critica opiniei care neagă condiţia dovedirii culpei prepusului [The critics of the opinion that denies the condition of proving the employee's guilt], in Contribuţii la studiul

Jugastru, C., (2013). Damage in the Context of the Liability for the Actions of Others, Jurnalul de studii juridice, Year VIII, No. 3-4, December 2013, pp:23-48

răspunderii civile delictuale, Editura Cordial Lex, Cluj-Napoca, 1997.

I. Lula, (1997), Fundamentul răspunderii comitentului pentru fapta prepusului [The ground of the employer's liability for the action of his employee], in Contribuţii la studiul răspunderii…[Contributions to the study of libility…], 1997.

I. Lula, (1996), Observaţii asupra pazei juridice şi capacităţii delictuale [Observations on the legal guardianship and non-contractual liability], in Dreptul, No.3/1996.

I. Lula (I), S. Beligradeanu (II), (1981), Răspunderea pentru prejudiciile cauzate de lucruri în unele situaţii speciale [Liability for the damages caused by goods in certain special situations], in Revista Română de Drept, No.8/1981.

I. Lula, (1996), Fundamentul răspunderii pentru lucruri neînsufleţite [The ground of the liability for inanimate goods], in Contribuţii la studiul…[Contributions to the study..].

Rapport Mazeaud, (2013), Autorité du commettant et responsabilité: approche de droit civil, în Autorité et responsabilité, Revue Lamy droit civil, citat după J. Flour, J.-L. Aubert, E. Savaux, Droit civil. Les obligations, 2,2013 .

S. Neculaescu, (2010), Răspunderea civilă delictuală în noul Cod civil – privire critică [The civil non-contractual liability within the new Civil code – critical view], in Dreptul, No. 4/2010.

R. Petrescu, (1996), Unele aspecte cu privire la răspunderea pentru prejudiciile cauzate de lucrurile ce le avem sub pază [Certain aspects regarding the liability for the good we keep under our guard], in Justiţia Nouă [New Justice], 8/1966.

L. Pop, G. Hoffer, (1982), Cu privire la fundamentarea răspunderii fără culpă a părinţilor pentru prejudiciile cauzate de copiii lor minori [With regard to the liability without fault of the parents for the damages caused by their minor children], in Studia Universitatis Babeş-Bolyai, Series Jurisprudentia, No. 1/1982.

L. Pop, (2010), Tabloul general al răspunderii civile în textele Noului Cod civil [General picture of the civil liability within the texts of the New Civil code], in Revista română de drept privat, No. 1/2010.

A. Tamba, (2007), Încercare de reconsiderare a calificării răspunderii civile delictuale reglementate prin art. 1002 din Codul civil (ruina edificiului) [Attempt to reconsider the qualification of the civil

Jugastru, C., (2013). Damage in the Context of the Liability for the Actions of Others, Jurnalul de studii juridice, Year VIII, No. 3-4, December 2013, pp:23-48

non-contractual liability regulated in Article 1002 of the Civil code (ruin of building), in Dreptul, No. 4/2007.

Gh. Tomsa, (1973), Consideraţii asupra reglementării răspunderii pentru prejudiciile cauzate de lucruri în Proiectul Codului civil [Considerations on the regulation of the liability or the damages caused by goods, within the Project of the Civil code], in Revista Română de Drept, No.10/1973.

Explanatory Dictionary of the Romanian Language

Dictionarul explicativ al limbii române [Explanatory Dictionary of the Romanian Language], Editura Univers Enciclopedic, Bucharest, 1998, p. 1130).

Collection of decisions

Trib. Supr., s. civ., dec. No. 2199/8 October 1974, in *Culegere de decizii ale Tribunalului Suprem* [Collection of decisions of the Supreme Tribunal], 1974.

Cour de Cassation française, deuxième chambe civile, dec. of 8 July 1970, in *Bulletin Civil,* n°241, quoted after Ph. Malaurie, L. Aynès, Ph. Stoffel-Munck, *Les obligations...,*.

Rapport d'information

Rapport d'information fait au nom de la Commission des lois constitutionnelles, de législatif, du suffrage universel, du Règlement et d'administration générale (1) par le groupe de travail (2) relatif à la responsabilité civile, p. 58 (The report No. 558 was registered at the Senate at 15 July 2009 and can be consulted on the webpage of the French Senate, http://www.senat.fr/leg/ppl09-657.html (page accessed at 3 February 2011- page accessed at 10 April 2011).

Legislation

Law on hunting and the protection of the cynegetic estate No. 407/2006 (Of. M. No. 944/22.11.2006) embodies provisions on the fauna of cynegetic interest.

Romanian Civil Code of 2009 - Law no. 287/25.06.2009, in the Romanian Official Monitor no. 511/24.07.2009, modified by the Law no. 71/2011 for the application of the Civil Code, in the Romanian Official Monitor no. 409/10.06.2011 and by the Government Emergency Ordinance no. 79/20.09.2011 for the regulation of some necessary measures for the entry into force of Law no. 287/2009, in the Romanian Official Monitor no. 696/30.09.2011.

Jugastru, C., (2013). Damage in the Context of the Liability for the Actions of Others, Jurnalul de studii juridice, Year VIII, No. 3-4, December 2013, pp:23-48