

Interpretation of the Provisions on Parental Responsibility for the Actions of Minors or those under Judicial Interdiction

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Abstract: The changes in the Romanian civil law aimed the issue of tort liability, i.e. the liability of parents for the infringements committed by their children and those placed under judicial interdiction, issues that we will develop within this paper. Without the stated ambition to exhaust the subject, the research aims at a rigorous contribution to the presentation, in the well-known context of the new civil regulations entered into force on 1 October 2011². Therefore we analyze the provisions of Article 1372 of the Civil Code which, over its three paragraphs, develops the hypothesis of assuming the liability of the parents and other categories of respondents for the illegal acts committed by minors or placed under judicial interdiction. We specify that this form of vicarious liability is established as an effective guarantor of the one called to respond, ensuring by the law to repair the damage caused to the victim.

Keywords: minor; court prohibition; tort liability; parent; guardian

1. Legal Ruling. Implementation Domain

The Romanian Civil Code establishes the tort liability regime (article 1349, Civil Code) which, together with the contractual liability (article 1350, Civil Code) forms the civil liability. Thus, in articles 1357-1371, it is analyzed the liability for the acts of its own, in the article 1372 par. (1) et seq., the vicarious liability, liability for the acts of animals in article 1375, responsibility for the ruin of a building article 1378, liability for the act of things in general in article 1379, paragraph (1) and, finally, in article 1380, it establishes grounds for exemption.

The institution of vicarious liability is governed wider in the new Civil Code, in the articles 1372-1374, the commitment being focused solely on the provisions of article 1372 of the Civil Code, consisting of three paragraphs.

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² The new Civil Code was adopted by Law no. 287/2009, amended by Law No. 71/2011, for the implementation of Law no. 287/2009 regarding the Civil Code.

The first paragraph states that: (1) “*the one who under the law of a contract or of a court decision is obliged to supervise a minor or a person under interdiction is responsible for the injury caused to another person by these latter people*”.

The essence of this legal text can be materialized as the birth certificate of a new principle in the Romanian law explicitly exposed. The new Civil Code establishes as a principle of tort liability for the acts of another person, considered by some authors as “*perhaps the most spectacular innovation in mirror with the Civil Code of Napoleonic inspiration, in matters of vicarious tort liability*.”¹ (Mangu & Motica, 2011, p. 1)

The liability imposed by this article assumes that the person who, under the law of a contract or of a court decision is required to supervise a minor or a person under interdiction, is responsible for the damage caused by these people (i.e. it may be required to repair the damage, pay compensation, etc.). These are the three sources of retaining parental responsibility.

In paragraph (2) of article 1372 of the Civil Code it is stated that the “*liability subsists even in the case where the perpetrator, lacking of discernment, is not liable for his own act*.” As a result, the person who was in charge of supervision is exonerated (free) of the liability only if he proves that he could not prevent the prejudicial event. Parents or, where applicable, the legal guardians, are exonerated (exempted) from the liability only if it proves that the child’s act is not a consequence of the way in which they have fulfilled their duties arising from the exercise of parental authority, but is due to a cause other than the way in which they have fulfilled their duties arising from the exercise of parental authority.

And finally, paragraph (3) of the same article, establishes in a generic expression, situations where the responsible person is relieved of this responsibility.

a) *The scope of persons for which it is liable*

The scope of persons for which it undertakes the responsibility is much broader than that provided for in the Civil Code in 1864.

Thus, while in the old regulation, the liability was undertaken only for unlawful and harmful acts committed by minors, respectively pupils and minor apprentices (Stătescu & Bîrsan, 2008, pp. 222-223, 243), article 1372 par. (1) of the Civil Code states that it is undertaken both for the acts of minors and persons under interdiction. So, in what concerns the offender of the illicit and harmful act, at the time of committing the offenses the person must have been minor, i.e. under 18 years of age or to be a person under judicial interdiction. This liability does not exist in the case where the offender of the prejudicial act is an adult without discernment or not placed under judicial interdiction for alienation or mental illness.

¹ Also, the promoter of such a thesis is the great analyst in civil matters Liviu Pop.

b) The scope of responsible persons

From the analysis of the same paragraph (1) of article 1372 of the Civil Code it results that the responsibility which we present it is undertaken *the ope legis* in the responsibility of all persons who are required, under the law, established in a contract or by a court decision to supervise the minor or person under judicial interdiction who has committed an illegal act, causing a damage to another.

So, compared to the Civil Code in 1864 which provided expressly and restrictively that liability it is undertaken solely under the task of the parents, teachers and craftsmen, the text from article 1372 paragraph (1) of the Civil Code in force establishes that liability belongs to any other person who has an obligation of supervising the juvenile court or the court prohibition, author of the illegal act and the damage. Supervisory obligation can be of different origin, i.e. required by the law or established in a contract or by court decision. We are witnessing an expansion of parental responsibility for their minor children and other persons responsible for supervising minors or persons under judicial interdiction, *ope legis* as designated, by agreement of the parents or by court order, as in the case of adopters, guardians or the care institutions. The victim may go against such persons and in cases specifically provided by the law, where the author without discernment is not held liable for his act. (Costache, 2014)

2. Persons for which it is Liable

As mentioned above, the scope of persons for which it is undertaken a liability is much broader than what it was provided in the Civil Code of 1864. The rule taken into consideration is speaking primarily about the “minor” and then about “people placed under judicial interdiction.” The minority, or, if applicable, the status of person placed under judicial interdiction must exist at the moment of the commitment by the direct author the prejudice of the illicit act. (Motica, 2012, p. 158)

Thus, while in the old regulation, the liability committed only for the unlawful and harmful acts committed by minor children, respectively pupils and minor apprentices (Stătescu & Bîrsan, 2008, pp. 222-223), article 1372, paragraph (1) of the Civil Code states that it is undertaken both for the acts of minors and persons under interdiction. As in what concerns the illicit and harmful act of the offender, it must be minor at the time of committing the offenses, i.e. under 18 years of age or to be a person under judicial interdiction. This liability does not exist in the case where the offender of the prejudicial act is an adult without discernment or not placed under judicial interdiction for alienation or mental illness.

2.1. The Minor

Article 38 paragraph (2) The Civil Code provides that “*a person becomes major at the age of 18 years*”, so we can conclude that we can qualify as juveniles any person under the age of 18 years. This liability will not apply in the case were the offender is of full age.

It should also be noted that article 1372 paragraph (1) from Civil Code refers to “a minor” without making the distinction in terms of his discernment. Corroborating the above provisions with those of article 38 paragraph (2) of the new Civil Code cited above, we understand that it will be undertaken any person under the age of 18, that is not of full age, regardless of whether the article 1366 of the Civil Code differentiate between minor under the age of 14 years, which is presumed relatively that he has no discernment, while the juvenile who had reached the age of 14 years is presumed to have relatively the discernment of his acts, granting the tort capacity. This “omission” for making the distinguish in the text of article 1372 paragraph (1) is not random; it is also consistent with the text of paragraph (2) of the same article, which highlights the lack of differentiation in terms of the discernment of the direct perpetrator, showing that the liability for the person obliged to supervise is engaged regardless of the discernment of the minor at the time on committing the illegal act.

In conclusion, it will be liable for the act of the minor, as long as it retains such status, that is to be of the age under 18 and not in the situation of being married at 16 years old or the person who has acquired full legal exercise capacity, for well-founded reasons. Children in general are part of this category, those schooled i.e. preschoolers, schoolchildren, students, apprentices, etc.

2.2. The Person Placed under Judicial Interdiction

Regarding the other categories of persons mentioned in article 1372 Civil Code, namely those placed under judicial interdiction, the text article 164 of the Civil Code qualifies for this measure of protection as any “*person who has no necessary discernment to look after its interests, due to alienation or mental debility*”, without making any statement referring the age of the person, even more in paragraph (2) it is provided that can be placed under judicial interdiction the minors with limited exercise capacity.

The individuals who may require placing under judicial interdiction are detailed in article 111 of the Code, namely:

- a) persons close to the minor, such as administrators and tenants of the house where the child resides;

- b) Civil Service, on registering the death of a person and public notary, during the opening of the succession proceedings;
- c) Courts, after sentencing the criminal punishment of prohibiting the parental rights;
- d) the local government bodies, institutions of care, as well as any other person.

From the date of the final judgment of placing under judicial interdiction, according to article 169, paragraph (1) Civil Code, it shall take effect, so that from that date, the person placed under the judicial interdiction will be destined to be included in the scope of persons for which the tort liability is undertaken, under article 1372 of the Civil Code.

The Civil Code makes no distinction on the person under judicial interdiction, depending on its age, nor should make any kind of distinction given that, pursuant to article 1366, paragraph (1) of the Civil Code, it is still assumed to have no discernment of his actions, as a result of being placed under judicial interdiction, regardless of the age. It is noteworthy, however, that placing under judicial interdiction of a minor shall be made, however, only from the age of 14 years, given the fact that even at this age he is still lacking of any exercise capacity and it is presumed to be devoid of discernment, like a person placed under judicial interdiction, therefore a placement under judicial interdiction so before that age would have no interest or effects.

An interesting problem has been reported in the specialized literature regarding the situation of minors aged between 14 and 18 placed under judicial interdiction, minor on the date of placing under judicial interdiction hereof, is under parental care. The question that many authors have tried to answer is: in what quality would parents be liable for the damage caused by the illicit acts of their minor placed under the judicial interdiction? Will they be liable as persons obliged for the supervision of minor under court order or as parents of a minor, that act of placing under the under judicial interdiction having no influence on this? What quality prevails, the one as supervisor or as parent?

The question reflects theoretical concern of the authors (Bodoasca; Draghici & Puie, 2012, p. 44-48), with no practical implication, on the contrary, from the provisions of article 1372, paragraph (3) of the new Civil Code it results in a substantial difference of statements on the exoneration: *“The person obliged to supervision is exonerated from liability only if he proves that he could not prevent it; the evidence is deemed to be achieved only if they prove that the act of the child is the result of a cause other than the way they fulfilled their duties, arising from the exercise of parental authority.”*

Given that the fact that in content of the parental care it is included, in addition to growth, education and training of the minor, also the duty of supervising the minor, the conclusion is that parenthood will prevail, encompassing even that of supervisor. (Motica, 2012, pp. 159- 161)

This liability does not exist in the case where the offender of the harmful act was, at the time of committing it, an adult without discernment and not placed under judicial interdiction for alienation or mental illness.

3. Liable Persons

Compared to the previous regulation it firstly extends the scope of persons required to respond for the damages caused by the minor: under the old Civil Code, only the parents and eventually the schoolmasters and artisans were responsible for the damages caused by minors under their supervision. The Old Civil Code does not leave room for interpretation in this regard, specifically naming the individuals responsible, so that their scope cannot be extended by analogy or generalization.

The regulation in the new Civil Code is of great generality, the circle of responsible persons being however circumscribed to those who hold the supervisory liability under the law, of contract or a court decision. Thus, it will be liable the one who knowingly *agreed* to take under his care another person. The person will have to accept - even tacitly – the commitment of repairing the damage caused by the person under care. The first clause is conditioned, therefore, by the manifestation of the will in the sense of accepting undertaking the task of organizing the way of life of another person. The second clause is related to the effective exercise of some organizational, supervision and control activities of the way of life of another person, being necessary for the liable person to have at least the possibility of effectively exercise those obligations, even if at the time of the producing of the damage it does not actually exercising them (due to the disappearance of the minor, etc.). Finally, the permanence feature, of the stability of exercising these attributions is essential. They will not be liable for those obligations which have been assigned totally randomly, temporarily. (Motica, 2012, pp. 159- 161)

3.1. The Parent. The Parental Authority

The obligations of parents arise directly from **the legal provisions**, not being necessary a court decision, or an administrative decision in order to establish the quality or duties. Those required by law to supervise the minor are primarily the parents. The scope of this responsibility regards firstly the parents, whether the filiation is from marriage or out of wedlock, or whether it is natural or civil. Even if, by court order, the exercise of parental authority is achieved by a single parent, his obligation is under the law, the court order having as effect the restriction of the

rights of the other parent. For example, there are required by the law for teachers to supervise the juvenile, the educational centers and penitentiaries which have under their control the minor offenders. The divorce court may order for the parental authority to be exercised by a single parent (according to article 398 of the Civil Code.), but parental authority shall be exercised by both parents after divorce as well, according to the principle of article 397 of the Civil Code, a case which attracts the liability of both parents.

According to article 487 of the Civil Code, entitled the “Content of parental authority”, *“parents have the right and duty to raise the child, caring for the health and physical, mental and intellectual development, education, teaching and training him, according to their own beliefs, traits and needs of the child; they are obliged to give the child guidance and advice necessary for the proper exercise of the rights granted by the law.”* Also, according to article 499 of the Civil Code, the minor child is maintained by his parents: “(1) Father and mother are bound jointly to maintain their minor child, ensuring his basic needs and education, teaching and his professional training. (2) If the minor has his own income which is not enough, the parents are required to provide the necessary conditions for growth, education and his professional training”.

From these provisions it results the obligations of parents towards their children, which under the both regulations consist of growing, educating, teaching and professional training of the child. Given these provisions and those of article 1372, paragraph (1) of the new Civil Code, in case of causing a prejudice to a minor, the parents will be forced to repair it.

The public local authorities have a duty to assist parents or, where applicable family, legal guardian of the child in achieving their obligations towards the child, developing and ensuring to that purpose diversified, affordable and quality services, appropriate to the needs of the child; complementary to the state, which insure the protection of the children and it ensures the compliance with all his rights through specific activities performed by public institutions and authorities with responsibilities in this area. (Lupascu, 2008, p. 211 et seq.)

The article 396 of the Civil Code, which develops the relationships between divorced parents and their minor children, is a principle text, which is an introduction to the rules governing the effects of divorce on the relationships between parents and their minor children. However, the text contains a number of important provisions, which should be considered by the tutelary court at the moment of passing the divorce decision, on the relationship between parents and their minor children.

The natural parents in accordance with article 499, paragraph (1) of the Civil Code in force have primarily the obligation of maintaining the minor child, ensuring his basic needs and education, teaching and his professional training. As a

consequence stemming from the parental obligation of growth and education, it is irrelevant if it is a result of marriage or outside marriage (article 505, paragraph 1 of the Civil Code), this obligation lasts throughout the marriage and after its dissolution. If the minor has reached 18 years and he is employed, parents are required to provide the necessary conditions for growth, education and training, if the gain is not enough and as such the child is still in need. Similar conditions for the child of age, after 18 years, engaged for studies, but not beyond the age of 26 years (article 499 par. 3 of Civil Code) it justifies parents' obligation for paying alimony.

The Parents of the adopted child. The adopter is liable before the natural parents, and only if he is in need, his maintenance will be passed on to the natural parents.

According to article 519 letter c, of the Civil Code, the *brothers and sisters* owe maintenance after the completion of the duties by the parents. Maintenance obligation goes on to brothers and sisters, whether they are in wedlock or out of wedlock.

Ascendants: grandparents and great grandparents. When parents, brothers or sisters have no income and are not valid for work, the ascendants will give their contribution to the maintenance of the minor child (article 519 b, Civil code).

3.2. Tutors. Teachers

In addition to these persons that in certain circumstances may be the *direct active subjects*, the *tutor and trustee* could become active subjects. According to article 134 paragraph 2 of the Civil Code, the guardian has a duty to care for the minor, and the trustee (article 178-186) should protect according to the civil law the physical person that "cannot take care of the interests in whole or in part, for reasons foreign of the state of its capacity". Therefore the obligation of protection is required also to people, who, as tutors or guardians, must grant financial and moral support to the people under their guardianship or trusteeship.

Under the effects that a court decision produces, the duty of supervising or prohibiting the minor may be exercised by the guardian, relative or other person or family, special trustee, a care institution, or an adopter.

The Guardianship is a central institution of civil law in incidence with the family relationships, a measure that takes an alternative form of protection, to which is entitled any child, that of parental authority. When placed under the guardianship of the minor who is temporarily or permanently deprived of parental care, this authority will be met by a tutor. So, as a legal entity, by legal guardianship it means legal means of protecting a minor lacking of parental care.

Previously provided by the Family Code currently guardianship is governed by the Civil Code in the articles 110-163, to which we add the special provisions of Law no. 272/2004, which refers explicitly to the competence of the court to pass the measure.

From the analysis of the two categories of provisions for establishing guardianship there must be met the following terms:

- The child is temporarily or permanently deprived of parental care;
- The establishment of guardianship should be in the best interests of the minor;
- By establishing guardianship it would be ensured the continuity of education, supervision of the minor;
- The child of 10 years will be heard in connection with the establishment of the measure;
- Appointing the guardian will be achieved judicially, taking into account the provisions of article 166 of the Civil Code. (Bodoaşcă; Drăghici & Puie, 2012, p. 516)

As a novelty, article 114 of the Civil Code in conjunction with article 166 of the Civil Code provides the possibility for any person to designate, by a unilateral act or contract of mandate, the tutor who will take care of the person and the goods of the prohibited under certain formal requirements (protection mandate).

The cases of establishing guardianship are provided for by article 110 of the Civil Code: *“when both parents are, where appropriate, dead, deprived of the exercise of parental rights or it was imposed the criminal sentence of having prohibited the exercise of parental rights, placed under judicial interdiction, legally declared dead or missing, and also in the case where, at the end of the adoption, the court determines that it is in the best interest of the minor to establish guardianship”*.

The quality of guardian resides for each physical entity, the rule being the capacity, and the exception – the incapacity. In this sense, article 112 of the Civil Code refers to persons who may be guardian, and the next item lists those that cannot be named. So, in order to be established the guardianship, an individual must meet cumulatively the following conditions: not to be in any of the cases of incompatibility referred to article 113 of the Civil Code, and the second condition the person or family should be assessed by the general direction of social assistance and child protection.

In accordance with the principle of the best interests of the minor, the guardian rights and obligations are exercised only in the best interest of the protected minor.

The liability of the academic staff remains in the view doctrine a situation that may lead to liability for the acts of a minor student. Although it is not expressly covered

by the new Civil Code [as it was before in the article 1000, paragraph (4) of the old Civil Code], the conclusion that emerges is that it can attract the liability of the teacher for the damage caused by the minors or those placed under judicial interdiction, however it will still happen under the law (the Education Law) and not under education contract that schools are required to sign with children's parents, under the Education Law no. 1/2011.

Who are the liable people responsible and on what grounds the minor is entrusted?

In the category of people to whom minors are entrusted for education, we will find all the teachers, since they have agreed to assume the obligation of supervision, organization and control of the students entrusted to them. This means that it will be included in this category, according to the Education Law no. 1/2011, which repealed the old Law of Education no. 84/1995 and Law no. 128/1997 the status of teachers, the teaching staff of ante-pre and pre-school educational units (nurseries, kindergartens and day care centers), teachers of primary schools, secondary, high school, technological and vocational, professional, military education, art or sport.

The new code leaves no room for interpretation on the secondary education teaching staff, postgraduate, doctoral, and even less about the postdoctoral education and training and continuing professional development. Unlike this code, the old code provided the liability for teachers in the case of the damage caused by students, without distinction based on age, so that it was the doctrine and jurisprudence's attribution to clarify this issue in the sense that it will be liable strictly for the minor children, and not for the adults, as they have discernment and they can respond for their acts.

4. Conclusions

According to article 1372 of the Civil Code, which is called in the new civil law: the *liability for the acts of minor or those placed under judicial interdiction*, who, under the law, a contract or of a court decision is obliged to supervise a minor or a person under judicial prohibition is liable for the injury caused to another person by these people.

Liability subsists even in the case where the perpetrator, lacking of discernment, is not responsible for his own act. The one required to supervise is exempted from liability only if he proves that he could not prevent the harmful event.

So the new law extends the scope of the civil liability both by increasing the number of people who could be held responsible (who under the law, a contract or a court decision is obliged to supervise) and also by adding persons under judicial interdiction to the basic category, that of minors.

By the changes brought to the new law of parental responsibility, and the other legal guardian it extends beyond the age of 18 years old, while the minor becomes adult placed under judicial interdiction, if it can prove that under no circumstances could he prevent the harmful event. Also, the parents, and not the other categories will not be liable if they prove that the requirements of the person's liability are fulfilled, having the responsibility of supervising the minor. We have noticed that the current Civil Code establishes, at the article 1372, *the liability for the acts of a minor or placed under judicial interdiction* without enlisting the respondents. That is why parents are not designated to be liable for the damages caused by their children, being included in what the code calls it generic, the person "*who, under the law, a contract or a court order is required to supervise a minor or person placed under judicial interdiction.*" This is the formula to which the editors of the Principles of European tort have stopped.

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