CONDITIONS OF CONTRACTUAL CIVIL LIABILITY

Lecturer Ph.D., Ana-Maria VASILE
"Constantin Brâncoveanu" University of Pitești, Romania
E-mail: vasile.anamaria4@yahoo.com

Abstract: *Social relations are governed by the rule of law. Through this regulation, the legislator takes into account the conditions under which the norm can and must be achieved, its ability to model behaviors, leading them on a path considered socially useful. At the same time, the legislator is considering the possibility of violating the rule through misconduct. Thus, the violation of the provisions of the legal norms attracts the legal responsibility of the guilty person. In the traditional conception of contractual liability, this is closely linked to the idea underlying the principle of binding force of the contract. Since the contract has the force of law in the relations between the parties, it is considered that each party must be liable for any non-compliance with its "law", respectively for violation of the "private rule" that the contract generates. Civil liability is a form of legal liability that consists of a report of obligations under which a person is obliged to repair the damage caused to another by his deed or, in the cases provided by law, the damage for which he is liable. As a legal institution, the civil liability consists of all the legal norms which regulate the obligation of any person to repair the damage caused to another by his extracontractual or contractual act for which he is called by law to answer.*

Keywords: *liability, contract, obligation, prejudice.*
JEL Classification: *K10.*

1. Introduction

Liability for damages caused by one's own act, of the entire tort liability presupposes the cumulative existence of four conditions or constituent elements: the damage, the wrongful act, the causal relationship between the wrongful act and the damage, the guilt of the perpetrator of the wrongful and prejudicial act (Pop, Popa and Vidu, 2012, p. 411) .

In order to be able to speak of the contractual civil liability, there must be a contract, a contractual connection, between the called party and the person to whom he is responsible. This is the major premise of engaging in contractual liability (Anghel, Deak and Popa, 1970, p. 316).

According to art. 1350 of the Civil Code, any person must perform the obligations he has contracted.

Therefore, contractual liability is incurred only between the parties to the contract. In the execution of the contract is the reason for triggering the mechanism of contractual liability, and this can only happen between those who have concluded the contract, and the persons who succeed them in rights or between the occurring parts of the non-executed act.

In other words, the contractual liability consists in the debtor's obligation to repair the damage caused by non-compliance with his contractual obligations.

From the point of view of contractual liability, it is irrelevant whether the breach of obligations justifies the termination of the agreement or the creditor can claim only the forced execution of obligations which without justification the debtor has not paid (Vasilescu, 2012, p. 535).

Based on the need for unitary treatment of civil liability, it can be said that in order to engage in contractual liability, the following conditions must be met: the causal relationship between the act and the damage, as well as the fault of the debtor, sometimes called "guilt".

Analyzing the texts of art. art. 1073 - 1090 C.civ. these conditions can be traced precisely to the idea that any hypothesis of liability concerns, in principle, the sanction of guilty conduct.

2. The illicit deed

The unlawful act is a human act that has caused harm to another subject of law. According to the provisions of art. 1349 C.Civ. the perpetrator has the obligation to fully repair the damage caused.

Illicit acts are human conduct that violates the mandatory rules of law, committed without the intention of producing legal effects against their perpetrator, effects that occur in the power of law.

The wrongful act consists in the non-execution, improper or delayed execution of the obligation. Therefore, the unlawful act committed by the contractual debtor consists in the non-performance of his contractual obligations.

In the matter of civil liability, the illicit deed is defined as any act by which, in violation of the rules of objective law, the damage of the subjective right belonging to a person is caused.

It can also be said that the wrongful act represents the action or inaction that results in the violation of the subjective rights or legitimate interests of a person. The wrongful act consists in an act of conduct by which the rules of conduct in society are violated.

The wrongdoing has the following characteristics:

- the deed has an objective character, ie the deed consists in an externalized human conduct or manifestation;

- the illicit deed is the way in which a psychic, subjective element is objectified: the will of the man who has chosen a certain conduct. We can say that the wrongdoing is the result of a mental attitude.

- the deed is contrary to the social order and reprobated by the society; social reprobation, from a subjective point of view, is related to mistake, guilt or guilt, and from an objective point of view, it finds its legal expression in the illicit character of the deed.

It can be said that the illicit deed represents the violation of the right of claim of the other contracting party, by non-execution of the contractual obligations. The meaning of the expression "non-performance of contractual obligations" has a double meaning:

- in the strict sense, it consists in the non-performance or incomplete performance of the obligations,

- in a broad sense it consists in the non-execution, the improper execution or with delay of the obligations.

Failure to comply, in whole or in part, means failure to fulfill all or part of the obligations assumed by the principal contractor.

In case of total non-execution, the contractual liability will be committed with certainty, the debtor being obliged to repair the entire damage caused (Adam, 2011, p. 666).

On the other hand, the improper execution represents the execution of the service with the non-observance of the quality conditions imposed in the contractual clauses.

When there is a question of a late execution, this presupposes that the debtor has executed in kind the services assumed or will continue to execute them, but only after the fulfillment of the term established in the contract, thus causing the creditor a prejudice. If, as a result of the delay in execution, the creditor has suffered damage, the debtor will be obliged to compensate him. These compensations are called moratorium damages.

3. Injury

Damage is an essential element of tortious civil liability and is the negative consequence (patrimonial or non-patrimonial nature) suffered by a person, as a result of the illicit act committed by another person, which violated a subjective right or a legitimate interest.

Terminologically, prejudice has the same meaning as damage. Therefore, it can be said that there is a difference between damage and injury. The damage or damage can be represented by any injury, any evil that affects either the person, in the attributes of the personality, or the patrimony.

Damage, damage, is a simple injury or loss of value, viewed in a neutral way, without locating it in someone's property or person, without still raising the issue of liability, while the damage would be the legal expression of the damage, having, this time, a subject who feels it and a person designated to fix it.

The damage represents the harmful consequences of patrimonial or non-patrimonial nature, effects of the violation by the debtor of the right of claim belonging to his contractual creditor, by non-execution of the service or services to which he owed.

In order for the obligation to repair to arise, the pecuniary damage must be certain: the damage whose existence is certain and the extent of which can be established at present is certain, as well as the future and certain damage that will occur.

Certain damage means damage which is certain both in terms of its existence and in terms of its extent. The damage must also be current, ie it must have already occurred. However, the damage that is likely to occur in the future is also certain and is likely to be assessed (for example, the future decrease in the victim's income due to the reduction of his work capacity).

The involvement of the patrimonial liability for the non-patrimonial damages has a limited scope of application. However, there are situations when compensation is granted and for such damage caused by non-performance of a contractual obligation: such as in the case of medical contracts or passenger transport contracts.

The Civil Code states that liability without damages does not exist, and therefore the creditor is required to prove that the breach of contract has caused him damage. Even if the non-performance of the contract is considered the specific wrongful act, the reparable damage must not be identified with the non-performed obligation.

The damage is an essential element, the debtor's liability not being incurred if the non-execution attributable to him did not cause the creditor a material damage to be repaired.

The assessment of the damage can be made in court and it must be complete, including both the loss actually suffered by the creditor and the gain he was deprived of.

Unrealized gain is the increase that would normally have occurred in the creditor's assets if the debtor had fulfilled his obligation. Damages consist of a direct and immediate consequence of the non-performance of the contract.

In the legislation and literature, in addition to the term "damage", the following synonyms are also used: "damage", "damage", "damage".

In order for the court to order that the damage be remedied, it must satisfy certain conditions, namely that the damage must be certain and that it has not yet been repaired.

The literature has argued and unreservedly claims that harm is the most important element of civil liability, being an essential and necessary condition of it, in its own right (Pop, Popa and Vidu, 2012, p. 412).

A first condition would be that the damage be certain, ie the existence of the damage must be unquestionable and, at the same time, it can be assessed at present. The actual damage is certain, ie it has occurred in full until the date of its repair, but the future damage can be certain if it is certain that it will occur and there are the necessary elements to determine its extent.

When the question of the existence of a future prejudice is raised, art. 1385 para.2 C.civ. states that: "Compensation may also be awarded for future damage if its production

is unquestionable." Paragraph 4 of that article also provides for the possibility of losing an opportunity to obtain an advantage in addition to the damage caused.

There should be no confusion between the possible, uncertain injury and the future injury. The certainty of the future damage refers both to its existence and to its extent. If the full extent is not known, the court will limit itself to the obligation to repair the damage found and assessed with certainty, but may return to grant due compensation for damages that became certain after the judgment.

The second condition, that the damage has not yet been repaired, is justified by the existence of the principle of full reparation of the damage set out above.

This second condition is explained by the concern not to make the repair of the damage a source of enrichment of the victim without a legitimate reason.

There are situations in which the victim retains his right to compensation from the perpetrator of the unlawful act causing damage, even if the damage suffered has been fully or partially covered.

A very important rule is that the victim, respectively the creditor, is entitled to compensation, so he has the right to compensation in kind for the damage suffered.

In some cases, the violation of the law is a basis for the birth and development of a civil legal relationship. This will lead to the appearance of the civil legal claim for compensation.

When it is impossible to recover the infringing legal relationship in kind, the liability measures shall be directed to change the rights and obligations of the parties concerned, in the end result to achieve the intended purpose from the outset, as well as the losses and damage caused by breach of the obligation to be repaired by the guilty person. Establishing the penal clause or repairing the damage in case of non-execution of the contractual obligation in the conditions in which this execution is real, aims to obtain the concrete result (execution of a work, circulation of goods, quality products, based on purchase-sale contract).

4. The causal relationship

The causal relationship is the link that must exist between the non-execution and the damage claimed as repairable (Vasilescu, 2012, p. 537).

The causal relationship between the non-performance of the contractual obligations and the damage caused to the creditor is a condition of the contractual liability. Article 1530 Civil Code. stipulates that "the creditor has the right to damages for the damage caused by the debtor and which is the direct and necessary consequence of the non-execution without justification or, as the case may be, guilty of the obligation".

According to art. 1351 of the Civil Code, the debtor cannot be obliged to pay damages if the non-execution lato sensu of the contractual obligations is caused by force majeure or a fortuitous case, which in turn also includes the fact of the creditor or the deed of a third person. It should be noted that in terms of contractual liability, fortuitous event and force majeure produce the same consequences. In the case of unilateral contracts, the debtor's obligation is extinguished. In the case of synallagmatic contracts, they cease automatically. In the case of contracts with successive execution, the effect will be that of extinguishing the obligations that have become impossible to execute.

The meaning of the causal relationship is represented by the connection from cause to effect, where the wrongful act is the cause, and the damage is the effect, respectively the result of the wrongful act. As long as it cannot be established that an unlawful act has caused damage, it cannot be a question of tortious civil liability.

Also, the causal relationship is the criterion according to which the extent of the reparation due to the victim is determined, since the right to reparation can be recognized only for the damages that are, undoubtedly, the direct consequence of the illicit deed.

As a subjective condition, we can say that the causal relationship has an objective character, which is not to be confused with mistake or guilt. Therefore, it is possible to have a causal relationship and to blame and vice versa.

In the matter of contractual civil liability, there is no difference of effect between fortuitous event and force majeure - both exonerate the debtor from liability. Force majeure and fortuitous event, as indicated in the legal literature, are exonerated from liability only as long as no previous action or inaction has been proved to the debtor that is attributable to him and without which these events would not have occurred.

The existence of the causal relationship in contractual matters is presumed by law, a relatively presumed deduction, under the influence of the regulations of the Civil Code of 1865, from the final provisions of art.1082 Civil Code, respectively art.1530 Civil Code, which provides: the creditor is entitled to damages for the damage caused by the debtor and which is the direct and necessary consequence of the non-execution without justification or, as the case may be, guilty of the obligation (Adam, 2011, p. 672).

5. The guilt or guilt of the debtor

Guilt is an essential element of liability for non-performance. The debtor is at fault in all cases where - intentionally, recklessly or negligently - he has made it impossible for the debtor to perform the obligation in kind, thus causing harm to his creditor. Any unlawful action or inaction of the debtor, having as final result the impossibility of execution in kind of the obligation taken, thus constitutes a fault on his part. In principle, the breach of its contractual obligation - as soon as the creditor has administered the proof of this breach - is imputable to the debtor, unless he establishes that the non-performance is due to a foreign cause not attributable to him.

Failure to comply with the voluntary obligation must be culpable, ie it can be blamed on the debtor, who has no justification for its non-performance.

Although it is required by law with value in principle, in the conception of Romanian civil law, guilt is a necessary condition only in certain cases of tortious liability.

Contractual liability remains a subjective one, which is based on the guilt of the debtor, even if it is legally presumed.

Guilt is the general condition of civil liability. In principle, the form of guilt does not matter, but we are interested in proving it in the case of result obligations in which the debtor's guilt is presumed because the debtor did not obtain the due result for the creditor. On the other hand, in the case of middle obligations, where the debtor is obliged to make every effort to obtain the result desired by the creditor, if it is proved that he did not do so, then the debtor is guilty of causing the damage.

According to art. 1548 C.Civ. it provides: "the fault of the debtor of a contractual obligation is presumed by the simple fact of non-execution". The practical effect is that the creditor is not required to prove guilt, and the debtor, if he claims not guilty, must prove it; the sample being free. The rule of presumption of guilt applies only to the obligations of result, the creditor of an obligation of means is - instead, required to prove that the promised result was not obtained due to the lack of diligence of his debtor.

The guilt of the debtor as a condition of the contractual liability follows from the interpretation of art. 1547 and 1548 Civil Code. With regard to proof of guilt, this is done according to whether the obligation is a result or a means. The distinctions made in the previous point, regarding the illicit deed, are valid in their entirety and the matter of guilt.

The Civil Code enshrines the necessity of the existence of guilt in art.1349 par.3 C.civ.

The civil liability of the person who caused the damage may be incurred, provided that the condition is that the wrongful act is causally related to the damage caused, and the act is attributable to its perpetrator, ie the perpetrator was at fault when he committed a.

In civil law, unlike other branches of law, liability will intervene regardless of the form of guilt, and the damage will be fully repaired in all cases, even if, in the case of the existence of several perpetrators, they will bear the damage proportional to the seriousness of each guilt. .

The tortious capacity (discernment) is an essential condition for the existence of guilt which consists in the person's mental ability to understand the meaning of his deed and to consciously represent its result, the lack of this ability leading to the removal of the perpetrator's responsibility for the wrongful cause of injury.

The tort capacity is not confused with the exercise capacity of the natural person; the first refers to liability for damages caused by the commission of non-contractual acts that produce such consequences, and the second means the person's ability to conclude civil legal acts alone and to be liable for failure to fulfill his obligations under his undertaking (Pop, Popa and Vidu, 2012, p. 454) (art.37 C.civ).

In addition to the persons placed under interdiction and minors under 14 years of age, art.1367 Civil Code. it provides for the possibility of harm to persons who, without being alienated or mentally debilitated, were "in a state of mental disorder at the time of the act, which made it impossible for them to realize the consequences of their actions."

The rule is that these people are not criminally liable unless that condition has been caused by themselves by consuming alcohol, narcotics or other such substances.

In principle, the guilt of the debtor matters, and not any special form of it. As with tortious liability, guilt is only a structural element of liability, but it does not matter whether the debtor worked intentionally or was only at fault (art. 1547 Civil Code).

In conclusion, by regulating the contractual liability for the act of another, the Civil Code does not make any hint about the subjective nature of this form of liability. However, it can be noted that this indirect liability is also subjective, and the presumption of fault must be applied if the debtor is held liable for the deed of the one he replaced in the execution of the contract.

References:

1. Adam, I., 2011. *Civil Law. Obligations. The contract*. Bucharest: C.H. Beck Publishing House.

2. Anghel, I.M., Deak, F., Popa, M.F., 1970. *Civil Liability.* Bucharest: Scientific Publishing House.

3. Pop, L., Popa, I.F., Vidu, S.I., 2012. *Elementary civil law treaty. Obligations, according to the new Civil Code.* Bucharest: Universul Juridic Publishing House.

4. Vasilescu, P., 2012. *Civil Law. Obligations* Bucharest: Hamangiu Publishing House.