

COORDINATES OF TORT CIVIL LIABILITY IN THE CONTEXT OF THE APPLICATION OF THE EUROPEAN PROCEDURE BASED ON AMIABLE SETTLEMENT¹

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Tort civil liability regulated by the text of the Civil Code regarding the delinquency and quasi-delinquency, art.998-1003, also regulates legal relations as a consequence of car accidents resulting in damage or injuries. The EU integration and harmonization of laws have modified the approach towards tort civil liability in car accidents. Since July 2009 a new commercial alternative called amiable settlement has been used and so insurance companies can handle claims better by using the understanding between the parties, simplifying procedures but also ignoring in some cases the civil law theory in favor of commercial law elements.

Key words: tort civil liability, Civil Code, delinquency, quasi-delinquency, damage or injuries, EU integration, car accidents, insurance companies.

Chapter I

GENERAL CONSIDERATIONS REGARDING TORT CIVIL LIABILITY FOR DAMAGES CAUSED AS A RESULT OF CAR ACCIDENTS

As far as tort Civil Liability is concerned, there is no special regulation that approaches the rights and obligations of individuals who cause losses to third parties as a result of car accidents and/or those of the individuals suffering the damage. Civil Law, through the texts of articles 998-1003 of the Civil Code, regulates the part about delinquency and quasi-delinquency, in which the elements of tort Civil Liability are found. In accordance with articles 998 and 999 of the Civil Code, any deed of a human being that results in damage to a third party obligates the perpetrator, out of whose fault the loss was created, to repair such damage. Man is responsible not only for the damage caused by his deed, but also for the damage caused by negligence or carelessness. The articles are inspired by the French Civil Code. The two legal texts establish a traditional principle of our civil law,² known from the times of the Calimach Code: the principle of direct liability according to which man cannot be made answerable except for his own deed.

The development of society and the complexity of social life imposed the necessity to ensure security in the civil circuit imposing the extension of tort Civil Liability beyond the limits of one's own deed.³ In other words, a liability that derogates from

¹ Car accident report drawn up by the parties involved

² Botea Gheorghe-*Raspunderea Civila delictuala in accidente de circulatie*, Editura Casa Europeana Publishing House, Bucuresti, 1992

³ M.Elinescu-*Raspunderea Civila delictuala*, Editura Academiei Romane Publishing House, Bucuresti, 1972, pag. 249, 252

common law was established, namely that of indirect tort Liability, notion which, in light of the provisions of articles 1000-1002 of the Civil Code, designates the obligation of a certain individual to repair the damage caused through an action or inaction of minor children, of the delegate who works for that individual, or of the object or animal in their care. Through these provisions, several types of tort Civil Liability were regulated in an express and limited manner, in a systematization remedied through the intervention of legal practice and the legal doctrine. Some authors⁴ group indirect Civil Liability into two categories, namely:

- A. Liability for another person's deed, which has the following subdivisions:
 - a. Liability of parents for the illicit deeds committed by minor children (article 1000 of the Civil Code);
 - b. Liability of teachers and artisans (craftsmen) for the damages caused by the students and apprentices under their supervision;
 - c. Liability of perpetrators for damages caused by their delegates in the entrusted positions;
- B. Liability for objects, animals and buildings, again structured in three subdivisions:
 - a. Liability of the individual for the damages caused by objects in their legal care;
 - b. Liability for the damages caused by animals in the legal care of an individual;
 - c. Liability of the owner of an edifice for the prejudices caused as a consequence of the ruining of such edifice.

In order for tort Liability to exist, certain specific, cumulative conditions need to be met simultaneously, in totality or sometimes just in part. A first condition of an objective nature is the existence of the damage, of a material damage or of a moral damage, respectively. A second condition, again of an objective nature, refers to the existence of an illicit deed. The third condition is the existence of a causality relation between the illicit deed and the damage, namely for the prejudice to be the causal result of the illicit deed. The fourth condition in order of succession, of a subjective nature this time, is the existence of the fault, consisting in the intention, negligence or carelessness with which the author of the illicit deed responsible for the damage acted. The fifth condition, again of a subjective nature, but indissolubly linked to the prejudicial act committed by negligence, is the existence of the delinquent capacity of the author of the illicit deed. There can be no guilt if there is no discernment of the deeds committed.

Chapter II

THE LEGAL BASIS OF THE COMPENSATORY ACTION OF THE INDIVIDUALS WHO SUFFERED DAMAGES AS A RESULT OF CAR ACCIDENTS

Car accidents are part of everyday life and the drivers' behavior and the road infrastructure generate more often than not serious damages of a material nature as well as nonmaterial damages known as moral damages. Tort Civil Liability for these damages certainly rests upon the car drivers who are responsible for their deeds. In the year 1972, Romania was the twelfth country in the world which institutionalized in a commercial form this Civil Liability. Through the State Council Decree no. 471 of 1971 with regard to state

⁴ C.Statescu, C.Birsan-*Tratat de Drept Civil, Teoria generala a obligatiilor*, Editura Academiei Romane Publishing House, Bucuresti, 1981, pag.158

insurance, clear provisions were established regarding the Civil Liability Car insurance as mandatory insurance. As of that date, private individuals and legal entities who hold vehicles subject to registration were automatically insured, through the essence of the law and the existence of the registered vehicles in the property of the private individual or legal entity. Through this legislative framework the groundwork for the reconciliation of the parties via amiable agreement was created. The claims for material damages of the individuals who suffered damages were extinguished by the insurance company based on an understanding with the insured and the responsible party, as the case may be. In this manner, the settlement of the claims via the courts of law was short-circuited. For the understanding between the parties, the provisions of tort Civil Liability comprised in articles 998-1003 had to be fulfilled and had to result from documents drawn up by the authorities (contravention reports) and the witnesses' statements.

For establishing the compensation value on the basis of the agreement between the parties⁵, the total repair of the material damages without exceeding the value of the goods at the time of the accident was possible after the establishing of the damages and the assessment thereof.

In the year 1995, the structural changes in the economy and in society created an objective necessity to modify the legislation in the field of tort Civil Liability in the case of car accidents. Through Law no. 136⁶ regarding Insurance and Reinsurance in Romania, new parameters are established regarding Civil Liability insurance in the case of car accidents. Through this law the insurance was redefined as mandatory and concluded on a contractual basis. The difference between the legislation that existed in the period 1972 and 1995 is technical and commercial in nature. The insurance does not automatically come into effect through the essence of the law on the date of registration but comes into effect on the date of the closing of the insurance contract, of the related insurance premiums and of the registration of the vehicle. The liabilities from the advancement of the insurance contract have not been changed and are subordinated to the Civil Code liabilities discussed in chapter I. Basically, the convention closed between the perpetrator (the insured), the individual who suffered damages, and the insurer extinguishes the claims for damages that were created as a result of the car accidents of the damaged parties.

The amiable agreement mechanism has evolved in the field of Civil Auto Liability and, over time, the amiable settlement of the claims for damages of a nonmaterial nature was also permitted by the legislators. Practice obligates the insured to bear in mind the examples and the legal practice for similar cases when accurately and honestly establishing the compensation indemnities.

Chapter III

TRENDS IN TORT CIVIL LIABILITY IN THE CASE OF CAR ACCIDENTS – COMMERCIAL SOLUTIONS FROM THE EUROPEAN PRACTICE

The Romanian Commission for the Supervision of Insurance⁷ regulated the commercial side of tort Civil Liability in a unitary fashion for the whole Romanian insurance market, through orders which established technical norms regarding the

⁵ Law-Decree no. 471/1971 regarding State Insurance, Republished in the Official Bulletin of the Socialist Republic of Romania, issue no. 13 of 27.02.1988, art.44

⁶ Law no. 136 regarding the Insurance and Reinsurance in Romania, published in the Official Gazette of Romania issue no. 303 of 30.12.1995

⁷ Set up on the basis of Law no. 32/2000 (before this law, the organism functioned under the name of OSAR – the Office for the Supervision of Insurance and Reinsurance, and was subordinated to the Ministry of Finance)

application of the mandatory Civil Liability insurance for damages created as a result of car accidents. These norms had an annual expression consistency and application authority.⁸

Through the annual legislative texts, the Insurance Supervision Commission harmonized the Romanian legislation with the EU legislation because the tort Civil Liability insurance in the case of car accidents has acquired a transborder character inside the EU as well as outside the EU (but in Europe nevertheless).

With direct reference to tort Civil Liability, we notice the fact that, starting with 2009, a parallel system for settling the potential subjects of law in the Civil Auto Liability is created, system which is based upon a combination of civil and commercial law elements. This parallel system, called amiable settlement, allows the settling of the compensation claims of the individuals who suffered damages as a result of car accidents caused by car drivers insured with commercial companies, based on the assessment of a state of affairs made by the insurers.

The amiable settlement procedure is a procedure that was introduced in accordance with the provisions of article 8 of Law 136/1995, regarding Insurance and Reinsurance in Romania, by the Insurance Supervision Commission, which issued in this sense Order no. 21/2008 published in the Official Gazette, issue no. 876/24.12.2008. The norms regarding the settling of tort Civil Liability on the basis of the amiable accident assessment came into force on July 1 2009. The amiable assessment form replaces the contravention report drawn up by the police on the occasion of the assessment of traffic accidents. If up to this date the police drew up all the administrative and contraventional sanction documents, the police now only gets involved in the case of accidents involving bodily injuries, in accidents in which more than three vehicles are involved, and in accidents where the parties do not reach a consensus regarding the dynamics of the accident.

For the cases where the car drivers have agreed with regard to the accident dynamics and map, the new methodology allows them to fill out a common form in which they fill out the information about the ownership of the vehicle, the technical characteristics and the registration data of the vehicle, and information on the Civil Liability Auto insurance contract. The form may be used irrespective of the place where the accident took place (in the classical system the police issued a contravention report only for the roads open to public traffic). The granting of compensation to individuals who suffered damages is done in this methodology on the basis of a protocol closed between the insurance companies authorized to practice Civil Liability insurance. The protocol describes a number of six basic scenarios for the accident dynamics and establishes by percentages in whose charge the fault for the causing of the accident is. Paradoxically, this protocol with the

⁸ In the year 2006 Government Ordinance no. 32 of 29.01.1996, published in the Official Gazette issue no. 22/30.01.1996; Government Ordinance no.1259/ 1996 published in the Official Gazette no. 306/25.11.1996 for the year 1997; Government Ordinance no. 848/1997 published in teh Official Gazette issue 363/17.12.1997 for the year 1998; Government Ordinance no. 906/1998 published in the Official Gazette issue no. 491/21.12.1998 for the year 1999; Government Ordinance no. 906/1998 published in the Official Gazette issue no. 491/21.12.1998 for the year 1999; Government Ordinance no. 1054/1999 published in the Official Gazette issue no. 640/29.12.1999 for the year 2000; the Order of the Insurance Supervision Commission no. 9/2002 published in the Official Gazette issue no.2/07.12.2002; the Order of the Insurance Supervision Commission no. 3113/2003 published in the Official Gazette issue no. 858/03.12.2003; Order 3108/2004 of the Insurance Supervision Commission published in the Official Gazette issue no.1154/20.12.1995; Order of teh Insurance Supervision Commission no. 3116/2005 published in the Official Gazette issue no. 615/15.07.2005; Order 113133/06.12.2006 of the Insurance Supervision Commission published in the Official Gazette issue no. 977/2006; Order 113102/2006 of the Insurance Supervision Commission published in the Official Gazette issue no. 106/27.02.2006; Law no. 304/2007 published in the Official Gazette issue no. 784/19.11.2007; Order no. 11/2007 of the Insurance Supervision Commission published in the Official Gazette issue no. 686/09.10.2007 for the year 2008; Order of the Insurance Supervision Commission no. 8/2008 published in the Official Gazette issue no. 500/03.07.2008

traffic scenarios does not observe the provisions of Government Emergency Ordinance no. 195/2002 which regulates traffic on public roads. An order of the Insurance Supervision Commission abolishes in part the provisions of certain Government decisions that regulate the degree of negligence on public roads. Situations may occur where, if the guilty person refers to the police, he/she has a certain legal classification and a fault in causing the accident, and if he/she uses to the amiable settlement method, the insurance companies where the two are insured establish negligence for the causing of the accident.

In the case where the ones responsible for causing the accident refer to the police for the establishing of the degree of negligence, they will be sanctioned conventionally (i.e. fined) for the imputed deed, and administratively with penalty points for their conduct on public roads. For the same deed, if they use the amiable settlement method, they are no longer legally accountable for the possible contravention, even though the deed is incriminated by the traffic legislation and they no longer accumulate administrative penalties.

From a procedural point of view, in Order no. 21/2008 regarding the introduction of the procedures for the amiable assessment of negligence and of tort Civil Liability, the Insurance Supervision Commission does not indicate what happens in the situation where the guilty party goes back on the statement he/she made initially, if there is a deadline for the prescription of the deed, nor does it indicate, according to the legal norms, what happens if, for the same accident, the persons involved declare different scenarios in order to receive twice the compensation as per tort Civil Liability.

The settling of tort Civil Liability relations based on the agreement of the parties via the use of an amiable settlement form was meant to be a procedure that the EU states have used for almost 20 years. Tort Civil Liability in the case of car accidents is transformed into a commercial act at the disposal of the insurance companies involved through the deed of their insured and which establish the guilt, negligence and the damages. The following conditions are no longer required: the illicit deed and the existence of a causality relation. The application of the amiable settlement method also eliminates the condition of the existence of discernment for the deeds for tort Civil Liability. The amiable settlement form may be filled out by persons who take drugs, who were under the influence of alcoholic drinks at the time of the accident, elements that will be hushed up by those involved in the accident at a later date when the accident is declared. According to the old procedure, the police would gather samples via the alcohol test or drug test methods.

Chapter IV CONCLUSIONS

The legal basis for the compensation action, instituted by the individual who suffered damage as a result of a car accident, is based upon tort Civil Liability, stipulated in the Civil Code, articles 998-1003. In order for the conditions required by law to be met, five conditions need to be met, of which three are of an objective nature while two are of a subjective nature, such as: the existence of the damage, the existence of the illicit deed, the existence of a causality relation, the existence of negligence and the existence of the delinquent capability. The determination of the obligation to repair these damages and the establishing of the person responsible for causing them occupy a special place among the general issues of tort Civil Liability⁹.

⁹ For a detailed presentation of the problems created by vehicle collision, see Francisc Deak, *Condițiile și fundamentul Raspunderii pentru prejudiciile cauzate de lucruri*, cit.supra, pag.31-34.

Starting with the year 1972, the Civil Liability Car insurance was introduced in Romania, through which the material and nonmaterial damages caused by car accidents are compensated economically by the insurance companies where the owners of the vehicle driven by the guilty party have insurance. In the year 2008, the legislation specific to insurance was modified, so that a parallel system based on Commercial Law was created, which settled the compensation claims of the individuals who suffered damages as a result of car accidents. This system, based on commercial rules, with elements of Civil Law referring to tort Civil Liability, has as its main objective the execution of the Civil Liability Car insurance contract in a simplified form upon the agreement between the insurance companies. The new system does not eliminate the classical system based on law norms but rather it complements it or sometimes ignores it. The auto drivers agree on the causes and circumstances of the accident but they do not decide guiltiness, even if one or the other is willing to take it upon themselves. Guiltiness is established by the insurance companies on the basis of certain simplified procedures that ignore the provisions of traffic and contraventional legislation. In the situation where the insurance companies do not agree on the payment obligations, these go before a mediation commission which imposes the observance of the protocol.

In the situation where the persons involved in the accident do not agree on an understanding regarding the dynamics of the accident, they will still turn to the police, which will solve the case, based on law norms referring to traffic on public roads. If not even the police satisfies their claims and positions, then they can initiate a court action for the establishing of civil liability on the basis of the Civil Code and the technical assessment.

We consider positive the legislative modification in tort Civil Liability in car accidents. The modifications harmonize the operation systems in all the EU countries, and the amiable settlement form is standardized on a European level, so that in this fashion every citizen is acquainted with the standard form and its contents. We amend the introduction of the amiable settlement. The amiable settlement was introduced through an order of the Insurance Supervision Commission and modifies situations decreed and clarified by legal regulations with superior power. Thus, Order no. 21/2008 of the Insurance Supervision Commission does not take into account the express provisions of the Government Emergency Ordinance regarding traffic on public roads, and the settlement based on the protocol between the insurance companies has at its basis other scenarios and other negligence compared to the regulations.

The future in the legal relations of Civil Law regarding tort Civil Liability in traffic accidents will be simplified and elements of Commercial Law owed to the intervention and interest of the insurance companies will appear. The procedures are new in Romania but in the EU states they have been functioning for a long time.

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