A new vision on prejudice as part of tort liability

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***Abstract**: Compared to the old regulations of the Civil Code of 1864, the new Civil Code [1], through its regulations on tort liability, replaces a number of normative statements and updates the legal terminology, using a modern legal language. Currently guilt is no longer the sole base of the foundation of tort liability and the imperative of repairing increasingly detaches from the sanctioning of the person "guilty" of committing prejudice. It prompts new fundamentals such as warranty or risk. "This reconstruction of civil liability based on the prejudice is also felt in the Romanian law, in full harmonization with European law" [2]. Also we note the opinion according to which, "this guideline demonstrates that the central idea of tort liability is the full compensation of the damage and the punishment of the perpetrator is left on a second plan. The conviction of the tort crime indissolubly related to the author's culpability or to the person civilly responsible became an inadequate idea for the conditions of the modern society" [3]. The conclusion that emerges from those few ideas presented above, is that it is more correct to use the phrase, "liability for damages caused by its own act" or "liability for damages caused by others" than, "responsibility for its own actions" or "responsibility for others actions" [4]. This aspect was not taken into consideration by the writers of the new Civil Code.*

***Keywords**: new Civil Code; tort liability; prejudice; illicit act; warranty; risk.*

Introduction

Aspects relating to tort liability for its own actions and general conditions in which this liability can occur can be found in art 1349 par. 1 - 2 and articles 1357 - 1371 of the new Civil Code. At the same time it should be noted that in the analysis of tort liability for damages caused by its own actins the provisions contained in article 1381-1395 of the new Civil Code, which govern the rules applicable for repairing damages caused by tort liability in all cases, must also be taken into consideration.

Thus, according to the provisions of article 1357 of the new Civil Code, "(1) The one who causes harm to another through an illicit act, committed with guilt, is obliged to repair it. (2) The author of the prejudice shall be responsible for even the easiest guilt", and according to the provisions of art. 1349, "(1) Everyone has the duty to respect the rules of conduct imposed by the law or custom of the place and to not harm, through its actions or inactions, the rights or legitimate interests of other persons. (2) Whoever, with discernment, breaches this duty shall be responsible for all prejudices caused and shall be forced to fully compensate".

In addressing tort liability, I also had in mind the provisions contained in art. 219-224 of the new Civil Code regarding the liability of legal persons of private law and of public law for lawful and unlawful actions of management in the functions entrusted. The provisions of article 630 of the new Civil Code on civil liability for damage caused by "exceeding the normal inconveniences of neighborhood" were also taken into account.

It results from the content of the legal provisions that for a civil tort liability to exist the following cumulative conditions must be met: *the prejudice, illicit act, causal link between the illicit act and the prejudice, the guilt* of the author of the illicit and prejudicial acts. Note that these conditions were also necessary under regulations of article 998-999 Civil Code of 1864.

1. The prejudice - essential condition of tort liability

As it is regulated in article 1349 in conjunction with article 1357-1371 of the new Civil Code, in order to engage tort liability for its own deeds, besides the existence of an illicit act, *damage to the victim must occur*.

The essence of tort liability lies in the existence of prejudice caused by infringement of subjective or legitimate interests of a person. These are objective conditions without which the obligation of the guilty person to fully repair cannot be established [5].

A legal definition of prejudice hasn't been explicitly formulated in the Civil Code of 1864, so the task was taken over by doctrine. Neither the new Civil Code does not give a legal definition to prejudice but it can be inferred from the analysis of texts governing tort liability in general and especially those in the art. 1381-1395 of the new Civil Code regarding "compensation for damage in the case of tort liability".

Thus, paragraphs 1 of article 1349 of the new Civil Code, which regulates the obligation of any person to not harm or bring prejudice to another person, provides that any infringement brought to the rights or legitimate interests of other persons entails, for the guilty one, the responsibility for all the damages caused, being forced to fully compensate for them.

The content of the cited article reveals that the authors of the new Civil Code took over the definition formulated in the traditional legal literature, according to which the prejudice, the damage, represents those "*negative economic and moral effects that a person goes through as a result of the wrongful conduct of another person, whether of a human fact, an animal, a thing or an event that removes the tort liability of the* agent" [6].

Recently, the prejudice has been defined as representing "*the harmful results of patrimonial or moral nature, consequences of breach or damage to the rights and legitimate interests of an* individual" [7].

The prejudice has also been defined, in the doctrine, as being an "*essential element of tort liability*" "*consisting in the negative effect suffered by an individual as a result of illicit acts committed by another person, or as a result of the action of an animal or thing under the protection of another* person" [8].

The idea according to which, "the prejudice is the most important element of civil liability", "cornerstone of all legal constructions" as a essential and necessary condition of it has been formulated in the specialty literature. "The prejudice is not only the repair liability condition, but also its measure, in the sense that it undertakes only in the extent of the damage caused" [9].

We must note that the terms prejudice, injury, damage are synonymous. Such a sense can be found both in the specialty literature and in judicial practice.

It constitutes material injury within the meaning of the above, the destruction or degradation of a good, bodily injury or health of a person; simple fact interests that are not recognized by the legislature as being subjective civil rights, etc.

Worthy of note is the contribution made by the judicial practice, prior to the emergence of the new Civil Code, in the sense of obliging the author of the prejudice to pay damages even in some situations in which the loss suffered was devoted to violating a simple interest that was not a subjective right [10].

In the contemporary doctrine the damages are classified into: property damage, bodily harm and moral prejudices or damages [11].

Property damages are those which have an economic value, can be valued in money and which arise from the violation of the economic rights and interests.

Bodily harm [12] are those caused by violation of personal non-patrimonial rights such as the right to life, the right to health, the right to bodily integrity, and generally those rights that define the physic personality of the individual.

Moral harm or moral damages are those caused through the infringements brought to the emotional or social personality of a person, such as the death of a close relative, infringements of privacy or intimate life, attacks on the honor and dignity of the victim, etc.

The content of the article 1381-1395, tells us that this classification was also approved by the authors of the new Civil Code in treating the institution relating to compensation for damage in case of tort liability.

In order to determine the extent of the prejudice *the expenses that the lender has done, of course, within a reasonable limit, in order to avoid or limit the prejudice* will be taken into account. In this sense the article 1534 paragraph 2 of the new Civil Code provides that the debtor will not be due compensation for the damage which the creditor could have avoided with a little diligence.

2. The conditions necessary to be able to ask for compensation of damages

In order to repair the damage caused to the victim, the victim must meet the following conditions: *to be sure, to not have been repaired, to be directly, to be personally and to result from the violation of a legitimate interest*.

a. *The certain character of the harm*

The harm is sure when its existence can be established with certainty, and when it can be evaluated.

The phrase *sure damage* includes in its contents both the present and future damage.

The *current, present damage* is the damage that already occurred at the time when claiming compensation.

The *future damage* is that which has not yet occurred, but there is still the certainty that it will occur in the future and it is thus susceptible to evaluation, (an example of such a harm may be the one resulting in the event of the death of a person, when compensation is owed to the persons which it had dependent, with the possibility of updating them, in relation to changes in health status or according to the need of the people entitled to compensation).

According to the principles of UNIDROIT 2004 future damage is certain when it refers to its *existence* and its *extent* [13].

We note that the *eventual harm* is not included in the future damage because its production is not secure nor can be evaluated.

A novelty of the Current Civil Code is the regulation in article 1385 of paragraph 4, "*the harm caused by the loss of the opportunity to obtain a benefit or avoid a loss*".

This issue has been and continues to be the subject of fierce doctrinal [14] and jurisprudential [15] disputes in France from where the authors of the new Civil Code have inspired from.

The examples that may be often encountered in the French literature [16] are those that relate to the loss of a horse owner's chances of winning a horse contest because the carrier arrived late or due to an accident, the animal could not start the race; the careless attitude of a lawyer to not perform a certain act of the proceedings which resulted in the loss of client's chances of winning the process; missing the opportunity to conclude a deal for real estate owner whose property has been damaged or due to noise, etc.

In our specialty literature, the issue of compensation for the loss of opportunity to obtain an advantage began to concern some doctrinal, after the emergence of the new Civil Code [17].

The judicial practice [18] prior to the new Civil Code, especially since 1989, acknowledged such prejudices by ordering compensation for damage even in the cases when the damaged person was not employed at the time of damage, but there were clear evidences that proved that the delay of employment was due to the illicit act.

Also damages have been awarded even in the event when the damaged party was a minor unemployable in the work field, because the loss or decrease of its ability to work certainly leads to the finding that the person concerned will not be able to be fit for work at the time when he will reach the age laid down by the Labor Code.

With regard to the possibility of repairing the damage caused by the loss of a chance by means of tort liability, the chance must meet the following cumulative conditions: the chance should be real and serious [19]; the loss of opportunity should be directly determined by the illicit act or another circumstance that engages tort liability;

In conclusion, in order to obtain compensation in such a case, the victim will have to prove that he missed getting an advantage or a certain favor that was almost a certainty, if the illicit act of the author hadn't intervened.

According to the provisions of paragraphs 4 of article 1385 of the new Civil Code, "the reparation will be proportional to the probability of obtaining the benefit, or, where appropriate, to avoid damage, taking into account the circumstances and particular situation of the victim".

The analysis of the legal provisions above stated lead us to the conclusion that the remedy in such a case, will be lower than the profit that the victim would have made by exploiting the opportunity because it would be done taking into account the extent to which that chance could have been achieved.

b. ***The damage had not yet been repaired***

In the event that the victim of the illicit act was compensated, tort mandatory report was extinguished and consequently the right to its action died by execution.

As a rule, compensation of the damage through payment shall be made by the one who has caused the damage through its illicit act, in which case the payment made is direct.

In such a case, there are two situations:

- the author of illicit acts performs the obligation to voluntarily pay as a result of the understanding between him and the victim;

-in the absence of a deal, the parties of the mandatory report may address the courts in civil trail suits or criminal proceedings which will also decide on the material prejudice.

The victim's right to claim damages can also be extinguished in the situation when the coverage of the damage was done by a third party through an act against payment or free of charge.

In the case of the third party who has made the payment of damages for consideration, he will be subrogated to the creditor's rights-victim and will take action against the debtor's setback-author of the deed. If the payment has been made free of charge then the mandatory reports will be extinguished.

When the third party has paid only a part of the damage, the creditor-victim will be able to watch it on the debtor-the author of the illicit act that caused harm for the unpaid difference.

Also, in the case of insurance contracts, when the payment was made by the insurance company, the right of the victim to compensation action is extinguished [20].

c. ***The direct nature of the prejudice*** is given by the ratio of the causal link between the illicit act and the unjust harm that caused the victim's damage. This character has in mind an objective element, meaning the causation link and not a subjective one.

In the specialty literature [21], it was pointed out and then justified the fact that the phrase, *direct prejudice* is not identical with the notion of *prejudice directly caused*, in the sense that the sphere of the notion direct prejudice is wider, encompassing both the prejudice caused by a direct causal and indirect one. The prejudice is indirect when between the illicit act and that damage there is no causal link.

The new Civil Code does not define explicitly the direct nature of the reparable prejudice, although such a clarification would have been beneficial, but this can understood from the provisions of article 1533, last part, according to which, "... interest damages include only what is the needed and direct consequence of the non-executed obligation".

d. ***The personal character of the prejudice*** stems from the fact that the right to claim compensation belongs only to the person who suffered the unjustly damage. Of course that the group of people who suffered an injury, indirect victims or people who have been harmed by ricochet have the same right as an individual, to claim compensation for an unjust damage. The personal character of the damage is not likely to impede the collective compensation for damage [22] resulting from infringement of collective interests belonging to certain categories of persons and any injury by Ricochet [23].

e. ***The prejudice should result from the violation of a right or a legitimate*** **interest**

The specialty doctrine, by interpreting the provisions of the Civil Code of 1864, came to the conclusion that civil liability will be employed in those situations in which damage was caused to the victim by infringement of subjective property or non-patrimonial rights, (the right to property, the right to maintenance, the right to privacy, the right to health, the right to physical integrity, the right to honor, etc.) [24].

Daily life has demonstrated that prejudices also occur as a result of the infringement of the interests of a person or a group of person, which doesn't have a correspondent in a subjective right. The specialty literature has come to the conclusion that achieving a simple interest resulting from a situation actually entitles the compensation for the damage caused. The culpable person will be liable to compensate for the harm done, if it meets the conditions: a) *is legitimate*, meaning that if it meets the requirements of the material law; b*) is serious,* meaning if it is reasonable and consistent with morality; c) *creates the appearance of a subjective civil right* [25].

The jurisprudence prior to the new Civil Code, has consistently held that in principle there is an obligation to repair the damage even in those situations where a person has been affected by the violation of a simple interest, which does not correspond to a subjective right [26].

The new Civil Code enacted the doctrinal opinions as well as the jurisprudence in matter by including the article 1349 in paragraph 1 the general liability of any person to do not bring prejudice to the rights and legitimate interests of others. Article 1359 of the new Civil Code stipulates which are the consequences of failing to comply with the general obligation to not do harm in the sense that "*the author of the illicit act is obliged to repair the prejudice made even when this prejudice is a consequence of the violations brought to another, if the interest is legitimate, serious and, by the way it manifests itself it creates the appearance of a subjective right*".

3. The principles that stand at the bases of remedying the prejudice

In the situation when the conditions necessary for the existence of prejudice are satisfied we can pass on to the measures that can be taken to repair the damage.

The reparation "*consists in restoring the damaged party to the patrimonial situation he had prior to the damaged he suffered and in its heritage reunification ... so that its active elements could achieve the value that it would have had if the illicit act had not been committed*" [27].

In the event the parties have reached an agreement concerning the ways of remedying the prejudice, the Court will no longer be notified by means of an action that would have as object the establishment of compensation and how to repair the prejudice.

In contradiction, there are situations when the parties cannot agree on the compensation for damage, so the victim has at its disposal a legal action for damages.

At the basis of settlement of such action are the following *principles*:

-the principle of full reparation of the damaged caused;

-the principle of reparation in kind of the prejudice;

-the principle of non-patrimonial reparation;

-the principle of remedying the loss of a chance;

-the principle of remedying the foreseeable prejudice;

A. *The principle of full reparation of the damage caused*

According to this principle the author of the prejudice is obliged to cover the actual damage (*damnum emergens*) as well as the unrealized benefit of the victim (*lucrum cessans*) [28] according to provisions of article 1349 in conjunction with those contained in article 1385, 1516, the new Civil Code (article 1073 of the Civil Code of 1864) and article 1531 of the new Civil Code, (article 1084 of the Civil Code of 1864).

The application of this principle aims to ensure the restitution of the situation the victim of the prejudice had before the damage suffered [29].

As underlined in the doctrine [30] the principle of full reparation is a fundamental principle of tort liability. "... To civilly respond means to fully repair the damage and to repair the damage means to respond from a civil point of view".

Compensation in the case of tort liability must be integral. Following this truth it is incomprehensible what the authors of the new Civil Code had in mind when, after presenting in theses one, paragraph 1 of article 1385 the principle, "The prejudice is fully repaired ...", in the final part of paragraph 1, they mention the phrase, "if the law does not provide otherwise". Any regulatory act that would limit the right of the victim to claim full coverage of damage would be contrary to Article 6 paragraph 1 of the European Convention on human rights [31].

With regard to the extent of compensation, the legal practice has held that "*in the case of repairing the patrimonial damage, the sole criterion for determining the amount of compensation is that of laying it down and not that of the material situation of the* victim" [32].

As a rule, in the practice of the courts *the gravity of guilt* is not a criterion for determining the amount of compensation; the author of damage is fully responding for even the mildest guilt.

However, "*If the damage was caused by the negligence of both the author and the victim, meaning their joint negligence, there is no legal basis for that portion of the damage caused by the negligence of the victim to be repaired by the author. As a result, the civil remedies that the author must pay will not represent in such situations, the full compensation of the damage but only part of it. Fixing the amount of such compensation shall be made by taking into account the seriousness of the author and the victim's guilt, as determined on the basis of the evidence* submitted" [33].

The author of the illicit act that caused the damage is responsible for the foreseeable damages as well as for those unexpected but which nonetheless occurred.

B. *The principle of restitution in kind of the prejudice*

Compensation in kind was defined by the doctrine [34] as being "*a form of reparation of the injury consisting in a material operation (embodied in the restitution of work unjustly appropriated; replacement of the destroyed object through the illicit act with a similar thing, etc.) or in a legal operation ... at which end the one called to answer, or the Court, as appropriate, eliminates the negative consequences produced by an illicit material act or through a unilateral act committed in damage to an injured person*".

The new Civil Code regulates the enforcement in kind in art. 1527, which provides: "*(1) The debtor may always require that the borrower be coerced to perform the obligation in kind, except where such execution is impossible. (2) The right to execution in kind includes, where appropriate, the right to repair or replace the asset or any other means to remedy an improper execution*".

The judicial practice, preceding the entry into force of the new Civil Code, held that, as a rule, compensation for damage is made in kind, but where this is not possible we will resort to repair through equivalent in the form of compensation [35].

The repair through equivalent is "*a form of damage repair ... which consists of an amount of goods comprising an equivalent compensation of damage suffered*" [36].

The execution through equivalent of the obligation is the right of the creditor to claim and obtain from the borrower the equivalent of the damage suffered as a result of non-execution, late execution or improper performance of the assumed obligation. In this respect article 1530 of the new Civil Code (article 1082 of the Civil Code of 1864), provides that: "the lender is entitled to damages for the reparation of the prejudice the debtor has caused and which is the direct and required consequence of the non-execution without justification or, as appropriate, guilty of the obligation".

In the case of execution through equivalent the original claim is replaced by another claim of compensation, involving a sum of money which represents the damage created by the creditor [37]. The reparations are owed in the virtue of the initial obligation, constituting the alternative subject, considered penalty, of execution of the obligation in question.

In all cases the extent of the repair must be consistent with the extent of the damage and in relation to the damage actually suffered by the damaged party [38].

Jurisprudence has held that compensation through equivalent can be achieved by giving a global amount as well as by establishing periodic successive benefits which can be temporary or lifelong [39].

The amount of the indemnity cannot be changed as long as the damage remains the same.

Damages awarded may be subsequently modified, for the purpose of raising or lowering them if changes occur in the extent of the damage.

Thus, if the damage records an increase, a rise, the injured may ask for the increase of the compensation amount because basically it's about a new damage generated from the same illicit act and which has not been considered by the Court when the judgment was pronounced.

In this respect, the jurisprudence has established that, in the event of serious bodily injury, the worsening of the health of the injured is equivalent to the emergence of a new prejudice and "*the fact that through the decision mentioned a compensation, consisting of a global sum, was granted, it has no efficiency in promoting the authorities' exception of the judged object because the motivation as well as the judgment clearly state that the global amount is for a period of 10 months and was determined by the difference between the salary and the sickness benefit that rightfully belonged for the time interval until the delivery of the judgment*" [40].

In the event that over time the damage decreases or ceases to exist and the compensation was established in the form of periodic payments, the person obliged to pay may ask the Court to reduce or suppress its obligation for the future.

C. ***The method of establishing compensation in the event of repair through equivalent of the prejudice***

a. ***The moment according to which the material damage of the prejudice is appreciated the damage***

A first problem, in connection with the assessment of damages is therefore to determine the moment when the evaluation of the damage and the establishment of the equivalent of the material damages can be made.

In this sense both the judicial practice [41] and the doctrine held that the assessment of the injury is made at the date of the sentencing. "*If any other moment – such as for instance, the date when the damage occurred or the action was introduction – would be taken into account the compensation thus determined may be lower or, on the contrary, could exceed the actual compensation of the prejudice sought*" [42].

b. *Repairing the patrimonial damage caused by the person's injury*

Repairing the patrimonial damage caused by the person's injury is *"a distinctive form of remedying the prejudice that does not include the distinction between the loss suffered and the forgone profit and which is intended to eliminate or compensate for the negative effects of the infringements against life, bodily integrity or health of the person* [43].

• In the case of harm brought to health and bodily integrity the prejudices are analyzed according to:

- the harm brought to health had no lasting consequences;

- the harm brought to health had as consequences the loss or reduction of work capacity;

In the first case the legal practice ruled that for determining the prejudice it should be taken into account the expenditures made for the restoration of health (expenditure on health care and other expenses) and also the difference between salary and the amount received during sick leave until recovery or the retribution that the person was deprived of for this period [44].

In the event the *harm brought to health and bodily integrity* has had as a consequence the loss or *reduction of work capacity* in practice multiple situations that may lead to various solutions may occur [45]. Situations that can occur are those that relate to: the injured person is employed, the injured person is not employed although he has the necessary age; the injured person has not reached the age of majority.

• *Assuming that the illicit act causes the death of the victim*: the damage can be located in the victim's patrimony, in the property of other persons, or at the same time, in the victim's patrimony and the property of others.

In this hypothesis there are several possibilities:

- the obligation of the author of the illicit act to repair the prejudices resulting from the costs of hospitalization and funeral expenses regardless of whether these expenses have been made by those in the maintenance of the victim or another person [46];

- the obligation of the author of the illicit act relating to damages that have to be granted to persons close to the deceased victim. In this case there are two different hypotheses:

- in the case of persons entitled to compensation which have the right to the *survivor's pension* in accordance with law No. 263/2010 concerning the unitary system of public pension [47] They must first address the National House of Public Pensions for the establishment of the survivor's pension and only if the pension does not cover all of the damage by loss of supporter, they may refer the matter to the Court through a complementary action with subsidiary character, based on art. 998 of Civil Code (1349 new Civil Code), in order to obtain additional compensation [48];

- in the event that the people who were dependent on the deceased *are not entitled to survivor's pension*, the obligation to repair the prejudice only acquires new features according to the different situations in which these people can be found, in the sense that if they have the right to ask for compensation. The ones that fall into this category are the people who *actually received maintenance from the deceased* (according to article 86-96 Family Code, repealed, now article 518-531 the new Civil Code) [49], *the people who although did not actually receive maintenance, however, at the time of death, met the conditions required by the Family Code,*

in order to obtain maintenance (that is, they were in need, they did not have a job because of the inability to work) [50], *those who were in fact in the maintenance of the victim* even though they lacked this right according to the Family Code [51].

The juridical practice has held that the payment of the compensation to the victim's maintenance to be done *gradually* and not in the form of a global amount [52].

The jurisprudence concluded that this monthly benefit is a *compensation* and not a *maintenance pension* and as a result, the author of the prejudice will be forced to cover the benefits that the victim paid, benefits that his followers were deprived off [53].

In both cases of harm to health and bodily integrity as well as in the case when the illicit act caused the victim's death, the date since when the compensations should be paid is the date when the illicit act of the damage or of the death took place and not the date when the sentence was pronounced [54].

D. *Reparation of the non-patrimonial prejudice*

Non-patrimonial prejudices may be considered the followings: physical or psychic pain, harms brought to honor and reputation or even aesthetic damage.

The Court of Justice of the European Union has recognized, in its jurisprudence, the right of the consumers to reparation of the non-patrimonial prejudice [55].

E. *Repairing the damage consisting in the loss of a chance*

Under the provisions of article 1532 paragraph 2 of the new Civil Code, *the damage that could have been caused by the loss of a chance of getting an advantage can be repaired in proportion to the probability of obtaining the advantage, taking into account the circumstances and particular situation of the creditor*.

In such a situation, the amount of compensation is inferior to the advantages that the lender could have received if he could have taken advantage of the situation. The compensation is going to be determined by the Court that will take into account the calculation of probability and the percentage in which the chance can be achieved [56].

E. *Repairing the foreseeable damage*

The principle stated above is based on the provisions of art. 1533 of the new Civil Code, according to which "*the debtor is responsible only for the prejudices which he foresaw or he could have foreseen as a result of a default at the time of conclusion of the contract, unless the failure is deliberate or due to serious fault. Even in the latter case, the damage - interests include only what is the necessary and direct consequence of the non- execution of the obligation*".

As a rule, the debtor is responsible only for the damage which he had foresaw or could have foreseen as a result of the failure to complete the obligation at the date of conclusion of the contract [57]. In the event the failure to perform the obligation is deliberate or it is due to a serious fault of the debtor, the later will also respond for the unpredictable damages at the time of conclusion of the contract.

The problem with repairing only the foreseeable injury at the time of conclusion of the contract should not be confused with the unpredictability contract theory [58].

Conclusion

Finally, I appreciate that the new Civil Code through the enactment of some doctrinal theories and jurisprudential aspects formulated in the research and application of the Civil Code of 1864 as well as related civil legislation, managed to adapt the legal provisions of civil law to the present challenges of development of the Romanian contemporary society. At the same time the codification work has succeeded, in a large part, a harmonization with the civil laws of some European countries as well as with the European Union law.

Of course, as the doctrine [59] has already noted and as it follows from those presented in this material, in drawing up this new Civil Code a series of inaccuracies have crept, aspects regarding the violation of the rules imposed by the legislative technique, certain incomplete definitions of some concepts etc., but certainly all these will be amended by the doctrine but also by the future jurisprudence, that will have to give solutions in concrete situations and not hypothetical.

The new Civil Code was a stringent necessity of the Romanian legal life and this has been satisfied.

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[10] The Supreme Court, col. pen. , December no. 39/1963, in the New Justice, p.178; the Supreme Court No no. 39/1988, in, "Romanian Law Magazine" no. 4/1989, p 75. See also **M. Eliescu** - op.cit., p.101, **X. Pradel** - *Le préjudice dans le droit civil de la respinsabilité*, Librairie Générale de Droit et de Jurisprudence Publishing House, Paris, 2004, p.187 and next.

[11] **Fr. Terré, Ph. Simler, Yv. Lequette**, *Droit civil. Les obligations*, Dalloz, Paris, 2005, p.697-702; **L. Pop**, *Tratat de drept civil .Obligaţiile*, volume I, *Regimul juridic general*, C.H.Beck Publishing House, 2006, p.414.

[12] **X. Pradel,** *op. cit*. p. 304-307; **L. Pop**, *Tabloul general al răspunderii civile în textele noului Cod civil,* ,,Romanian Magazine of Privat Law" no. 1/2010, p. 194-196.

[13] The 2004 UNIDROIT Principles of International Commercial Contracts, 2004, available on the website: http://www.unidroit.org , art. 7.4.3, review 2.

[14] **G. Viney, P. Jourdain**, *Traité du droit civil*, under the direction of **J. Ghestin,** Librairie Générale de Droit et de Jurisprudence Publishing House, 1998, p 87-103.

[15] Cass. crim., February 23, 1977, Bull. crim. no. 73, p 169, "loss of opportunity may represent in itself a direct and certain character in all cases where there is real possibility of extinction as a favorable event, through definition, lead to the realization of that opportunities" (quoted by **L. Pop, I.F. Popa, S.I. Vidu** in op cit. p.417).

[16] **Fr. Terré, Ph. Simler, Yv. Lequette**, *Droit civil. Les obligations*, Dalloz, Paris, 2005, p.689.

[17] **L. Pop**, *Reglementările noului Cod civil cu privire la repararea prejudiciului în cazul răspunderii delictuale*, în "The Law", no. 6/2010, p. 20-21; **L.R. Boilă**, *Discuţii privind prejudiciul cauzat prin pierderea şansei de a obţine un avantaj în cadrul răspunderii civile delictuale*, in "The Law" no. 7/2010, p.99-128.

[18] See Supreme Court, decision no.17/1992 *Probleme de drept* 1990, 1992, p.417-419, Supreme Court, Civil Division, the decision no.2013/1991 "The Law" no.8/1992, p.84.

[19] **G. Viney, P. Jourdain,** *op. cit.* p. 98-100; **L. Pop, I.F. Popa, S.I. Vidu,** *op. cit.* p. 417; **L. R. Boilă,** *Capitolul IV. Răspunderea civilă*, in *Noul Cod civil, Comentariu pe articole, art.1-2664*, Cordonators: **Fl.A. Baias, E. Chelaru, R. Constantinovici, I. Macovei**, C.H.Beck Publishing House, Bucharest, 2012, p.1462;

[20] See on the analysis of the above situations: C. Stătescu, C. Bîrsan - op. cit., p.155-158.

[21] **M. Eliescu**, *op.cit.* p.97; **L. Pop I.F. Popa, S.I. Vidu** *Tratat…* 2012, p.418-419; **V. Stoica**, *Relaţia cauzală complexă ca element al răspunderii civile delictuale în procesul penal,* in „Romanian Law Magazine" no. 2/1984, p.35.

[22] **X. Pradel,** defined as collective damages, "those damages which affect several people at a single event" op. cit. p 277-279.

[23] **G. Viney, P. Jourdain,** *op. cit.* p. 117, 154-178; **L. Pop, I.F. Popa, S.I. Vidu,** *op. cit.* p. 420, **Gheorghe Durac**, *Noul Cod civil.Comentarii, doctrină şi jurisprudenţă, Vol II, art. 953-1649*, Hamangiu Publishing House, Bucharest, 2012, p.687.

[24] **M. Eliescu** – *op.cit.*, p.100-102; **L. Pop, I.F. Popa, S.I. Vidu,** *op. cit.* p. 422-423; **C. Stătescu, C. Bîrsan** – *op.cit.*, p.146-147.

[25] **M. Eliescu** – *op.cit.*, p.101-102; **L. Pop, I.F. Popa, S.I. Vidu,** *op. cit.* p. 423; **C. Stătescu, C. Bîrsan** – *op.cit.*, p.147; **A. Georgescu-Banc**, in *Noul Cod civil. Note .Corelaţii. Explcaţii*., Editura C.H.Beck, Bucureşti, 2011, p.505-506; **Gheorghe Durac**, *op, cit*. p.690; **L.R. Boilă,** *op. cit***.** p.1420-1421.

[26] Supreme Court, s. pen., December. no.495/1966, in CD 1966, p 432; Supreme Court, s. pen. December no. 2722/1970, in RRD no. 3/1971, p 130; Trib. Suprem, s. mil., December no. 39/1998 in RRD no. 8/1989, p 75; Trib. Suprem col. pen. December. no. 39/1963 in J.N. no. 4/1969, p 178.

[27] M.N. Costin, C.M. Costin - op.cit., P.854.

[28] See Supreme Court, Criminal Division, no.34/1981 decision, in "Romanian Journal of Law" no.11/1981, p.52; decision no.1525/1989 the "right" No.8 / 1990, p.82, Supreme Court, Criminal Division, decision no.417/1990 "The Law" no.9-12/1990, p.243.

[29] **L. Pop**, *Tabloul general al răspunderii civile în textele noului Cod*, in "Romanian Magazine of Private Law" no. 1/2010, p 214.

[30] **L.R. Boilă,** *Capitolul IV. Răspunderea civilă*, in *Noul Cod civil, Comentariu pe articole, art.1-2664*, Cordonators: **Fl.A. Baias, E. Chelaru, R. Constantinovici, I. Macovei**, C.H.Beck Publishing House, Bucharest 2012, p.1460-1461; **V. Ursa**, *Dezvoltarea de către practica judiciară a principiului reparării integrale şi a principiului reparării în natură a prejudiciului*, in **A. Ionaşcu, colectiv**, *Contribuţia practicii judecătoreşti la dezvoltarea principiilor dreptului civil român*, Editura Academy Publishing House, Bucharest, 1978, p. 135.

[31] Article 6 paragraph 1 of the European Convention of Human Rights states, "Everyone has the right to a fair, public trial and within a reasonable time by an independent and impartial tribunal established by law, which shall decide on rights and obligations of a civil nature ....".

[32] See decision No. 412 of March 4, 1964 of the former Supreme Court, Civil College in **I. Mihut, A. Lesviodax** – "Repertoriu 1952-1969", Scientific Publishing House, Bucharest, 1970, p.410.

[33] See former Supreme Court Guidance Decision no.10/1961 in "Reports of Decisions 1961", p.65; decision guidance no.17/1964 the Supreme Court Plenum former "Reports of Decisions 1964", p.52.

[34] **M.N. Costin, C.M. Costin** - op.cit., P.854.

[35] See the Bucharest City Court Criminal Division I, decision no.1330/1992 in "Culegere de practică judiciară în materie penală", 1992, p.18.

[36] **M.N. Costin, C.M. Costin** - op.cit., P.857.

[37] **C. Stătescu, C. Bîrsan** - op.cit., P.328-33, **T.R. Popescu, P. Anca** - op.cit., P.319.

[38] See in this regard: The Supreme Court, Civil College, decision no.1622/1955 in "Collection of Decisions 1955", p.173, Supreme Court, Civil Division, decision no.924/1973 in "Collection of Decision 1973", p.175.

[39] See: Supreme Court, Civil College, decision no.782/1961 in "Collection of Decisions 1961", p.177, Supreme Court, Criminal Division, decision no.1166/1996 in "Collection of Decisions 1966", p.426, Supreme Court, Civil College, decision no. 91/1957 (**I. Mihuţă, A. Lesviodax –** „Repertoriu...1952-1969", p.407).

[40] Sibiu County Court, Civil decision no.749/1969 in "Romanian Journal of Law" no.2/1970, p.163; Likewise, Supreme Court, Civil Division, no.2013/1991 decision in "Problems of Law 1990-1992", p.87.

[41] Supreme Court of Justice, Criminal Division, decision no.1556/1991 in "Problems of Law 1990-1992", p.421-422, Supreme Court, Criminal Division, decision no.826/1997 "The Law" no.7/1998, p.144; Bucharest City Court Criminal Division I decision no.380/1991 in "Culegere de practică judiciară în materie civilă 1991", p.80-81, decision no.398/1992, in "Culegere de practică judiciară în materie penală 1992", p.81

[42] **T.R. Popescu, P. Anca** – *Teoria generală a obligaţiilor*, Scientiphic Publishing House, Bucharest, 1968, p.173; **M. Eliescu** – *Răspunderea civilă delictuală*, Academy Publishing House, Bucharest, 1972, p.407; **C. Stătescu, C. Bîrsan** – *op.cit.*, p.162-163; **V. Stoica, N. Puşcaş, P. Truşcă** – *op.cit.*, p.312-313.

[43] **M.N. Costin, C.M. Costin** – *op.cit.*, p.856-857.

[44] Suceava County Court, criminal decision no.1378/1972 in "Romanian Journal of Law" no.12/1972, p.162.

[45] The Supreme Court, Criminal Division, decision no.5364/1971 in "Culegere de decizii 1971", p.418, Sibiu County Court, Civil decision no.749/1969, in "Romanian Journal of Law" no. 7/1970, p.163, Supreme Court, Criminal Division, no.1356/1983 decision in "Romanian Journal of Law" no.5/1984, p.62; Supreme Court, Plenum, decision guidance no.13/1968 in "Culegere de decizii 1963", p.31, Supreme Court, Criminal Division, decision no.1092/1970 in "Romanian Journal of Law" no.11/1970, p.170.

[46] The Supreme Court, Civil College, decision no.212/1956 in "Culegere de decizii 1956", p.329.

[47] Published in the Official Gazette no.852 of December 20, 2010, as amended by Government Emergency Ordinance no.177/2010, published in the Official Gazette of December 30, 2010 no.891.

[48] The Supreme Court, Criminal Division, decision no.461/1970 in "Romanian Journal of Law" no.11/1970, p.151, Supreme Court, Civil College, decision no212/1956 in "Culegere de decizii 1956" 1, p.329, Supreme Court, Military Department, decision no.63/1982, in "Romanian Journal of Law" no.8/1983, p.62.

[49] The Supreme Court, Civil College, decision no.1032/1956 in "Culegere de decizii 1956", p 325.

[50] **T.R. Popescu, P. Anca** – *op.cit.*, p.171; **C. Stătescu, C. Bîrsan** – *op.cit.*, p.170.

[51] The Supreme Court, Civil College, decision no.1241/1959 in "Culegere de decizii 1959", p.183.

[52] The Supreme Court, Civil College, decision no.2151/1956 in "Culegere de decizii 1956", p.327.

[53] Ilfov County Court, Criminal Division, decision no.498/1969, in "Romanian Journal of Law" no.11/1969, p.178, Supreme Court, Civil Division, the decision no.1720/1991 "The Law" no.6/1992, p.88 and decision no.747/1992 in "The Law" no.2/1993, p.75-76.

[54] The Supreme Court, Criminal Division, decision no.69/1973 in "Culegere de decizii 1973", p.457

[55] European Court reports 2002, p. I-02631, CJUE, *Simone Leitner c. TUI Deutschland GmbH & Co. KG*, C-168, parag.23-24; CJUE, *Axel Walz c. Clickair SA*, C-63/09, parag.39, (*http://eur-lex.europa.eu*);

[56] **L. Pop**, *Tabloul general al răspunderii civile în textele noului Cod civil*, in "Romanian Journal of Privat Law" no 1/2010, p. 214; **D.A. Ghinoiu**, in *Noul Cod civil. Comentariu pe articole, art. 1-2664*, (Cordonators: **Fl.A. Baias, E. Chelaru, R. Constantinovici, I. Macovei**), C.H. Beck Publishing House, Bucharest, 2012, p.1620-1621.

[57] **T.R. Popescu, P. Anca**, *Teoria generală a obligaţiilor*, Scientific Publishing House, Bucharest 1968, p. 333.

[58] **C. Stătescu, C. Bîrsan**, *Obligaţiile*, p.340-341; **C.E. Zamşa**, *Teoria impreviziunii*, Hamangiu Publishing House, Bucharest 2006, p. 146-147.

[59] **L. Pop, I.F. Popa, S.I. Vidu,** *op. cit*. p. 38-463; **L.R. Boilă**, in *Noul Cod civil. Comentariu pe articole, art. 1-2664*, (cordonators: **Fl.A. Baias, E. Chelaru, R. Constantinovici, I. Macovei**), C.H. Beck Publishing House, Bucharest, 2012, p.1399-1473; **S**. **Neculăescu***, Reflecţii privind soluţiile noului Cod civil în materia răspunderii civile delictuale*, in *Noul Cod civil. Comentarii*. Coordonator, **M. Uliescu**, third edition, amended and supplemented, Juridical Universe Publishing House, Bucharest, 2011, p.198-250.