

Tort Liability

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ABSTRACT: The object of this paper is the tort liability, which represents an important element of the legal relationships. This paper refers at the legal regulation of the tort liability, as well as its scope. This paper also refers at the two types of liability, representing the general liability that we find in the civil law, which is the relation between the tort liability and the contractual liability. This paper also presents the comparison between the tort liability and the criminal liability, as well as the relation between the tort liability and the patrimonial liability specific to the labour law. We shall speak of the types of tort liability and their classification, referring at the hypotheses regulated by the Civil Code and the related legislation, as well as of the criterion of the fundamental principle of liability.

KEYWORDS: criminal liability, contractual liability, patrimonial liability, tort liability, unlawful act

Introduction

Tort liability represents one of the most interesting and important domains of the civil law. The Civil Code regulates, under arts. 998-999, civil liability for one's deed, respectively each human's deed which causes to another a prejudice compels that one that had caused it to repair it. Articles 999 and 1002 of the Romanian Civil Code are a reproduction of art. 1328-1386 of the French Civil Code, and art. 1003 of the Romanian Civil Code gets its inspiration from the Italian Civil Code.

Thus, the tort liability may be defined as a form of the legal liability consisting in a mandatory report, respectively any person must repair the prejudice caused to another person, by his/her deed. Any violation of a subjective right or of an interest belonging to another person results in a type of liability. Tort liability, as institution of the civil law, has similarities with other types of liability, which are specific to other branches of law, such as: criminal liability, contractual liability, patrimonial liability specific to the labour law. Tort liability interferes in all the situations when legal dispositions are violated.

Legal Regulations

Tort liability is regulated by arts. 998-1003 of the Civil Code. These state the principle of tort liability for the deed, in the well-known definition of art. 998, according to which: “each human's deed which causes to another a prejudice compels that one that had caused it to repair it”.

As for the tort liability, at the forefront of each case stand the direct interests of a person whose patrimony was prejudiced by an unlawful act (Statescu 2009, 1). Whereas articles 998-999 of the Civil Code regulate the liability for own deed, articles 1000-1002 refer at the liability for other human's deed, the liability for prejudices caused by things, in general, by animals and ruin of the building. Art. 1003 defines joint and several liability, when a prejudice is caused by the unlawful act committed by two or more persons.

The liability for other human's deed is an additional measure of protecting the interests of the prejudiced victim. This does not substitute to the liability for the own deed of the author of the prejudice, but is added to it, leaving to the victim the option of a way to follow in order to get indemnified.

The direct consequence of such a manner of conceiving the liability for other human's deed is that it functions only in the relationships with the victim of the prejudice, not in the relationship between the author of the prejudice and the one who is liable for it (Stanescu 2009, 1-2).

The tort liability for one's own deed is the general principle, the common law of tort liability, because it is normal and fair for every person to be liable for his/her own deeds and acts (Florescu 2002, 249).

Terminology

The tort liability is, in reality, a legal relationship of obligations resulting from an unlawful and prejudicial act. Therefore, the tort liability relationship is, this time, one and the same with the obligation relationship (Pop 2000, 192).

The unlawful deed giving birth to the legal relationship of liability is called “civil tort”, which makes the liability for this deed to be called “tort liability”. Another way of saying is that the unlawful deed causing prejudice triggers tort liability which content is the civil obligation of repairing the prejudice caused. The Civil Code makes a distinction between tort, which is an unlawful deed committed with intent (art. 998) and quasi-tort, which is an unlawful act committed by negligence or recklessness - art. 999 (Adam, 2004, 249-250). The consequences of these two categories of wrongful or identical acts are that the author or the liable person must repair the entire prejudice (Pop 2000, 194).

Legal Nature of the Tort Liability

The judiciary literature and practice consider that the tort liability is a civil sanction applied in case of committing an unlawful act that causes prejudice, therefore, it is relief-related, without being also a punishment.

Punishments, no matter their nature, can only be applied and executed during the lifetime of the author of the deed. Unlike punishment, tort liability seen as a civil sanction, applies not in consideration of the person who committed the unlawful act, but in consideration of his/her patrimony.

Even if the civil liability is a sanction not related to punishment, there is no reason for not associating this civil sanction to a punishment. This is the case when the unlawful act is at the same time an offence or administrative misconduct, situation in which, in addition to the criminal punishment foreseen by the law or to the administrative sanction applied, to the author of the deed it is also applied the civil liability of indemnity payment obligation (Adam 2004, 250-251).

Scope

As it results from the definition of the tort liability, its principles and rules are applicable in all the situations when a person to whom a prejudice is caused by an extra-contractual tort (Pop 2000, 194).

The extra-contractual tort is the way in which the obligation of not harming the legitimate rights and interests of the other persons is violated, as well as the failure to fulfil *lato sensu* the obligations born from an unlawful act and from a unilateral legal act (Adam 2004, 250).

The tort liability is also engaged when a prejudice is caused by a thing or an animal under our watch, as well as by the ruin of the building. This can also be engaged in the hypothesis when the prejudice is caused to a person because of the default of the debtor to fulfil obligations or if the default is a deed foreseen and sanctioned by the criminal law.

In conclusion, the tort liability represents the common law in civil liability matter.

Tort Liability and Contractual Liability

These two types of liability have a common essence resulted from the same finality their functions confer, respectively the repair of the unjust prejudice suffered by the victim even when the repair in kind is not possible (Niculaescu 2001, 298).

They form together only one legal institution. There are also some differences between these types which, though not of essence, have practical importance due to the legal consequences they determine. These differences are also as many arguments to realize that the contractual liability is a special liability, characterised by derogation from the tort liability (Pop 2000, 353).

The main difference refers at the burden of proving the fault: respectively, with regard to the tort liability, the victim must prove the negligence of the author, whereas, with regard to the contractual liability, the victim must prove the contract and the violation by the debtor of the

obligations assumed therein, respectively the non-fulfilment, the improper fulfilment or the delayed fulfilment of the obligations (Neculaescu 2001, 300).

Another difference refers at the extent of the fault. In case of tort liability, the extent of the repair is decided depending on the amount of direct, predictable and unpredictable prejudices; in contractual matter, in order to decide the extent of the damages-interests, only direct and predictable prejudices will be taken into account, except for the case when the debtor is guilty of deceit (Pop 2000, 354).

The severity of the fault is almost insensitive at the tort liability, where, the least severe fault is taken into account, whereas, with regard to the contractual liability, it may be triggered differently, depending on the type of obligation assumed by the debtor (Neculaescu 2001, 301).

In case of tort liability, if the prejudice is caused by two or more persons, their liability is joint (art. 103 of the Civil Code); in case of contractual liability, if there are two or more debtors, their liability is divisible, proportionally with their obligation (Pop 2000, 354).

All the persons with the capacity of good judgment will be liable in case of tort liability. As for the persons under 14 years of age, there is a relative presumption of lack of good judgment, whereas, for the minors above 14 years of age, there is the contrary presumption that they have good judgment (Neculaescu, 2001, 301).

As for the matter of tort, the author of the prejudice is deemed in default *ipso jure*; on the contrary, in order to trigger the contractual liability, it is usually necessary to put the debtor in default by means of a payment order (Pop 2000, 355).

The non-liability clauses are easily admissible in case of contractual liability, whereas these are basically inadmissible in case of tort liability.

Invoking the statute of limitation is different: in case of contractual liability, beside the general period of limitation, a series of special periods are established; in case of tort liability, the period of limitation is only general. The territorial competence is different, depending on the tort or contractual liability (Neculaescu 2001, 301).

Tort Liability and Criminal Liability

In all the situations when the unlawful acts causing prejudices are at the same time crimes, beside the tort liability, there will also be the criminal liability. Both types of liability will act as a consequence of committing an unlawful act that harms law-protected social values (Adam 2004, 235).

The differences between the civil liability and the criminal liability result from their different purpose. The civil liability's purpose is to repair the prejudices caused to the individuals and legal entities, due to a contractual or extra-contractual unlawful act.

The source of the tort liability is any unlawful act that caused a prejudice to another person. The criminal liability is based on the principle of legality in criminalisation of acts (Pop 2000, 172).

As general principle, both criminal liability and the civil liability are based on the guilt of the author of the unlawful act (Adam 2004, 237).

The subjects of civil liability can be individuals and also legal entities. The subjects of the criminal liability can be, in accordance with the law, only the individuals. The extent of the civil liability is established depending on the value of the prejudice caused, on the type and degree of guilt.

The civil liability is patrimonial, consisting in the obligation of repairing the damage. The criminal liability has basically non-patrimonial character (Pop 2000, 172).

The capacity of the persons summoned to be liable for their unlawful act is different. In both cases, it is necessary for the person who committed the unlawful act to have acted with good judgment (Adam 2004, 237).

The action in tort liability is at the disposal of the person who was prejudiced and the criminal liability is exercised *ex officio* by the Public Ministry (Pop 2000, 174).

Tort Liability and Patrimonial Liability in the Labour Law

The patrimonial liability is that form of legal liability consisting in each employee's obligation of repairing the prejudice caused.

The patrimonial liability in the labour law is a civil contractual liability which has certain particularities resulting from the labour legislation, the collective labour agreement and the individual labour agreement (Pop 2000, 175).

In accordance with the Labour Code, the patrimonial liability is applicable only to the employees, not to the persons hired with service-level agreement (Florescu 2002, 247).

There are many similarities between the tort liability and the patrimonial liability, among which we remind the most important ones (Adam 2004, 244):

- a) these two types of liability are engaged in the presence of the same general conditions: unlawful act, guilt, prejudice, the existence of a causal relationship between deed and prejudice;
- b) their purpose is identical, respectively the repair of a prejudice caused to another person.

Types of Tort Liability

One of the fundamental principles of the legal liability is that everyone is liable for his/her own deeds. This principle is also valid for tort liability (Stătescu and Bârsan 1998, 143).

There are several types of tort liability, particularly, it can be subjective and objective (Motica and Lupu 2005, 414).

- 1) Direct tort liability or tort liability for one's own deed – is regulated by art. 998-999 of the Civil Code, consecrating the rule of principle that every person is liable for his/her own deeds;
- 2) Liability for other person's deed – is of three types: the liability of the parents for the unlawful acts committed by their minor children; the liability of the teachers and trainers for the prejudices caused by their pupils and apprentices who are under their supervision; the liability of the principals for the prejudices caused by their agents (Adam 2004, 251).
- 3) Liability for the prejudices caused by things, animals and the ruin of the building – the social life has proven that a person can suffer a prejudice caused to him/her, without his/her deed, by a thing, an animal or the ruin of a building. The Civil Code regulates this liability as follows (Pop 2000, 196):
 - a) the liability for the prejudices caused by the things that are under our judicial protection;
 - b) the liability for the prejudices caused by the animals which are under the judicial protection of a person;
 - c) the liability of the landlord for the prejudice caused by the ruin of the building;

The scope of the objective tort liability is made of (Motica and Lupan 2005, 416):

- a) the liability of the principals for the prejudices caused by agents;
- b) the liability for the prejudices caused by things;
- c) the liability for the prejudices caused by animals;
- d) the liability for the prejudices caused by the ruin of building;
- e) the liability for the prejudices caused by illegal administrative acts.

Unlawful Act

The unlawful act, as element of the tort liability, is defined as being any an act subsequent to which prejudices are caused to the subjective right belonging to a person, in violation of the norms of the objective right (Stătescu and Bârsan 1998, 172).

The act is unlawful when it is contrary to the law and when it also violates a subjective right of a person or at least a legitimate interest of that person, which is not antagonistic to law or morality.

The unlawful behaviour may consist either in committing a forbidden deed or in the omission to commit a deed required by the law (Florescu 2002, 251).

Usually, the unlawful acts damage the right of property and the other main real rights. The unlawful act has the following features (Pop 2000, 213):

- a) the act is objective or has material existence and consists in a behaviour or exteriorised human manifestation;
- b) the act is the means of making objective a subjective psychical element: the will of the person who chose a certain behaviour; therefore, the unlawful act is the result of a psychical attitude ;
- c) the act is contrary to the social order and is condemned by the society.

The acts are extremely varied and therefore their listing is impossible and would be useless. However, they can be grouped in two large categories: commissive or actions and omissive or inactions (Motica and Lupu 2005, 419).

Conclusions

The content of this paper presents the fact that the action in tort liability is regulated in arts. 998-1003 of the old Civil Code, which represents not only the form of liability for own deed, but also other forms, such as liability of some categories of persons for the unlawful act committed by another person.

The obligation of the person who committed the unlawful act is to repair the prejudice caused. The unlawful act represents the attitude, manifestation of will of a person, which is contrary to the law. The tort liability interferes in all the situations where the legal dispositions are violated.

In order for tort liability to exist, there should exist an unlawful act, which violates a certain obligation, the commitment of a deed with guilt, the existence of a prejudice and of a causality relationship between the unlawful act and the prejudice.

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