The liability of the principal for the deed of the prepositive

The institution of legal liability of the principal for the deed of the prepositive is a particularly important form of civil liability, having been established for hundreds of years in the Civil Code, which has seen numerous ideological developments, disputed theories and relentless discussions concerning the interpretation, in the absence of comprehensive and clear text, on the few legal provisions regulating it.

The delimitation of scope and interpretation of this form of liability has thus fallen under the special doctrine and judicial practice, which attempted to define the concepts of prepositive and that of principal as well as the relationship or the legal relations arising between them and between the two and victim of the damage caused by the wrongful act, respectively.

The New Civil Code tries to regulate more clearly and concisely, through comprehensive texts, all the concepts and relationships characteristic of this type of responsibility, but we will see that it fails to provide an answer to all existing disputes.

The responsibility of the principal for the deeds of the prepositive will to be analyzed from the point of view of the legal liability concept, then from that of civil liability including it into the framework of delict civil liability, and finally as a form of liability for another person.

The paper identifies and characterizes in a comparative manner other types of liability (administrative, disciplinary, constitutional, criminal, etc.), including State liability for judicial errors, namely the international responsibility of states for not complying with the international and European laws, for breaches of its obligations under the treaties of the European Union, but also for the way in which the European Union assumes responsibility for the damage caused by its agents or its institutions in relation to the citizens.

The thesis includes a preamble and a set of conclusions, and is divided into five chapters, each containing sections, subsections and paragraphs.

Chapter I, Legal Liability - Social Responsibility is divided into two sections: "The general notion of legal liability" and "Specific forms of liability" and analyses the concept of liability from the assumption that any legal subject must answer for its acts and must take all the consequences of his -/ her commitments, the notion of responsibility being similar from this point of view the notion of responsibility as a general principle of law.

According to the analysis, human society is based on respect for certain rules of general conduct and non-compliance with these will attract liability of those who violate them.

According to the principle of accountability, no one is allowed to violate another person's rights and to cause damages by his / her own action or omission.

All the rules regulating its implementation into practice represent the institution of responsibility, the aim being that of ensuring stability and order.

Liability derives primarily from human dignity and is rooted in free will, because man is different from all other forms of life, and by means of responsibility in general and legal responsibility, in particular, the man sets his own limits.

The analysis finds that liability can be understood also as an obligation to bear the consequences of breaching the general rules of conduct, but this obligation shall not be confused with legal sanction, because they are different concepts, so liability is a complex of subsidiary rights and obligations which, according to the law, appears as a result of committing of an illegal act and which constitutes the framework for achieving government coercion through legal sanctions with the end of ensuring the stability of social relations and mentoring members of society in a spirit of respect for rule of law.

The conclusion is that the liability of a person is a legal relationship of constraint created by the rule of law, between the State and the person who broke the law, the state being the one to apply the sanction stipulated by the legal norm, which constitutes the subject of legal liability, against the person who violated the law and the duty of this person to submit to the penalty in order to restore the previous order.

According to this conclusion, the legal institution of civil liability proves to be the set of legal rules according to which the person causing damage to another person by his act is obliged to fix it. The institution of liability is viable also in criminal law, administrative law, labour law, constitutional law, European law, international law, etc.

Chapter II, entitled "Types of Civil Liability" is dedicated exclusively to the research of the concept of civil liability and contains three sections "The concept of civil liability and the kinds of civil liability", "Direct delict liability - Liability for one ‘s own deeds" and "Indirect delict liability - Liability for the deed of the other".

Civil liability is the type of liability that, given its characteristic principles, conditions and functions, represents in terms of patrimonial liability, the common law, thus contributing to the protection of subjective rights and legitimate interests of all individuals and legal persons.

Civil legal liability represents the complete range of legal norms which regulate the obligation of a person to repair the damage caused to another person by his or her extra-contractual or contractual deeds.

The research leads us to the conclusion that we can consider that civil liability is common law in matters of property liability because its principles, conditions and functions contribute to the protection of subjective rights and legal interests of all individuals and legal persons.

The New Civil Code dedicates to liability an entire chapter, namely Chapter IV, and by analysing these provisions, civil liability is similar to other forms of legal liability, considering the aims pursued and the means employed, but is distinguished from other forms of legal liability, as well as from other institutions of civil law.

Based on the interpretation of the New Civil Code, contractual liability becomes a special application of delict liability, in that the latter makes the rule and contractual liability occurs when the damage results from the breach of a contractual obligation, which in this case plays the role of an illicit deed.

The illicit deed may be in relation to the execution of an obligation assumed by the debtor, or may be related to a different kind of obligation that is not relative to any previous contract.

The analysis we conducted found that if the failure of a contractual obligation is a civil offense, there is a need to apply the special conditions of contractual liability because Article 1350 para. (2) of the New Civil Code provides that no party can refrain from applying the rules of contractual liability in order to opt for other rules, even if the latter would be more favorable.

Rule of non-overlapping responsibilities is that according to which it is not allowed to invoke delict liability if the conditions of contractual liability are applicable. If a contract is not executed, the victim of the breach of obligation cannot use the possibility of requiring two different remedies, by invoking one type of liability at first, and invoking the second after that.

The conclusion is that the repair of a type of liability case cannot be combined with the type of liability corresponding to the other.

Chapter III is entitled "Civil delict liability of the principal for the deeds of the prepositive – General considerations" and comprises six sections, as follows, "Legal centre and general characteristics before the New Civil Code," "Legal centre and general characteristics under the New Civil Code" "The functions of responsibility of the principal for the deeds of the prepositive", "Scope", "Substantiation of the liability of principals before the New Civil Code" and "Substantiation of the liability of principals under the New Civil Code".

The research makes a number of observations on the rules existing prior to the entry into force of the New Civil Code, the rules governing the liability of the principal for the act of the prepositive, more precisely par. 3 art. 1000 Civil Code, which held liable the masters and the principals for the damage caused by their servants and propositives in the functions that were entrusted to them.

They could not benefit from the provisions of par. 5 a) of the art. 1000 of the old Civil Code, which specifically identified those who may be exonerated from liability established by the said article, by proving that they could not prevent the damage.

The paper identifies the first objective type of liability as that represented by masters and principals liability for damage caused by servants and prepositives, then the liability for damage caused by animals, caused by things and by ruined building, where the fault of the person responsible for the repair of the damage would not be required, and is enough to lead to civil liability if they had individual supervision, management or the legal security of the property.

Unlike the old Civil Code, which established the principal responsibility for the deed servant one paragraph – art.1000, par. 3, the New Civil Code governs this liability more comprehensively, by dedicating it an entire article.

Chapter IV is entitled "Conditions and effects of the principal's liability for the acts of the servant" and contains four sections, as follows, "General Conditions for the liability of the principal", "Special conditions for the liability of the principal," "Effects of the principal's liability" and "Regress of the principal against the prepositive".

The analysis is carried out in identifying the legal provisions of the liability of the principal for the deeds of the prepositive, which can be triggered under art. 1373 of the New Civil Code, under which the person is found to be prepositive if he meets the requirements of art. 1357 - art. 1371 of the New Civil Code, relating to liability for the acts of its own.

The injured victim will have to prove that the general conditions are met as follows: the damage, the existence of the illegal act of the servant and the existence of a causal connection between the wrongful act and the damage.

With regard to the fault or the negligence of the prepositive, art. 1373 of the New Civil Code does not establish it as a condition for the liability of the principal, therefore, when the victim will go against the principal, he will not have to prove the fault of the prepositive, but it will be required from him to prove guilt in the case when he will go directly against the prepositive.

This research emphasizes that prior to the entry into force of the new Civil Code, the literature has proposed this approach, but it was not shared by the vast majority of judicial doctrine or practice, reaching however to be taken by the provisions of the new regulations.

Regarding the research of the causal role in determining the conditions of the damage suffered by the victim, an important criterion is the express provisions of the law such as the provisions of the Criminal Code, which provide for the liability, including the liability for damage caused, together with the author, by the instigator and by the accomplice.

Such provisions have been taken and are found today in the New Civil Code at art. 1369, with the legal provisions as principles and effectively represent a correct application of the causation process in liability. This theory was generalized in particular by our practice court, although for different cases and some decisions, there were judgments based on the theory of equivalence of conditions and on the theory of the required cause.

This paper therefore reach the conclusion that, in the light of the New Civil Code, such situations will cease to produce and we will see a unification of the jurisprudence, which is to treat all court cases by using reasoning behind the theory of the cause of indivisibility.

Chapter V is entitled "Aspects of comparative law on liability" and contains five sections, as follows, "The principal's liability for the deed of the prepositive in the law of other states", "Action for failure to fulfil the commitments assumed by the Member States of the EU treaties", "Action for damages or extra-contractual liability action in EU law", "International liability of states" and "Specific cases of liability of international organizations - the United Nations ".

This chapter analyses in comparative terms the principal's liability in the legal systems of countries such as France, Italy, Spain, Germany, Switzerland, Poland, Czech Republic, Slovakia, Hungary and the Russian Federation. The research identifies where the legal provisions are similar to our system of law, and when the legal provisions are different from the Romanian legal system.

The legal liability in European law takes specific forms and it's very close to the national law. The main forms of liability analysed are the action for failure to fulfil the commitments assumed by the Member States through treaties and the action for damages or extra-contractual liability action.

These forms of liability have been identified and acted at first under some jurisprudential developments sometimes chaotic, with the origin in the common principles of the interpretation of national laws and of the constitutive treaties, so the non-contractual liability of the Union followed the application of the rules governing the liability of public authorities in national legal systems.

It is noted that a great importance in terms of liability have the national courts of the Member States and the national administrative authorities of the Member States, by an analysis of the procedure for the determination of liability.

Regarding the international responsibility of states, the research primarily aimed at the definition of the international responsibility of a State, the fundamentals of the liability of the states, the illegal acts that could lead to the responsibility of the States, the major forms of damage that can be produced etc.

As for the liability of the international organizations, the paper analyses this type of liability regarding the United Nations, which is responsible under the principle that any act or omission of an organization that is incompatible with the general rules of law or the provisions of a treaty to which it is part, is an internationally wrongful act which will be attributable to the organization.

Observe how, once again, the international law of responsibility designed for the purposes against the states required different adaptations to its application against the international organizations. At times the international organization would behave and respond similarly to a principal, the prepositives in this situation are represented by the Member States of the international organization.

The research highlights how necessary overall there was an adequate regulation of the liability for any damages resulting from the exercise of the functions entrusted to the prepositive by the principal. The idea to go for this purpose was the idea of a guarantee for the victim’s injury, the certainty that it will be compensated for the damage they suffered, and the idea of strengthening the sense of responsibility on how the prepositives and the principals who entrust their specific functions operate.

The judicial practice has come over many years to outline some principles enshrined by the New Civil Code, which however has left room for interpretation, not responding fully to all theories of the doctrine of specialty.

It concludes that the New Civil Code removed a gap on the fixing of the concepts of principal and prepositive, clearly defined the report of the principal-prepositive, on which judicial practice and literature have tried to give a definition of the myriad of views divergent.

The prepositive subordinate to the principal criterion, which results in the principal's activities of guidance and control power established by agreement with the prepositive, were also detained in the content of the New Code.

The principal's responsibility continues to be a case of liability, although the consequences are in terms of substantiating the principal's liability and its right of regress against the servant. The new regulation does not expressly chose any of the principal's responsibility to substantiate the theory that had been previously proposed, but considering that in light of the provisions of the New Code, the theory implies idea of the objective security of the risk activity.

The absence of fault on the part of the principal in the supervision of the prepositive has become very complex in terms of the activities of large enterprises, in which, with all due care requirement filed or submitted by the principal, it is impossible to exercise constant, concrete, continuous, direct and effective supervision of the for each individual whom has been entrusted with certain tasks.

The victim's interest will not suffer any damage such as he will be able to be compensated by both the prepositive and by its guarantor, which is the principal, which is called to provide coverage for damage resulting from the unlawful acts committed by those which he is in charge of. The principal is a guarantor and not a joint debtor, that doesn't underline his possibility of recourse against the prepositive, who must ultimately answer anyway for his illegal acts.

According to the research findings, the warranty covering the damages to the victim represents only a fair degree of protection of victim's injury and it is not a cause of exoneration of the prepositive.

The current regulation contains a precise identification of the conditions under which the principal will be liable for the acts of the prepositive. Condition of his guilt, which was the object of some controversy in the literature, it is retained in the New Code, that the principal will act as a guarantor, regardless of his guilt.

The culpability of the principal will affect its recourse action against the prepositive, who shall indemnify the principal in proportion to the extent of his guilt in committing illegal acts.

On condition that the wrongful act was committed in the functions entrusted to the prepositive, the law did not consider necessary to regulate the hypothesis when the prepositive exceeds his office, and the principal is not held liable if the prepositive extended what was initially assigned by the principal.

Regarding the right of regress of the principal against the prepositive, guarantor in relation to the victim, it was devoted specifically by the New Civil Code, which enshrined the judicial practice solutions, including establishing clearly the situation when the prepositive and the principal committed the wrongful act together.

The new code has not expressly provided for the situation when the damage occurred by many prepositives, each subordinate to another principal. The conclusion is that under the provisions of this code we cannot establish solidarity between the principals, but only solidarity among the prepositives, each principal will be accountable for his own prepositive, to the extent of its contribution to the damage.

It will be interesting to see how the legal doctrine and the practice will develop from now on, given that the new regulation gives response, overall, to all the misunderstandings and the disputes held over the few paragraphs that regulated for hundreds of years the subject of liability of the principal for the deeds of the prepositive.

The analysis points out that the law has attempted to cover all possible situations, or more precisely tried to give a clear answer to various problems that will occur during the following years, long after the entry into force of the New Code, but experience makes us doubt the possibility of achieving this ambitious goal.

The law will always evolve as human society relations and legal relations are always moving, always evolving and the law is bound to develop and grow together with the reality of social life. Therefore, there will surely be new topics for debate, new theories and new approaches to demonstrate.

Although the law regulates only the future, the conclusion of the paper is that the New Civil Code tried to give an answer to the past, so that, together with the legal doctrine and practice to find out the questions that will submitted by the future under the new regulations.