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DAMAGE AND ITS RESPONSIBILITY: EMPIRICAL ANALYSIS OF MONETARY DAMAGE TO THE LAW IN ALBANIAN INSTITUTIONS

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Abstract

The Concept of Impair and whom is Liable for its occurrence, putting the causer of the impair through legal process and reestablishing the infringed Right through institutional means or through fair and full compensation for impaired damage, encompasses a wide variety of problems in theory and practice for Civil Right, which goes on into more convoluted and wide range of other disciplines; so the only means by which in this work we can successfully tackle this problem is by taking a deep and comprehensive side by side analysis of revised law and coherent practice.

Foremost, careful scrutiny, should be paid to treatment of Non Material Impair, this mostly due to the fact that this institution is less known and studied from current legislation, doctrine and Albanian jurisprudence, differently from other Western European Countries or even U.S.A where personality infringement, mental and physical integrity and everything else that might infringe on "non-material" have been the center of studying from lawyers and scholars of the field, also for practitioners. The difficulties while dealing with this kind of non-contractual infringement is its subjectivity, proving it and moreover measuring the collateral obligation and a concrete sum of reward, which would constitute as fair compensation in the end of a full trial.

Throughout such difficulties, legal experts in Albania and practitioners of the field is also added the lack of legal background that our own Civil Code has, where infringement of non-material damage is only foreseen by Article 608 and 625 of the Civil Code, and for compensation on the infringement is only foreseen for non-contractual material (Article 640 through 647 of current Civil Code). Furthermore, destitute legislative tradition is coherent even today where compensation for non-material infringement especially on "public figures" becomes a bit of bashful situation for the judges, in any court. This has ensued that lawyer, judges and so on, to give a very vague interpretation of non-material infringement whenever dealing with such cases, leaving it only within the poor mold that outdated law allows.

***Keywords**:* Albanian Public administration, responsibility, legal process, civil code practices.

INTRODUCTION

Furthermore, due to the fact that this topic needs a good platform to be well explained and studied, a platform as such, we have to agree that Article 625 of Civil Code, when interpreted in a wider scope based also on other practices of more recent times might give us the right to claim that infringements such as : biological infringement, psychological infringement, infringement on leisure, moral infringement, social infringement, and sexual infringement or infringement on the right to give birth might be finding compensation here as in other Western countries.

Nonetheless, keeping in mind wrongful legal interpretation from time to time in our country which continues to happen in this millennia, this gives me the courage to give my view on a better interpretation of Article 635 of the Civil Code and a more objective insight into the compensation that comes from such a subjective topic as "non-material infringement"

Lastly I would like to emphasize that throughout my career, as a lawyer, I have encountered Civil disputes which have aroused in me questions related to :

1. Do we find our self in a situation where infringement has occurred
2. If yes, what type of infringement has occurred
3. Which is the guilty party
4. Which are the elements responsible for this infringement

5. How would you calculate the collateral damage of such infringement and compensation
6. Has the compensation truly undone upon the ensued infringement

Being that regarding these problems there have been little to no discussions at all, or even contradictory decisions to base your work upon or there have been no work at all, I took it upon myself that such a wide and vague topic would take a lot of my time, through research and full commitment.

Ofcourse, at any point, I will never claim that at any case I have fully given an answer to the questions in the way that the law requires, but nonetheless, I hope that this work can be seen as stepping stone which will spur more legal and theoretical thought which improve my work and hopefully the current legal framework.

Not to forget that, side by side with the comments on every disposition which have been studied on a case to case basis, I will also refer to the rulings of Albania's High Court, where in special occasions I have partaken as representative. Even though such actions only find value from a theoretical prospective, they have no legal liability whatsoever; they do present an irreplaceable knowledge in the unifying of legal practice. This practice is creating a new phenomenon in jurisprudence, which must be studied not only for practical but also theoretical purposes in order to bring a betterment of the current legal framework in regards to non-material infringement.

Asking for forgiveness in a humble way, for any mistakes due to lack of experiences which is never enough while working on such topics, I am welcome at any time for constructive criticism which I will regard more as help towards continuously improving my work and reworking it sometime in the near future. Nonetheless, I hope that the conclusions and analysis done in this work have justified the trust given to me by the University while working on this thesis.

LITERATURE REVIEW Of EMOTIONAL MANAGEMENT AND EMOTIONAL INTELIGENCE

2.1 Period of 1945-1990

With the end of the war , 1939-1944, the law that was primarly excecuted was the law of prewar, while the new political-economical development of the society were a determining factor for the right and rule of law in the country. At this period the rule of law was primarily based on Socialist Right, if it can be charachterised as such, which fallowed the socialist economical theory where the State was the sole owner of capital and means of production. In such circumstances the previous legislation of Albanian governance was voided after the war to make place for new legislation which conformed the ruling ideology, on which the whole country was ruled. In this situation was put in place Law number 61, date 17.05.1945 " Abrogation of the legal dispositions promulgated during the occupation, and nullification of penal decisions given throughout this period from Foreign Military Authorities which were valid and based over legal dispositions which were in power before April 7-nth 1939". This law, nullified all legislation put in place during the occupation and classified it as void, while abrogated the legal rights before April 7-nth. This was followed by a series of laws in the field of obligations, until 1957 when Law nr.2359 date 15.11.1956, was put in place, "Overseeing legal actions and obligations". This law was the baseline of overseeing obligatory relations between parties until 1981 when the "Civil Code" was enacted, which encompassed within itself the Legal-Civil relations as a whole.

The litigation of responsibility that comes from infringement according to the law " Overseeing legal actions and obligations"

The aforementioned Law, foresees as obligatory: contracts, obligations which reside from one sided legal actions, obligations which are born from infringement and obligations which come from purloin without right. Compared with the Civil Code of 1929, this Law marked a regress of legal right of obligation in general and in infringement especially.

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For example, it has to be mentioned that law established as reparable only material infringement while categorically denying monetary reward of moral infringement. Let us see specifically how this infringement finds solution in this Law particularly:

In the article 472 we are given the principles of accountability from infringement as stated :

"The person who is guilty (be it with or without conscience) of infringement illegally , towards another person or his wealth, it is obliged to compensate the amount of infringement. The person who is responsible for the infringement cannot be found guilty and answer to the law if he proves otherwise."

According to this disposition we can clearly see the elements of who is responsible and what follows from infringement upon others based on Civil rights. As such, for a person to be charged with Civil responsibility, there are some circumstances which have to align, as: the existence of damage or infringement, the illegality of the action taken, the correlation between the cause and consequence and the culpability which forms the basis of such responsibility. Let us shortly revise the elements which make up the responsibility which is an outcome of the infringement.

1.2 Harm

Is a necessary condition in order to ensue Civil Responsibility according to the Law , which in turn proves the existence of the Harm. With **harm** in general, we see material infringement and not non-material infringement. With material infringement we understand actions by which we lower material goods, or wealth, owned by infringed party which can be compensated with monetary value. Same cannot be said for non-material infringement, which can be infringement upon their life, health, honor, dignity, which according to the Law cannot be determined in a monetary value. Doc.Andon Sallabanda, "The right of Obligations, Tirana 1962.

For such reason, the aforementioned Law does not accept compensation of non-material infringement or differently put "moral infringement". In case we have infringement upon non-material goods, like the death of the person, it can only be compensated for monetary infringement that might have been carried in the process. Case in point: the **harm** that the person has suffered, which was obliged to feed him, is a monetary measurable infringement, which will make the person who has harmed the other party to pay tribute to the party who has been infringed upon. Even though Article 472 (see above) talks for harm beyond monetary harm, as of harm towards a person, it is interpreted as only monetary harm towards the person that has been infringed, because this is the only harm that can be measured with an amount which can be compensated.

1.3 Illegality of an action

Civil responsibility for compensation in regards to infringement, seeks to prove that the infringement was carried in an illegal way (Article 472 of the aforementioned Law). The illegal actions are an objective category and it has to do with the fact that the actions which have caused the harm while contradicting the norms of objective rights. The person who has infringed while carrying an illegal actions, opposing objective rights, has undermined a subjective right of the infringed which is clearly visible, for instance by stealing a personal belonging he has infringed the subjective right of ownership of the person.

The harm caused in this illegal manner can come as consequence of the action or lack of action in an illegal situation. The action was considered illegal if it was restricted by the law. But, when it comes the lack of action was considered illegal, when the person carrying the infringement was obliged to act and had the opportunity to act. The obligation or the opportunity to act should have competed side by side. The illegality of acting (or not acting) which has caused the infringement is a determining factor for holding responsibility towards the compensation. For these reasons, the Law has made clear the occasion, when a person has committed infringement not to be held accountable for compensation due to the fact that the infringement lacks the character of the illegal harm caused that can be put in monetary value. As such the harm caused by a person who is executing his rights or obligations, does not hold within itself the character of illegality. This implies that the author of the harm cannot be held accountable for the harm

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caused of such actions, this is self explained due to the fact that the actions of the harmer are protected by the law itself. Moreover , according to the aforementioned Law (Article 474/1), the person who has carried the harm in conditions of necessary self preservation, is excluded from the responsibility of compensating, making the such kind of infringement and illegal harm. In the case of extreme circumstances, the person who has carried the harm, is not excluded from the responsibility of paying compensation, as such he is obliged monetary compensation. Nonetheless, in such cases it was up to the court to see the circumstance from a case to case basis of how the harm was inflicted and to charge or discharge the author from the obligations of paying compensation to the infringed party.

1.4 The correlation with the cause

Except the existence of the harm and its illegality, in order for there to be responsibility for compensation, it must be proved the correlation between the cause of the action and the consequence of the infringement (harm). According to Article 472 of the aforementioned Law , it is understood that the illegal action must have been the cause of the harm and the action itself is the consequence of the harm. The correlation between the cause must exist even when the inflicted harm was a result of not acting, meaning that in case of inaction and the result of the harm both of them could have been prevented, coming to the same result. In regards to the correlating cause, it has been treated by different scholars and has take a not non-significant place in the doctrine of the time.

1.5 Guilt

Civil Right in accordance with the Law of the time accepted **guilt** as a Civil Responsibility. The obligations which come as a result of inflicting harm as seen in the Article 472 of the Law, differently from the Civil Code of 1929, we see the acceptance of concept “presumption of guilty”. As such, the person who has been infringed upon does not have to prove that the author is guilty of harm, because already he is presumed guilty. Paragraph II, in the aforementioned disposition, lays out that, the person who has inflicted the harm cannot be held responsible if he can prove his innocence. This means that is up to the party who inflicted the harm to prove that he was not guilty for the harm inflicted. Nonetheless, even though as a rule of thumb, accountability for Civil Responsibility that comes from infringement makes the author of it accountable, the law in some cases has also accepted the responsibility with no guilt. Case in point would harm inflicted from an occupation or activity which hold high risk involved.

2. Accountability for harm inflicted by others

Accountability for harm inflicted from a minor under 14 years of age

In regards to such responsibility the aforementioned Law, lays out some cases in which the responsibility for inflicted harm cannot be held by its author, but by its legal guardian. Firstly, we have to mention the responsibility in case when the infliction of harm has been conducted by a child under the age of 14. Article 475 of the aforementioned Law foresees that the case of inflicted harm cause by a minor under 14, accountability shall fall on his parents or its appointed legal guardians. Also for such harm, accountable will be held people responsible for overseeing the minor, but this the accountability shall be restricted only within the time-frame that the minor is under their supervision.

METHODOLOGY

In some studies, based on the methods used, the information obtained may be of a qualitative and quantitative nature. The study is based on obtaining information through questionnaires, which are constructed with closed-ended questions. The data obtained from them are quantitative and qualitative in nature, therefore statistical techniques can be used for their processing based on the objectives of the study.

Quantitative research is pervasive in nature and is used by researchers to understand the effects of various promotional inputs on the consumer, enabling marketers to "predict" consumer behavior. etc. This type of search addresses questions about who, what, when and where consumers buy.

Research can be considered exploratory or confirmatory. Confirmatory research tests hypotheses. The results of these tests aid in decision making, suggesting a specific course of action. Exploratory research takes different approaches. They may be needed to develop ideas, leading first to the development of research hypotheses.

Some researchers often discover the reactions and activities of respondents using marketing research methods.

On the other hand, quantitative methods are needed to measure the effectiveness of these measures.

The Quantitative methodology was used to conduct this study as the analyzed data to derive the results and conclusions of the study are numerical data. The resources used are primary and secondary. Primary data were collected through questionnaires, while secondary data were obtained from the of World Bank, Municipalities etc and for the literature part books and other materials were used by foreign authors and Albanian authors.

What needs to be pointed out in this case is that accountability of the parents and appointed legal guardians is absolute accountability. This means that they cannot be relieved from accountability even if they can provide proof that they could not stop the infringement or causation of the harm. As such, the parent or appointed legal guardian is not only presumed guilty, but this presumption cannot be overruled. We can see a different approach in Paragraph II of Article 475, according to which people tasked with overseeing the minor, cannot be held accountable for the inflicted harm if they can prove their inability to stop the infringement at the time of occurrence.

4.1 Accountability for inflicted harm from a minor over 14 years of age

This is laid out in Article 476 of the aforementioned Law. Differently from a minor under the age of 14, the one who has already reached the age of 14 (considered a minor still), holds accountability for its own actions. There might be cases when the minor does not have the economic means in order to pay compensation for the harm inflicted. In such cases, the accountability for the harm inflicted will be held by his parents or legally appointed guardian. The aforementioned, can be discharged from any accountability if they can prove that their inability to stop the infringement at the time of occurrence. As noted, in this case, the accountability of the parents and legally appointed guardians is a limited accountability.

4.2 Accountability for inflicted harm from a person with the inability to act

In order to be held accountable for inflicted harm there is a number of criteria in which there is also guilt. As such, it means that can be held accountable people who can understand the consequences and importance of their actions. In these circumstances the aforementioned Law has accepted the fact that people who have been stripped of their ability to act, cannot be held accountable for inflicted harm. Article 477 of the Law lays out that inflected harm in this case, hold accountable the people which are charged with the responsibility to oversee a person the inability to act, but this accountability is restricted. These people cannot be held accountable for the inflicted harm if they can prove their inability to stop the infringement at the time of occurrence.

4.3 Accountability for inflicted harm from legal entities, employees and employers

The aforementioned Law, in Article 480 states that:

“ Legal entities are accountable for inflicted harm from its employers or employees while they are carrying out their duties”

The legal entity as any other person is held accountable for inflected damage from it employees while carrying out their duties, but only when the inflicted harm has been carried out from employers or employees whom are not fit for the task that they were hired, or they have not been supervised in a suitable way while carrying out their duties.

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As we can see, the disposition makes a clear differentiation from the legal entity, its employee and employers. This differentiation is important to keep in mind because it implies that the harm inflicted from the legal entity, the one held responsible should be held the legal entity as a whole. The carrying out of the duties of the legal entity is considered the actions of the legal person itself. While the employers or employees are people which are in a contractual relation with the legal entity. For the inflicted damage from the aforementioned, the legal entity is held responsible only if the damage was inflicted by employees which are hired under its supervision and were not suitable to carry on the duties or did not have the proper supervision while carrying out these duties. In order to evaluate if the employee was or not suitable to carry out these duties, it shall remain to the court to decide on a case to case basis. Furthermore the harm inflicted must be correlated with the duties which are carried by the legal entity, as such should be within the framework of the activity carried out by the legal entity.

4.4 Accountability of a governmental legal entity carried out by governmental employees while carrying out their duties in accordance with public service

This type of accountability is foreseen in Article 481 of the aforementioned Law according to which: *"For inflicted harm as a result of illegal actions carried out from public servants while accomplishing their duties in accordance with civic duties, the governmental legal entity is accountable only in the cases which are well established within the law".* This means that the activity falls into a different category which is carried out by the public servant and as such, the legal entity is a governmental entity which has a specific activity, not of any kind. This means that the legal entity will be held accountable if this responsibility is foreseen in a specific law.

Accountability for inflicted damage as result of a high risk activity

This is one of the cases of accountability without guilt, which is laid down on Article 473 of the aforementioned Law. This disposition, explicitly states that:

"Enterprises, institutions and organizations and legal entities which carry out duties which hold a high risk activity in regards to its surrounding, are held accountable for inflected damage from this high risk activity, except when they are able to prove that the inflicted harm has been inflicted by a ***major force****"*

Holding in mind that in such cases we are dealing with accountability without guilt, we can say that the person accountable for infringement cannot be discharged of its accountability even if he can prove is innocence in accordance with Article 472/2, by proving that he is not responsible for the infliction of the harm. The person who is responsible for the infliction of the harm will be discharged of accountability only if he proves that the damage inflicted came as result of a **major force**. Furthermore, the person charged with the compensation of the inflicted damage, can be discharged from its accountability or it can be reduced, when in the infringement has partaken has taken part the harmed party. Regarding what constitutes a high risk activity, the Law does not make a clear definition or explanation, as such its definition would be correlated with the industrial means used while carrying out such activities and would be up to the court, especially the High Court, to establish what would constitute a high risk activity.

4.5 Collective Accountability

In regards when the inflicted damage was carried out by multiple people at once, then there is **collective accountability** and common compensation. This is laid out in Article 478 of the aforementioned Law as stated: *"When the inflicted damage is carried out by more than one person, they will answer towards the affected party together in unity"*

In such cases there is no need for a pre trial agreement between the authors and the hurt parties. In order for Civil Accountability to take place, it only needs that the damage inflicted be result of the actions taken by the people as a group.

Reward for the inflicted damage

The aforementioned Law lays out instances not only when the damage is inflicted from the person responsible, but also while taking into account the guilt of towards the person that the damage is inflicted upon. In this case there is mixed accountability. This is foreseen in Article 485 of the Law according to which: *"When the inflicted damage or the amount inflicted with or without purpose or as a result of recklessness or grave negligence of the hurt party, and when they have not shown regard for the minimizing of the damage, the court on a case to case basis can reduce the monetary amount given as a reward for compensation or discharge the inflicting party from any compensation whatsoever."* In such case, the damage is not only a consequence of illegal actions of the person responsible, but also of the damaged party. The compensation for the inflicted damage in such cases, as is interpreted from the disposition itself, will be done while keeping in mind such facts from the court which can reduce or completely discharge the inflicting party from any compensation. In order for the aforementioned article to be implemented, the affected party should have acted in grave negligence or with pretence.

4.6 Accountability for inflicted damage resulting in death or grave medical injury

When a person is killed or inflicted damage on him results in grave injury, as a result, the inflicted party are infringed in a material and non-material way. The Law does not accept compensation of non-material damage, but only of material nature. In this case, the disposition has foreseen that in this case the affected party benefits from Social Securities, and as such the compensation will be done by the Social Security Institution. When the affected party will not receive the compensation to the fullest from the Social Security, they can reach out and seek compensation from the person responsible for the damage to the fullest. On the other side, the Social Security Institution have every right to seek from the party that has inflected the damage, whatever they have paid up to that point.

DATA ANALYSIS AND THE WORK RESULTS

This study, by its very nature, has focused on descriptive analysis. The most basic statistical analysis is descriptive analysis. Through this analysis we make the initial transformation of the data, in order to describe the basic characteristics such as: central tendency, distribution and densities. One of the most effective ways of presenting information, especially numerical ones, is to construct and present the data obtained through graphs. This, also because many people are confused by the appearance of numbers.

This study, by its very nature, is focused on descriptive analysis. Descriptive analyzes focus on measuring, estimating values, quantities, and distributing the characteristics of the variables taken into the study. Descriptive analysis is advisable to be used for processing data of measurements and observations performed in order to assess the manner and / or extent of reaction and / or dependence of an economic indicator, economic phenomenon, consumer behavior.

In the case when the afflicted damage, results in death, Article 489 of the Law has foreseen which are the people that can demand compensation for the damage. This disposition clearly states that: *"When the inflicted damage results in death, it is compensated the person which are affected be them minor or unable to work, which have been under the supervision of the deceased fully or partially and the people who have been under food care of the deceased".* As we can see from this disposition, the condition under which minors or people unable to work is to be compensated is their status under the care of the deceased. While people who have been under food care from the decease, have right of compensation for the damage inflicted regardless if they have been or not under the supervision of the deceased.

In article 488 of the Law it is foreseen the accountability in case of medical injury of the person. In such cases the damages that might come as a result which are tied to medical expenses and such, loss or impact in the ability to work. Such are the damages that have to be compensated from the inflicting party. The compensation for the afflicting

damages, put in place as a result in reduction in the ability to work can be subject of change with the passing of the time, as requested by the affected party (Article 497)

When the inflicted damage it is done to a minor, the compensation of the damage is settled differently (Article 494,495). Firstly, it has to deal when the inflected damage is done to a minor under the age of 18 and was not wounded in the moment of the inflicted damage. The compensation in this instance towards the minor will be comprised of the necessary medical treatment, payment for necessary prosthetics and furthermore expenses that are related to the injury of his health. When the affected minor is 16 years old, he has every right to seek compensation in regards to losing its ability to work for median wage of a unqualified worker.

Second case, is in regards to the injury of a minor above the age of 14, but not 18 years of age and that in the moment of inflicted damage has stable income from its employment. The person responsible for inflicting the damage is obliged to compensate in regards to his medical care but also damage inflicted due to loss of ability to work based on the income that the affected party had from its employment but still no less than the median income. When the minor is above 18 years of age, he has the right to seek compensation from the damage inflicted based on the median income of the category that he would be employed in before he was damaged.

5.1 Compensation of inflicted damage during the undoing of damage that is endangering socialist common wealth

The prioritization of governmental property over private property can be clearly seen in Article 483 of the Law, according to which: *"For the damage inflicted to a person, when he is undoing a possible damage towards socialist common wealth, the responsibility falls of the legal entity to which the wealth belongs to."* The protection of socialist common wealth was an obligation for every citizen of the Republic at the time, but with this disposition they were trying to incentivize individuals more towards the idea of protecting what is **ours**.

5.2 Suing for compensation and its dispositions

With the illegal infliction of damage, the affected party is legitimized to sue for fair compensation towards the damage afflicted. The way to do this is foreseen in Article 500 of the aforementioned Law. This Law lays out in Article 77, the general rule that the right to sue is immediately conceived the moment that the damage can be foreseen, while the obligations that are executable with the request of the creditors begin once the monetary obligation is determined. Differently from this, the sue that follows afflicted damage is specially regulated from the aforementioned dispositions. Based on this the right to sue is conceived the moment that the affected party knew or had to know about the inflicted damage and about its author. So the deadline is coarsely related to the knowledge about the damage inflicted and its author because it is only at this point that the affected party can sue for compensation. Furthermore in Article 500/2 lays down that the case for compensation can be suspended except in the cases when the affected party, has presented a request for a pension from the authority until the day that this pension is granted or completely refused.

Concrete obligations are derived from legal facts being as such a specific factual source of obligations and the law being the root of them all. Studying on the obligations has been studied while keeping in mind the difference between contractual and non-contractual obligations. The ladder includes: 1.Obligations that come from inflected damages. 2. Wide arrange of professions 3. Unasked payments 4.Unjustified wealth. But the focus of our study shall be the accountability that follows inflicting of damage.

When damage is inflicted, then the person responsible for it must be held accountable. Accountability can be seen from different perspectives. Firstly, from an internal point, where the person must be conscious about the actions that has taken and it has to do with a moral accountability. Secondly, its behavior must show resentment and ready to deal with a trial, in the case of criminal penalty but also in case of compensation towards the affected party. This last responsibility, can be distinguished through the source that it came from, a contractual responsibility in which the parties are responsible if the clauses of the contract have not been fulfilled and must be held responsible in the case of

a void contract, which in the case of the damage inflected the author and affected party might not be connected by any contractual agreement. We can see further down what are the differentiations between them.

- **Differences of civil accountability in a contractual setting and civil accountability in a non-contractual setting**

Civil accountability is contractual when the afflicted damage results in a void contract. The debtor must compensate the damage inflicted which comes as a result from the conditions on the contract not being fulfilled. Case in point, if the goods that needed to be transported, have not been transported or have been shipped with a delay or have been damaged during the transport, the debtor is obliged to compensate for the damage inflicted. In this case we are dealing with a contractual accountability.

In this aspect, contractual damage does not only mean compensation of the damage inflicted, but also comes the implementation of the means for enforcing a contract, sole purpose of which is to oblige the contractual parties to fulfill their obligations as per sanctioned in the contract. Contractual damage presets one of the most used means for reassuring a contract.

Civil Accountability in a non-contractual setting exists when the damage inflicted is by a third party and there is no void contract. A pedestrian, injured in a car crash, will sue the driver for compensation regarding his injuries in the crash, this because there is no contractual agreement between the driver and the pedestrian.

CONCLUSIONS

From the analysis of the scientific work we have identified the immediate need that universities should change both in form and content in their work process

In practice, even though it rarely happens, there are cases when these two accountabilities cannot be distinguished from one another. For instance in the case of not fulfilling a purchase order contract, the debtor is referring for legal interpretation Article 913 of the Civil Code, where it is foreseen the term of a purchase order contract, also to Article 640 which has to do with compensation that derives from damage inflicted from a non-contractual setting.

In these cases the court has yet to take a verdict, which in my opinion is not fair, because you cannot accept the same compensation from a contractual and non-contractual setting. In another case between two parties there was a fulfillment order contract, and the suing party claimed inflicted damages from the non-fulfillment of the contract, and based their claims only in Article 608 and 640 which have nothing to do with contractual agreements but rather damage inflected in non-contractual setting.

Even in this case the court has not ruled the legal premises of the case, but it has rather accepted it. Furthermore, from not fulfilling its monetary obligation on a rent contract, there is inflected damage to the renter. Compensation regarding this damage he can seek it through the dispositions of the renting agreement, as a contractual damage and not as a non-contractual damage. Ruling nr.950, date 17.10.2000 Court of Appeal, Tirana.

In order not to bring more negative examples one after the other, I will recall a case from the Court of Tirana. As a result of non-fulfilled repair contract, the affected party sued in court. The case was based in Articles 608,609,618,640,644 and after putting all these dispositions in his claim they also add Article 850 which explains a “enterprise contractual agreement”. The court in its ruling, expressed that Article 608 was not implementable according to the Civil Code and due to the fact that we have a contract and the dispositions of inflicting of damage on a non-contractual bases are not implacable. (Ruling nr.606, date 17.06.1999 The Supreme Court)

Furthermore, in a ruling by the Supreme Court it expressed that it has recognized the existence of a contract between the two parties, but it recognizes the inflicted damage in a non-contractual damage based in Article 640 and 622 of the Civil Code.

The Supreme Court has turned back for due process to the court to re-establish if we are facing or not a non-contractual inflicted damage.(Ruling nr.675 date 24.02.2000). Nonetheless, we should be optimistic that in the near future clear cases of contractual responsibility should not be misinterpreted with dispositions of inflicted damage.

From the aforementioned cases, there is a thin line to differentiate these two accountabilities, which is not very clear which for some can be interpreted as contractual and for some non-contractual accountability. For this lets take an example:

A driver sees a person trying to catch a ride and accepts to take him along in his car. The person which is now travelling for free, suffers an injury in a car accident inflicted due to the fault of the driver. As such he sues the driver for wrongful injury. In this case some might think that this is a contractual accountability: one between the driver and the person which was injured there was a contractual agreement, even though with no terms. But others might think that there is no contractual agreement, be that without any rewards, but it is all in name of good faith between the two. As such, there is accountability that comes from inflicted injury and not from contractual accountability. As you can see it is not always clear to conclude with no doubt if we are dealing with a contractual damage that is inflicted from non-fulfillment of a contract or if we are dealing with inflicted damage from a non-contractual damage due to actions of a third party.

5.1 Civic accountability and penal accountability

It might happen that the same action can lead to penal accountability and civic accountability at the same time. As such these two accountabilities can co-exists with each other. But what is the difference between these two?

1. First and foremost, the differentiation between the two is derived from its purposes, objectives which are not the same in these two accountabilities. Penal accountability has in its core the protection of society against actions that can threaten public safety. Civic accountability has as its main role compensation of inflicted damages from a specific person, be that physical entity or legal entity.
2. The application of penal law and taking into criminal investigation can be only done by the prosecutor, except penal actions which can be raised from the damaged party. While compensation of civil damage is always requested by the affected itself, its representative and not from the prosecutor.
3. Penal accountability presumes that the author has acted in guilt (be that on purpose or not). Nonetheless in criminal law the author of the inflicted damage is presumed innocent until he is proven guilty or there is a executable court ruling. On the other side on civic accountability the principle of presuming guilty subsides. This means that the defendant has to prove that the damage was not inflicted by him or due to his actions.
4. The criminal law sets as crucial and lasting elements of criminal accountability the guilt of carrying out the criminal action. Civic accountability is an accountability with guilt but there are its cases when the law itself accepts accountability without the guilt of the person in question
5. In penal accountability, the accountability is always personal. The person who has committed a criminal violation will answer for it personally and will suffer its own sentence. There is penal accountability for actions taken by other people. While in civic right, except the general rules where every person answers for its own actions, there are also cases where a person can be charged with the accountability of a crime he has not committed personally. So, civic society can implemented even for damages inflicted by others
6. In the establishment of a criminal verdict the amount of guilt affects the amount of sentence conducted. While in civil right there exists the principle of reward and full compensation from amount of guilt of the author of the inflected damage, which does not affect the set compensation. The person who has inflicted the damage, despite the guilt will obliged to compensate the damage in full

5.2 Conditions on which accountability arises from the infliction of damage

Our Civil Code foresees accountability that comes from the infliction of damage in illegal ways on Chapter 4 in Articles 608 and 647. With the arise of such accountability, the person which has inflicted the damage is obliged to compensate the person damaged by returning what has been damaged to its previous state. But the law has put some precursors, existence of which is more than necessary in order to make a person accountable. As such illegal inflicted damage, the connection of causation through action or inaction and the consequence that comes from that, including the guilt of the inflicting party are the conditions which compete in order to bring forth the civil accountability from the infliction of a damage. This chapter with see step by step each and every one of these conditions.

Damage

Civil accountability which ensues from the infliction of damage cannot be understood without understanding the damage. Due to the fact that its final purpose is the re-establishment of the damaged party in its previous state, before the infliction of the damage. Existence of the damage as a condition for the arise of accountability, is necessary for the studying of which opens a path towards correction and compensation. Furthermore we will try to explain exactly this.

Types of damages

Article 608/1 of the Civil Code states that: *"The person that through illegal means and in guilt inflicts damage to another person or to its wealth is obliged to compensate the inflicted damage."* As such we have established what inflicted damage, which it can be is: 1. Inflicted damage to wealth or material and 2. Non-material inflected damage. Let's take them one by one

Material damage (patrimonial)

With material damage we shall understand, damage by the result of which we are infringing a right, which has a market value, as such it can be compensated in monetary value. So this damage differentiates from one that can be inflicted physically on a person (through killing or injury). If we were to talk about inflicting damage on wealth, we would only talk about economic consequences of these damages such as: medical expenses, pharmaceutical expenses, inability to work etc.

Damages inflicted on wealth are multiple. Some would be the result of an injury or even destruction of property. They can be considered even as economical loses as a result of unfair competition.

Loss and non-achieved profit

Article 486 of Civil Code foresees the principle of full compensation of damages in case of non-executions of duties or responsibilities. Furthermore, in the case of arises in obligations due to damages inflicted on wealth, it is foreseen that the same principles as in Article 640/1 of the Civil Code which states: *"Damage inflicted on wealth shall be compensated based on the loses and the profits which have not been achieved"*

Through these means, infliction of damage through wealth can be seen in a double aspect: losses (damnum emergens) and profits not achieved (lucrum cessans).

With the term losses, we must see it as economical poverty, reduction of material goods and monetary(Thimio Kondi, Journal Justice, 1989,nr.3) caused from damaging actions such as: damaging of an object, destruction of property, expenses as a result of an accident, loss of a right etc.

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