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The “Restrictive” Nature of Civil Liability for the Acts of Minors or those under Judicial Interdiction

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Abstract: In this study we propose a rigorous analysis of article 1372 of the Civil Code, concerning the nature of vicarious tort liability, focusing on the limited situations of implementing those provisions of civil law. Also, we will relate to previous regulation, subjecting the analysis accuracy with which the current legislator has accurately regulated only two of the three phases of the vicarious tort liability, being current until October 2011. The review will only regard the first of the two forms, and namely, the liability for the prejudice caused by the act of a minor or a person under judicial interdiction. From the analysis and interpretation of the three paragraphs of article 1372 we will identify the restrictive nature in applying this form of liability, in the strict interpretation of the described situations.

Keywords: tort; minor; parent; academic staff; student

1. Introduction

Everyone, as subject of civil law enjoys, under the law, the plenitude of its civil subjective rights, with the correlative obligation of not causing harm to his fellow men that would justly indebted to an adequate reparation, attracting the activation of tort liability.

The experience of social life has imposed in civil law matter the diversification of liability hypothesis: the one for his own act and liability for the acts of another person, both cases having as declared purpose protecting the interests of victims and repairing the prejudice (Stătescu, 2009, p. 2). So, the tort can be committed not only in the task of the one causing the prejudice, but also the responsibility of others, the current Civil Code establishing, **increasingly restrictive**, two such forms within the articles 1372-1374 of the Civil Code, compared to the three existing ones, until recently. At first glance, from reading these texts it is easy to perceive that the two forms have **principled and restrictive feature**, from the nature of their writing. It is about the liability for the prejudice caused to another person by the act of a minor or a person under judicial interdiction and principals liability for the infringements caused by the agents, renouncing to the liability of the teachers and artisans for the acts of students and apprentices under their supervision.

Why only on these two situations? We identify in this study the following theoretical trajectory and legislative interpretation:

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- the express silence of the law as to reverse the prior express provisions concerning liability of the teacher (generically speaking) for the student under the supervision, it circumscribes / joins any of the above situations or we interpret it based on the contractual relationship between parent and the establishment where the minor conducts educational activities, a perspective already foreshadowed by the doctrine?
- The legal text (articles 1373 and 1374 of the Civil Code) expressly conditions the two assumptions or by extension, we can identify, through a judicious interpretation, new situations designed to attract the legal incidence and substance of the provisions mentioned above? If not, however it remains the issue of the vicarious liability a constant, although the legal “coat” was renewed? If so, towards what kind of situations of law, tort obviously, can we turn?

We will direct this analysis towards these ideas.

2. The “Restrictive” Nature of this Type of Tort

Unlike criminal law which knows only the principle of personal responsibility for the personal act, the civil law system recognizes the principle of *vicarious liability*.

In that case, the remedy obligation will be determined in the task of other persons, other than the perpetrator. Compared to the three forms that were regulated by the Civil Code of 1864¹, currently the Civil Code establishes only two forms, which provide in the cases expressly provided by law, a person can be required to repair the caused prejudice by the illicit act of another person.

The general and restrictive background at first sight of this liability is established in article 1349 paragraph (3) which states that: “*In cases specifically provided by law, a person is obliged to repair the prejudice caused by another person, by things or animals under his guard and also the ruin of the building.*”

The first of these legal situations are based on article 1372 of Civil Code, which establishes a **principle of liability for the prejudice caused by a minor or a person under interdiction**, the task of which, under the law, a contract or a court order was required to also supervise the author of the harmful act. The second form, upon which we will not insist, is ruled by article 1373 of the Civil Code and it establishes **the liability for the infringements committed by the agents**. There is nothing mentioned about the teacher’s liability (institutor, craftsman) for the infringements committed by students or apprentices.

It was argued that to be responsible for another person, or otherwise, of not being able / to be hindered by anything to answer on their own behalf, this would mean either the existence of a state of “inequality” or one of “subordination” (Fabre-Magnan, 2007, p. 307).² These two issues should not be construed *ad litteram*, as people are equal, have equal rights and the civil law relations are

¹ The first form was governed by the old Civil Code in article 1000, paragraph (2) and (5) of the Civil Code, the parental responsibility for the infringements committed by their children. The second form that of teachers and artisans liability for the damage caused by students and apprentices under their supervision – article 1000, paragraph (4) of the Civil Code, and the last form, the perpetrator’s liability for the damage caused by their agents in the entrusted functions was established by article 1000, paragraph (3) of the Civil Code.

² For the situation of subordination, the author refers to the principal-agent relationship existing between the principal and the agent.

characterized by the position of legal equality of the parties. We can at most support the view on the status of being under age, which does not confer to the minor nor full capacity, or the discernment for his actions, but it is also characterized by the need to protect his interests, being deprived of legal experience. That period in every man's life is marked by physical and mental immaturity, by social dependency, by the need for material and emotional support. In this context, the role of the family is major, as protective environment, as it becomes responsible for all social ills specific to the juvenile (violence, juvenile delinquency, etc.).

Therefore, the right of parents on the arbitrary will of children is determined by the purpose of keeping within the limits of discipline and to educate them. (Hegel, 1996, pp. 180-181). Connected to the right, where the minor's conduct exceeds the ethical and juridical normative space, it intervenes the obligation of parents' liability for the infringements committed by the minor. It is what the law defined by **parental authority**. Having the value of principle, pursuant to article 483, paragraph (2) of the Civil Code, the parents (and other persons designated by law) "*exercises the parental authority only in the interests of the minor, with due respect for his person, and they associate the child in all decisions relating to him, taking into account the age and the maturity of the child*".

We have achieved this intermezzo to materialize the role of this form of tort liability within the relationship between social (family, parents) and legal. For where the social creates relations, the law defends them and it gives effectiveness, promoting the rights and obligations of individuals and it restores the rule of law.

3. Determining the Persons Liable for the Offense of the Minor or the one placed under Interdiction according to the New Ruling

From the entire approach of this study, we identify reasons that will support the idea that the scope of the persons called upon to respond for the act of the juvenile is restricted in the new regulation, but on the other hand, we are witnessing a diversification of their scope, envisaged by the legislator, supported even by the lack of actual nomination of the academic staff. From this point of view, the doctrinal voices have emanated also critical assertions. As mentioned, not everyone is obliged to repair the damage caused by a third person, for we would have witnessed legislative and jurisprudential chaos. The category of the nominated people being liable is a strict one, expressly established by law or with deep expectation that the current coding would have achieved this in an optimal manner. From the relationship point of view we clearly take into consideration, the connections related to the civil nature, that would entitle the imposition of such liability with derogatory feature, according to some researchers in civil matters, vicarious liability (Eliescu, 1972, p. 249).¹ Its derogatory nature of it presupposes tort liability withheld solely to restricted categories and exhaustively provided by the law, without the possibility of extending it to other people (Vasilescu, 2012, p. 639). From the nature of this / these relations it derives the special character, whose development knows a restrictive parallel path with historical development of the society. We consider here the relationships between parents and their children or between tutor, curator and those in care.

¹ In this regard, Michael Eliescu sustains: the vicarious liability or for the acts of work derogates the liability from common law. The doctrine shared different opinions on this title of derogating liability from common law. Constantin Stătescu (2009, p. 2) speaks of the indirect and complementary nature of this form. Contrary to these views, it was also noted that the expression of indirect liability is totally inadequate, citing the fact that there can be no processing of the act of another person, but only an imposition of the indemnity task. See (Neculaescu, 2006, p. 43)

Until recently, regarding parental responsibility for the damaging acts of their minor children, the matter is in article 1000, paragraph (2) of the Civil Code, containing the following: “*the father and mother after the death of the man are responsible for the damage caused by their minor children living with them.*” There were also taken into account the provisions of article, 1000 paragraph (5) “*... are shielded from the shown above liability proving that they could not prevent the occurred harmful event*”.

Currently, the Civil Code interferes with the amendments to the law from the desire to reconfigure this institution with a broader foundation, elaborated, expanded to the scope of persons called upon to respond for the minor (but expressly non-nominating the academics from higher education), broadening the scope of persons for which is liable (minor and convict under judicial disability), giving substance also by the updated terminology. From our point of view, this new regulation is likely to be dashed by some detailed comments as we develop the subject.

The text of article 1372 paragraph (1), whose name refers to the marginal type of liability under investigation, i.e. the liability for the acts of minors or those under interdiction, states: “the one who, under the law, a contract or a court order is required to supervise a minor or a person placed under interdiction is responsible for the injury caused by these latter people “. Paragraph (2) of the same article states that “*liability subsists even in the case where the perpetrator, lacking judgment, is not responsible for his own deed*”.

As regards paragraph (3), it states that “the person required to supervise is relieved from the liability only if he proves that he could not prevent the harmful event. In the case of parents or where applicable, the legal guardians, the proof shall be deemed only if they prove that the child’s act is the result of another act, other than the way they have fulfilled the duties arising from the exercise of parental authority”.

These three texts of legislation, plus another, article 1374, paragraph (1) of the Civil Code according to which “parents do not respond if they prove that they have fulfilled the requirements of the person’s responsibility, who was obliged to supervise the minor” and paragraph (2): “No other person outside the principal is liable for the prejudicial act committed by the juvenile, who had de quality of agent. However, in the case where the principal is the parent of the minor who committed the wrongful act, the victim has the right to choose the basis of liability.”

Compared to the spirit and letter of this new regulation, on first reading we opined that the matter is better organized, but some comments are not only inevitable, but also entitled to be specified. We have noticed the economy of the legal text, and also the elimination of one of the three oldest forms existing until October 2011, at a cursory analysis, the restrictive feature of the liable persons becomes a false assumption. The act generating the liability is consolidated now in the charge of a person who, under the law of contract or judgments has the task of supervising the minor. We are seeing, in fact, *de lege lata*, **a real extension of liability on persons other than** mother and father, schoolmasters and artisans, because the legislator renounced to referring explicitly to the mother, father or parents choosing to regulate indistinctly the liability of everyone involved, on different grounds, to supervise a minor or a person placed under interdiction. Firstly, the text refers explicitly to parents and guardians, but we believe that there were not regarded only these two categories, for the legal text contains generic structures and indefinite “the one who...” or “the one obliged to...”¹

¹ The regulation of the current Civil Code is a broad generalization and its inspiration (for our subject) is the counterpart model text from the German Civil Code.

In a recent study, an author devoted to this subject for some time, Lacrima Boilă (2012, p. 82) criticizes the structure that begins article 1372 of the Civil Code, on the grounds that it would lead to the idea committing liability only to a physical entity, or, according to the current regulation also an institutional entity can be liable under the same legal basis. The author proposes using examples, the following solution: “parents, guardians, rehabilitation centers, medical and educational institutions, health facilities or any other natural or legal persons under the law...” Such forms, which are intended to be exhaustive, though there are not mentioned the curators, although she marks a generous and judicious idea, the one of improving the text of the law, from our point of view is daunting, exuberant and superfluous.

In search of a (shy) relevant solution, in our view, for differentiating this problem, we consider that, if it requires a reconfiguration of the text of the law, we propose the following solution: “*the person or entity / institution who/which...*”

As such, the indistinct, but broad scope of liable persons, includes teachers, not being *expressis verbis* specified, but to which the text of article 1372 of the Civil Code is incident. The rule laid down in the article establishes that “the person under the law... it obliged to supervise a minor or a person placed under interdiction...” can also be a teacher.¹

The problems with the current regulation are far from being solved, starting from natural question: who will actually be liable, the teacher, the supervisor... or the school unit? Is there a difference between state and private educational establishments? Will they respond only according to the legal or conventional nature which formed the legal basis of the report? These are questions that the legal texts have not yet given an adequate response. Thus, with parents, the teachers are required to answer for the damage caused by the minors or those placed under judicial interdiction, all based on a legal terms, namely the National Education Law no. 1/2011², and not based on the educational contract which the educational institutions are obliged to conclude with the students’ parents under the Education Law no. 1/2011.

Even in the absence of an express nomination, the teachers remain responsible and in the legislative current context, they are liable according to the common law. There will be enrolled in this sphere, according to the Law of education also those who have assumed the obligation of supervision, organization and control over students and other categories of minors, over a period of time, the law nominating the teachers of school units (nurseries, kindergartens and day care centers) the teachers of primary schools, secondary, technological and vocational, professional military education, art or sports. There are missing from the law the provisions concerning the auxiliary staff and non-teaching staff, which according to our opinion, cannot be held liable for such liability.

Some doctrinal voices found that despite the constant jurisprudence, the educational institution should be the one responsible in such cases (Motica, 2012, pp. 168-174). In supporting this hypothesis, the author starts from neutral and generic formulation of the legislator no longer distinguishing what kind of entity it may be, at which “can be both an abstract person (natural or legal) to whom the minor or the convict under judicial disability was entrusted. So, the author concludes that “from the point of view of designating the person responsible in the analyzed article there is no impediment in considering that the educational institution itself could be liable.” (Motica, 2012, p. 168)

¹ Whatever name we choose to allocate to this category, professors, teachers, educators or according to the old terminology, schoolmasters, we refer to the pre-university teaching staff in public or private education, regardless of academic rank, to which we add other subcategory: sports trainers, supervisors in the homes of students in school camps, etc.

² The Law no. 1/2011 of the National Education, updated, was published in the Official Monitor no. 18 of 10 January 2011.

4. Conclusions

On the one hand, the restricted nature is sustained only by the fact that these forms must be interpreted strictly, in that they are the only circumstances when it comes to intervening in the vicarious liability. On the other hand, amongst those to whom there are entrusted the minors or the convict under judicial disability in order to educate and to supervise them there are added in the category also teachers/academic staff, enlarging the liable persons. Engaging the extended liability enunciated by the text of article 1372 can be justified by the nature of relations of the person responsible for the harmful act, being motivated also by the authority which it exercises over it, it materialized by controlling his lifestyle or managing the activities that he performs. It has already been held that the manner of ruling is a unique one (Adam, 2013, p. 355)¹, meaning that, shortly after their implementation, the doctrinal debates have not ceased to refer to the scope and wording itself of this article. The fact is that the role of doctrine in this context will be one as hard to sustain as before, manifesting our desire to reach in the near future to common denominator to the problem, from the legal-doctrinal-jurisprudential point of view.

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¹ The author considers it appropriate that these provisions be interpreted objectively and rationally correlates both with the other laws in force at national and EU treaties and directives.