Summary of the thesis

”The principle of full compensation for damage. Content, correlations, limits.”

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The principle of full compensation for the damage, although widely known among law theoreticians and practitioners, has not received any monograph to be analyzed properly. Noting the doctrinal gap, we tried to complement it by treating this general principle of civil liability from several perspectives, in order to emphasize its applicability limits determined by correlation with other liability rules, which is a novelty. Concern for the subject was due to the fact that we face a principle with distant origins, but which still maintains its vigor and will probably not cease to exist in the near future.

Due to the injury relevance in the civil liability, even in the absence of any legal settlement, doctrine and jurisprudence relating to the previously Civil Code advanced to the rank of a principle the obligation of full compensation for the damage caused to the victim. This direction was taken by the Romanian legislature in the current Civil Code by inserting several legal provisions promoting the principle of full compensation for the injury. However, not any damage can be recovered, but only the one which is indubitable and is a direct consequence of the reprehensible conduct of the agent.

Practice and literature have shown, however, that this is the general rule, which entails certain exceptions. In this way, in the area of repairable damages were included the future damage, if it is certain that will occur and its amount can be determined in present, and apparently indirect damage, called by ricochet, which is subject to repair even if it is alleged that there is not a direct connection between it and the civil offense.

Building on the features of each type of injury and taking account of the nature of rights and legitimate interests harmed by the conduct of the author, we found that the principle of full compensation for the damage must be assessed by reference to the circumstances of each loss occurs. At the occurrence of a legal relationship with negative consequences can contribute directly or indirectly, in addition to any foreign causes, both the author of an illegal act and / or a person or a thing for which he / she is responsible, and the victim or a third party.

Observing the mainly human involvement in creating a damage and preventive-educational function of liability, we considered necessary to establish the mental position of such persons regarding to the inadequate activity. Since the liability of a person is also perceived as a penalty and in order to prevent the wrongly reproach, it is mandatory to determine the form and severity of the guilt for each participant who contributed causing the damage.

Studying the constituent elements of various forms of guilt, we noticed that at the base of each human action or inaction it is found, directly or indirectly, a complex mental process that betrays how the author perceives and relates to the conduct imposed by the social coexistence rules. To ensure a correct balance between the rights and obligations of the responsible person and between social value harmed and the sanction imposed to its author, it appears necessary to identify

not only the form of guilt that agent acted with, but also the elements concerning guilt that draw aggravation or mitigation of liability.

Setting the form of intentional guilt is not a very difficult mission because, in general, this results from the way the harmful activity exteriorizes. Thus, it is quite easy for the court to decide whether the author followed or only accepted the possibility of producing injury. However, challenges arise if the offense is committed by negligence whereas at least one of the intellectual and volitional factors is flawed.

Based on the disadvantages of criteria developed in doctrine and jurisprudence, we tried to identify a way to ensure a fair solution both for the person responsible for producing negative consequences and towards the victim. That led to the promotion of intermediate criterion, based on objective criterion and supplemented by certain external circumstances in which illicit activity took place. We conducted a practical approach by reference to several adverse legal situations likely to be remedied, more or less, by applying the principle of full compensation of the damage. In this regard, we considered the contribution of the victim and ads on liability, moral damage, contractual liability (predictable damage), damage consisting in the loss of an opportunity and the hypothesis of the person lacking capacity of judgment.

With regard to force majeure and fortuitous event, we found that modern doctrine treats them related to the causal relationship between the activity of the author and damage suffered by the victim. We have shown in the paper the reasons why we believe that these foreign causes have a bivalent nature, having the ability to affect not only causation, but also agent’s guilt, composed of both complex mental process and the reproach directed against the author for disregarding legal order.

Although civil legislature has regulated force majeure and fortuitous event as causes excused from liability, analyzing the assumptions that also other circumstances have contributed to the damage, we showed that these external events not always remove entirely the responsibility of the author. In such cases there is only a limitation of liability, which implicitly leads to a restriction of the effect of the principle of full compensation for the damage.

Another cause that may intervene in the obligational duty between the author and the victim of injury is the act of a third party. Regarding to the subjective liability, the deed of a third party exonerates the agent if it brings together at least the elements of fortuitous event. In the objective liability, in order to produce such an effect, the deed of a third party must meet the conditions of force majeure.

More commonly encountered in practice are cases in which the damage suffered by the victim is the result of a plurality of causes made of the author's activity accompanied by the deed of a third party, without a prior or concurrent subjective connection between them. In such cases, the effect of the action committed by the third party on the author’s liability is different from the force majeure or fortuitous event, concurrent with the act of the author, when there is a limitation to the principle of full compensation for the injury. So competing the act of a third party does not affect this principle, the victim being entitled to receive compensation equivalent to the total loss without having to bear any part of it. The initial author and the third party are responsible for all damage caused to the victim, the relations between them depending on each one's contribution.

The responsibility of the author and, implicitly, the applicability of the principle of full compensation for the damage can be influenced by certain clauses regarding to liability. They are expressly regulated in the

current Civil Code, and in order to lead to a total exemption from liability must be fulfilled two conditions: defaults are not committed intentionally or with serious negligence and the damage is restricted to material damage because it is held that liability for damage caused to physical or mental health can be removed or diminished only in certain conditions established by law.

From the perspective of the principle of full compensation for the damage we insisted on clauses that limit the author's compensation to the victim of the offense. Such an agreement is the penal clause in cases in which the hardship exceeds the value anticipated by clause. The same partially exonerating effect it is by the clauses that limit the amount of damages to a predetermined ceiling, when it is lower than the actual value of the damage.

Regarding to the contractual liability notices, we found that they actually represent genuine clauses on liability, with all the effects they produce. Such ads have a bilateral nature, in terms of their tacit acceptance by the other contracting party, as far as he / she knew their contents when the convention was settled. Therefore, to achieve elimination or limitation of the principle of full compensation for the damage, the author must prove that the contractual partner of the victim considered and accepted the ad content at the conclusion of the contract.

In tort terms, similar effects to those of the contractual clauses on liability can be produced by the consent expressed by the victim about a potentially harmful activity of the author. The consent of the victim is distinct from the case when his / her act presents to the author the characteristics of a foreign cause which excuse from liability. The argument of this solution is that the author states that the victim will participate in the activity, assuming the possibility of suffering an injury.

Moreover, the possible attitude of the victim who treats lightly the possibility of occurrence a damaging consequence does not affect the validity of his / her consent and the victim has to pay for the full damage caused.

Although the victim's contribution to the harm issue has been debated since Roman law, it took shape in terms of legal regulation by the Civil Code of 2009. Thus, if the victim contributed intentionally or negligently to causing the injury or to increase or didn't avoid them, in whole or in part, although he / she was able to do so, the author will repair only the damage which he / she has caused. In this way there is a limitation to the principle of full compensation for the damage, but also the author is protected to answer only for what he / she caused.

Equally, we examined the effects of announcements relating to liability in tort according to the provisions on the contribution of the victim. Thus, we found that the victim who was warned by a notice on the existence of danger, but nevertheless contributed intentionally or negligently to causing the injury or to increase or didn't avoid them, in whole or in part, although he / she was able to do so, will incur the injury was not caused by the author.

The announcement, by itself, does not have the capacity to hold harmless the person responsible, but establishes a rebuttable presumption of guilt borne by the victim who violates the warning. Although the legislature has referred only to the rule of common guilt and the limitation of liability of the author thanks to the contribution of the victim, we consider that regulation should also target the victim's act, which could exempt the author from liability. Therefore, the mere announcement of the author does not result in a limitation of the principle of full compensation for the damage, but when it is corroborated by the victim's deed it may occur as a restriction on the

amount of compensation the victim is entitled to or as a total removal of author's liability, depending on each situation assessed *in concreto*.

Another limitation of the principle of full compensation for damage occurs in non-property damage, due to their specificity which does not allow compensation by replacing and any precise quantification. Given the nature of this type of injury, we consider that we are not dealing with a true "reparation" but with a victim recovery to comfort for the pain produced by the tortious activity.

As regards the contractual civil liability, the principle of full compensation for the damage is affected by the provision or lack of provision of the author, this principle being applied effectively only in case of not executing intentional or grossly negligent the contractual obligations. The debtor usually responds only for damages which he / she anticipated or could anticipate at the conclusion moment that will suffer the contractual partner for his / her failure to enforce the contract.

We have shown that as long as the duty which was not honored derives from a civil contract, validly concluded between the two subjects of the legal relationship of responsibility, the liability can only be contractual. We therefore consider that the responsibility of the author doesn't shift on grounds of tort because it is just a contractual liability increased by the form and severity of guilt compounded by the agent who violates a concrete obligation, assumed by convention and not a legal and general one.

Although contractual liability has taken over many regulations from tort matters, which is the common law of liability, the principle of full compensation for the damage has been truncated. We see therefore that the debtor is contractually bound to repair only the negative consequences that he / she had in mind when expressed the consent and is exempt from any unpredictable consequences because he / she

has volunteer created a civil legal. In conclusion, there is a restriction of the principle of full compensation for the injury, unless non-performance is intentional or due to serious negligence of the borrower.

A separate category of damage is the one consisting in the loss of opportunity, for the first time regulated by the Romanian legislature in the current Civil Code. We appreciate that the purpose of this type of damage compensation consists of a recovery because the victim was kidnapped a favorable event and not a repair by reinstatement. Although apparently there isn't any limitation of the principle of full compensation for the damage as the victim is compensated for all the initially damage consisting lack of chance capitalization, in reality there are cases where compensation does not rise to the level of actual damage suffered by the victim.

Another limitation of this principle, from the perspective of the innocent victim, is the situation in which the author is a person without discernment. Although the regulation mainly aims to protect the victim who normally would not have received any compensation from the injudicious author we consider that there is a partial repair of the damage. From the perspective of actual damage produced, this hypothesis is a limitation of the principle of full compensation because doesn't aim a complete restitution, but only a fair compensation amount by reporting both to the victim's and author's patrimonial state.

In conclusion, we consider that the performed analysis is able to show that the principle of full compensation for the damage, although it has a general application, has some limitations in situations where prevail other judicial arguments such as: the principle of equity, effective impossibility of exact quantification of damage, assuming a contractual relationship with predictable effects etc.