

Parental responsibility for damage caused by a minor child

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Abstract

The protection of subjective civil rights in the event of damage includes the recognition of the right to compensation for damages and the restoration of the situation that exists before the violation of a certain right. In this case, a civil legal relationship arises between the injured party and the injured party with concrete rights and obligations for the parties in question. The realization of the obligation to compensate the damage is done within a certain legal procedure. The procedure can be of administrative and judicial nature. The implementation of the obligation to compensate the damage by the authorized body is in function of satisfying the interest of the injured person - protected by law.

Keywords: right, law, harm, reward, responsibility.

1. General reviews

Violation of legal rules gives rise to the responsibility of a certain person. In the early stages of the birth of liability, liability for breach of the law was independent of guilt. The purpose of liability was not to compensate for the damage but to remedy the legal violations through a procedure which was considered magical¹.

Today, when we live with the rapid development of technology - technology, the possibility of posing a risk to human wealth, life and integrity is greater. The large number of consequences of this nature has marked an increase in the use of dangerous items and in the exercise of dangerous activity. Being exposed to such losses, on the other hand legal preconditions have been created to provide an institutional mechanism in order to advance the issue of civil liability for damage caused in scientific research, in contemporary solutions of legislation and case law. This is also the reason why today, the issue of civil liability for the damage caused occupies an important place in the contemporary theory of civil law, to be composed together with the insurance institute and to be complemented together with the relevant forms of liability. Today, the issue of civil liability for damage caused by dangerous goods or dangerous activity can't be treated alone, within the rules of substantive civil law, but it is treated as an integral part of the rules of insurance law. When adjudicating civil legal liability for damage caused by dangerous goods and dangerous activities, this liability extends to the dimensions of insurance law, since below we will present the position that motor vehicles in civil law are considered dangerous items and their use corresponds to the exercise of dangerous activity, we can say that the damage caused by the use of motor vehicles gives rise to civil liability for the damage caused, this responsibility which is extended to the frameworks of the insurance institute from auto liability.

¹ Janno Lahe, Forms of Liability in the Law of Delict: Fault-Based Liability and Liability without Fault, *Juridica International*, X, 2005, <http://www.juridicainternational.eu/index.php?id=12617>, 25 September 2011.

II. Status of motor vehicles in civil law

Motor vehicles in civil law are items which have a special status. They have received special treatment from the legislature. That status, that treatment is not only an object of legal science, but a legal matter. Civil legal theory has dealt considerably with the determination of the status and treatment of motor vehicles. In the framework of the theoretical treatment, a number of important issues for the adjudication of civil legal liability for the damage caused by the use of motor vehicles are analyzed. The first important issue is the determination of the legal status of the motor vehicle, respectively the treatment that the motor vehicle has in the legislation. The theory of civil law has also contributed to this issue. The motor vehicle in civil legal theory is considered a dangerous item. It is the position and manner or form of use of the item that made it reflect danger². Dangerous item is any movable or immovable item which according to its position or use or according to its properties poses a danger to the district³.

Regarding the status and use of the motor vehicle, the legislation of the Republic of Macedonia has not provided for express provisions in this regard, but has determined the damage resulting from the dangerous vehicle or dangerous activity. Thus, only the issue of liability for damage caused by dangerous items or dangerous activity is addressed in the Law on Obligations of Macedonia. If we analyze these legal provisions, we can conclude that the Macedonian legislator did not provide a systematic solution to the damage caused by the dangerous item or dangerous activity, but only identified the dangerous item and dangerous activity as the cause of the damage. Article 159 of the Law on Obligations of Macedonia stipulates that the damage caused in relation to a dangerous thing, dangerous activity, is considered to originate from that thing, activity, unless it is proven that they were not the cause of the damage.

Based on the legal wording, the issue of civil legal liability for damage caused by objects or dangerous activity is closely related to the facts that determine the causal link for the damage caused. The causal link is the relevant fact in determining the civil legal liability for the damage caused. If the causal link between the consequence and another cause is proven, then it cannot be said that the damage originates from the dangerous item or dangerous activity. The legal wording "unless it is proven that they were not the cause of the damage", means that the determination of civil legal liability for the damage caused by dangerous items or dangerous activity is subject to proving the cause of the damage. So, it must be proved that the dangerous item or dangerous activity is the cause for the damage. In addition, this legal solution has made the issue of assessment that the damage caused by the dangerous item or dangerous activity is a matter that belongs to a factual whole and that in each specific case the responsibility is determined within the rules of a relevant procedure.

The motor vehicle does not present a dangerous item as such. Depending on its position, the motor vehicle can reflect danger. Only when it gains this opportunity does the motor vehicle have the status of a dangerous item. Otherwise, when the motor vehicle has the position that eliminates any danger with certain consequences, then the dangerous item is not treated. Putting the motor vehicle into circulation is the position that gives it the opportunity to display a potential hazard. In this regard, we appreciate the theoretical approach that the motor vehicle will be dangerous when set in motion, because it produces great kinetic energy which can also become

2 See: Popovic Velimir, work, quoted. p. 1.

3 Dauti Nerxhivane, Law of Obligations, Prishtina, 2001, p. 174.

destructive⁴. From this approach we can conclude that the motor vehicle is considered a dangerous item because it circulates at high speed and as a result, can't be stopped at the moment when it is exposed to concrete danger. In order not to create the attitude that the motor vehicle is a dangerous item only when it is moving fast, we can conclude that the motor vehicle acquires the status of a dangerous item when it becomes a source of potential danger, regardless of whether it is in fast circulation or not. . Even the issue of the danger of the motor vehicle should not be related to the fact whether it is in circulation or not. The most important thing is to determine the position in which the motor vehicle is located and from which position it makes it a cause for damage. We should not open the dilemma to the approach that the moving motor vehicle is the source of an increased risk and this risk is potential to cause certain consequence. It is indisputable that the danger resulting from the motor vehicle that is in circulation is related to the driver who drives it, creating circumstances that the certain consequence is inevitable.

III. Cause of damage

Dealing with the fact of causing damage is an essential part of determining civil liability. This liability is directly related to the concrete damage. On the basis of this fact are treated other legal conditions set for the adjudication of liability. Damage as a prohibited human action is not the only fact even though it is fundamental in the procedure for exercising the right to compensation. In addition to certain consequences, the nature of the illegal action that caused them raises issues of great relevance in determining liability. This means that the responsibility in these cases depends on a concrete feature of the action that caused the damage - illegality. So, the action with which the damage is caused should be prohibited and illegal⁵. Certain consequences must result from that action which has the property of illegality. So, only from those actions should be injured a certain good which in the concrete case has a certain property value, or infringed an interest even if not property protected by legal provisions that provide concrete protection from potential risk and reward determined by the eventual infliction of damage⁶.

IV. Civil legal responsibility

An important issue in the civil legal liability for the damage caused is the determination of the moment of its birth. When is civil liability for damage caused considered? The legislature has not defined an expressive moment in this regard. However, addressing the content of Article 9 of the Law on Obligations of Macedonia, which prohibits the act by which someone else is harmed, we can conclude that the moment of birth of liability is indirectly determined⁷. This moment is related to the birth of the

4 In relation to this position of the motor vehicle we should not relate the issue to the kinetic energy that the motor vehicle releases when it is in circulation, but the circumstances that make that position at potential risk of causing harm. For more details see: Toshevski Blagoj, Nadomestuvanje na shteta pričineto so motorno vozilo, thesis, Skopje, 1980, p. 12.

5 Jan – Luis Baudovin et Patrice Deslauriers, *La responsabilite civile: vos droits et vos obligations*, 5 edition, Edition Ivon Blais, 1998, p.4.

6 Hetemi Mehdi, *Obligations and contracts*, Tirana, 1998, p. 261.

7 Article 823 of the German Civil Code defines liability for damage caused. According to him, a

relevant legal fact. Prohibited human action when it will cause certain consequences, at the same time has violated the concrete legal provision. The person is harmed and when someone is harmed, harmful action is forbidden. So, in cases when the damage is caused, then it is relevant for the law to address the issue of the birth of a new relevant fact - the damage. When this fact arises then a source of civil legal obligations was created - the obligation to compensate the damage. Anyone who causes harm to another is obliged to compensate him, unless he proves that the harm was caused through no fault of his own⁸.

So, in the legislation is incorporated the principle of prohibition of causing damage - *neminem laedere*. In all cases where the *neminem laedere* principle is violated, the application of the sanction is in question. The sanction in this case is the implementation of the purpose of civil legal liability for the damage caused⁹. However, when we talk about the sanction resulting from the violation of the *neminem laedere* principle, we can't leave without addressing a number of other issues relevant to the adjudication of liability. The issue of guilt and the relationship of the criterion of liability set in the application with the fault of the perpetrator of the illegal act is essential in determining the responsibility and the responsible person.

When we talk about civil legal liability for the damage caused we can say that the sanction that results from it has a property character. This sanction is in fact compensation for damage. When it comes to the damage caused by the motor vehicle, the compensation of the damage is realized in support of concrete legal titles: insurance contract, green card, border insurance certificate and the law on compulsory motor third party liability insurance. Insurance cover includes a range of motor damage cases. In motor third party liability there is coverage of the obligation to compensate the damage based on the rules of insurance law. The insurance company will always compensate the damage caused to third parties by using the motor vehicle if the insurance case arises, respectively if there is liability of the insured or other user of the motor vehicle. This is the obligation deriving from the insurance contract itself or other legal titles defined by law. So, in other cases, when the contract for motor third party liability insurance has not been concluded, when the damage was caused by an unidentified motor vehicle and when the first insurance premium has not been paid, then there is no contract coverage for the compensation of the damage, but coverage based on Articles 66 and 67 of the Law on Insurance of Property and Persons of Macedonia. Injured third parties have the right to claim compensation from the insurance company which deals with motor third party liability insurance. The obligation to compensate the damage of the Insurance Company in this case results from the law itself, but always within the rules and principles of civil legal liability for causing damage.

V. Parental responsibility for damage caused by a minor child

A person who is in charge of another who is a minor or subject to mental disability person who intentionally or negligently unlawfully damages the life and bodily health, freedom of property or a right of another person is obliged to compensate the damage to the injured party. Nikolovski Aleksandar Stopansko pravo so osnovi na pravoto, Skopje. 1984.p.154.

8 Nikolovski Aleksandar, work, quoted, p.154.

9 Regarding the sanction that is applied in case of violation of the principle of prohibition of causing damage, see in more detail: Alishani Alajdin, Basic Principles of the Law on Obligations, Prishtina 2000, p. 327.

is liable for harm caused to others, unless the responsible person proves that there is compliance of supervision with the required standards of conduct¹⁰.

For traffic accidents, in the court procedure for the realization of the right to compensation of damage, the trial of parental responsibility as a civil legal obligation is not excluded. Insurance policy has also given access to the extension of parental liability for damages caused in car accidents.

When we talk about responsibility for others¹¹ referring to the responsibility of parents for their minor child, it is important to determine the legal position of the child in legal solutions. German law has defined the responsibility of minors based on the age of the child. Under Article 828 of the German Civil Code a person who has not reached the age of seven is not liable for damage caused to the other party. Also, a person who has raised the age of seven but not the age of ten is not liable for causing damage to the other party in an accident if he did not cause the damage intentionally. Meanwhile, a person who has reached the age of eighty is liable for the damage caused to the other party. In relation to this provision, the German legislature has defined the circumstances that make parents responsible for the damage caused by the child they are supervising. In this regard, Article 832 of the German Civil Code stipulates that a person who is obliged under the law of supervision of a person to whom supervision must be offered either because he is a minor or because of his condition mental or physical, is liable for damages caused to other persons by the person under supervision. He will be exempted from this liability if it is proved that the damage was caused despite the fulfillment of duties and requirements for supervision.

Liability for others exists when a natural person by his actions will cause damage, while the other natural person or legal person is obliged to compensate the damage caused¹². Similarly, the Spanish Civil Code in Article 1903 stipulates that the obligation to compensate for damage is necessary not only for the actions or omissions of the person himself as the perpetrator of the damage, but also for those people who are in custody. The parents are responsible for the damage caused by the children who are in his custody. Tutors are responsible for harm caused to children living with or under their authority.

In this type of liability, the principle that the one who causes damage is obliged to compensate it is excluded. Liability for others is not the responsibility of the person who caused the damage, but the other entity in its place¹³. The parents will be liable for the damage that will be caused by the motor vehicle that has been directed by the minor child who has taken the motor vehicle illegally. Parents will be liable for damages if their minor child is responsible for causing the damage. The father and mother of the minor child are persons exercising parental authority. They are jointly liable for damages caused by their minor children living with them.

Thus, the application of the rules of parental responsibility occurs in all cases where the pest has no tortious capacity or the pest has tortious capacity but is under parental care¹⁴. In this context, the damage will be compensated by the entity that is in a special

10 Art. 6:101, Principles of European Tort Law, European Group on Tort Law, <http://civil.udg.edu/php/biblioteca/items/283/PETL.pdf>, 10 June 2012.

11 Corinne Renault – Brahinsky, *L'essentiel du Droit des obligations*, 2011-2012, 7-e édition, Gualino, lextenso éditions, Paris, p.100.

12 Georgiev Pop Dimitar, work, quoted, p. 434.

13 Dauti Nerxhivane, work, quoted, p. 189

14 Corinne Renault – Brahinsky, *L'essentiel du Droit des obligations*, 2011-2012, 7-e édition,

legal relationship with the pest.

The alleged fault is the basis of liability for the other, because the damage must have been caused by the other entity's omissions. This guilt in some cases can be relative - *presumptio iuris tantum*, and in some cases absolute - *presumptio iuris et de jure*.

When it comes to parental responsibility for children and the responsibility of the guardian or guardianship bodies for persons completely deprived of the ability to act, the main reason for responsibility for others is based on the necessary oversight of some entities - *culpa in inspiciendo*, for the responsibility of employers for their employees and for the responsibility of the economic organization for its employees, the main reason for the responsibility is based on the lack of necessary instructions - *culpa in instruendo*, on the wrong choice of the employee to whom the work is entrusted - *culpa in eligendo* and in lack of proper oversight for the affairs entrusted to the affairs - *culpa in eligendo* and in the absence of proper oversight for the affairs entrusted to it - *culpa in incipiendo*, while for the responsibility of the legal person for its bodies, the main reason for the responsibility for others rely on the wrong choice of another collaborator or worker - *culpa in eligendo*¹⁵.

VI. Conclusion

When the damage will be caused by the minor child then it is estimated that the tortuous capacity of the pest is missing, respectively the pest is in parental care. In this type of liability, the principle that the one who causes damage is obliged to compensate it is excluded. Liability for others is not the responsibility of the person who caused the damage, but the other entity in its place¹⁶. Parents will be liable for the damage that will be caused by the motor vehicle that has been directed by the minor child who has taken the motor vehicle illegally. Parents will be liable for damages if their minor child is responsible for causing the damage. The father and mother of the minor child are persons exercising parental authority. They are jointly liable for damages caused by their minor children living with them.

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15 Regarding liability for others, the Court of Appeal in Bitola, Judgment, Nr. 340/09 on determining the obligation to compensate the damage caused in a car accident has based it on the application of substantive law in the field of labor law. In cases when the employee during work and in relation to work, intentionally or through gross negligence causes damage to another, the employer is obliged to compensate the damage to the injured person, and gains the right to reimbursement on behalf of the amount paid by the employee who has culpably caused harm.

16 Dauti Nerxhivane, Law of Obligations, Prishtina, 2002.p. 189.

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