

Parental Liability for Damages Resulting from a Child's Acts

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Abstract

This paper will treat one type of liability that results from the non-contractual damage, and concretely liability resulting from damage caused by children. There will be analyzed the person who shall be charged with liability in case a third party is subject to damage by children (minors) and how the parental responsibility is related with this kind damage. The paper will focus on the conditions or the criteria under which a person shall be liable for the actions caused by another person. We live in a society where development is much advanced and this means that definitions given in the countries' legislations should be reviewed from time to time and should be in compliance with the latest social and contemporary developments. This paper will analyze the parental liability regarding damages caused by their children who are until the age of eighteen years old, as provided for in law, and how are parents found liable for the illegal actions committed by their children. This paper will not focus on how the issue of parental liability finds treatment in a particular legislation, but the legislation of some countries will be taken into consideration, as well as treatment of this issue, analysis on facts and circumstances under which liability falls to the parents and not to the person who has caused the damage Innovation of legislation related to this topic.

Keywords: Liability, child, non – contractual damage, responsibility

1. Introduction

This is a general study with regard to liability resulting from damage caused to third parties by minors, the individual to whom this liability is attributed to, a general explanation about this issue, the way how this non-contractual damage is provided for in the Albanian legislation and in some of the most developed European countries' legislations, the way how this issue is provided for in the less economically developed countries' legislations, whether the legal specifications are the same when it comes to dealing with parental or the guardian liability as part of the non-contractual damage, seen in a comparative point of view.

An individual shall be liable for damages caused to third parties if this individual commits an offense. This means that everyone that causes impairment, by using an object that he/she possesses, to a third party shall be liable. Additionally, an individual shall be liable even if a third party has been subject to impairment by an individual for whom such a third is liable (Delory 1987).

This paper will address the liability resulting from the occurrence of an non-contractual damage, relating to the liability for one's actions, which directly relates to the legal relationship of parent-child and parental liability which arises as a result of existence of this legal relationship that is recognized by the legislations throughout the world, and occurrence of damage caused to third parties by the child.

Parents may be found liable for the damages that their children cause. They shall appear before justice if their children have caused damage and shall be liable for damage compensation and remuneration of the individual affected (Spinak 2014).

Each individual shall be obliged to compensate the damage caused at the time this individual is found liable. But in this case we shall examine and consider the lawsuit prescription term, since in various legislations the lawsuit prescription term is different depending on different cases (Lamb 2005).

2. Parental responsibility according to the Albanian legislation:

Parental liability for the actions committed by minors is provided for in the Civil Code of the Republic of Albania, as follows.

Damage caused by minors and the individuals incapable of acting are provided for in Article 613 of the Civil Code

of the Republic of Albania. This article says "*Minors less than 14 years old and the totally incapable to act individuals are not liable for the damage caused*"¹.

The wording of the foregoing section makes clear that when a minor (under the age of fourteen) or another individual, that has no legal capacity to act, cause any damage, this individual shall not be liable for the fact that this individual is unable to properly understand the importance of the actions that he/she has committed and therefore to control such actions. However, in terms of an non-contractual damage that occurs as a result of an illegal action, someone shall definitely bear the liability for this damage because the individual who has been damaged by an illegal action has absolute right to demand indemnity or compensation. To this regard, an individual shall be considered liable for the damage caused as provided for in the law and parents shall be legally and logically liable for their children, while guardians shall be liable for the individuals who were incapable to act.

The second paragraph of Article 613 of the Civil Code of the Republic of Albania provides for as following: "*Parents, the guardian or those to who are in charge of supervise the incapable to act individuals, are liable for the damage caused by illegal actions of children below 14 years of age, of the individuals under their tutelage and of those under which supervision they are and with whom they live, but that have no capacity to act, apart when they prove that they could not avoid the cause of damage*"².

Analyzing the above provision we come to conclusion that the lawmaker had considered that even if damage is caused by an individual incapable of acting, someone else, i.e., an individual different from the individual who has caused the damage, shall be liable for the damage caused. In this case the parent or the guardian shall be liable, depending on the circumstances of the case, and to this regard it should be emphasized that parents should jointly be liable for their children' actions.

Based on the above provision we make exemption from the general rule according to which parents or guardians are not liable if they prove that they have taken all necessary and indispensable measures to avoid the damage or to cause its prohibition but despite this effort the damage has occurred.

To this regard we are before a relative assumption, because although liability of parents or guardians is presumed for the actions of individuals unable of acting, there is the possibility that these may be released from liability if they can prove that despite having taking appropriate measures damage could not be prevented.

Under the Albanian law, and the Civil Code of the Republic of Albania, liability for the children' actions finds treatment in two phases, the first phase as mentioned above and that has to do with liability for children' actions who have not reached the age of fourteen, i.e., the same liability of individuals with disabilities, while the second phase is provided for in Article 614 of the Civil Code of the Republic of Albania, which says that:

"The minor who is above 14 years old, is liable for the illegal damage caused by him.

Parents or the guardian are liable for the above mentioned damage when the minor does not earn income by work nor has any property himself, except if they prove that they could not stop the occurrence of the damage"³.

Analysis of the above provision has shown that there are two types of minors to whom liability is charged to i.e., who have reached the age of fourteen, depending on the case.

The above provision stipulates when a minor who has attained the age of fourteen is liable for the harmful actions that he/she has caused to third parties. But here we have to make the difference for those cases where compensation provides for award of a sum of money or other material which enables the compensation of damage caused, as in such a case in order to indemnify damage caused it is required that the individual affected be given money to the extent determined by the court decision, based on expertise from experts of the relevant sector in charge of making assessment on the damages.

As above, if the minor does not have assets in his name nor has any income from his work, the parent of the minor who has caused the illegal action shall be liable (Bala 2000).

The legislator has taken into account the fact that after the age of fourteen the individual has partial ability to act, therefore is liable and conscious for his actions, has full consciousness for actions that he performs and he is liable for his actions, and in addition he is able to perform any easy and suitable work for his age and formation by means of which to take substantial income for himself, in order to have a modicum of independence and income and through this income to indemnify for the damage caused by him. This somehow affects the education or training of the first child, from a psychological point of view.

Otherwise, as it was mentioned above his parents shall be liable for the acts of a minor who has reached the age

¹ Civil Code of the Republic of Albania, Article 613/1

² Civil Code of the Republic of Albania, Article 613/2

³ Civil Code of the Republic of Albania, Article 613

of fourteen, but even this is not absolute because regarding the parents the legislation has provided for a clause that limits or affects this kind of liability that derives from the non-contractual damage, which says that: parents will be liable for the illegal actions caused by their children only in those cases when it is proved that they have taken all measures needed or necessary to avoid the illegal actions causing damage to third parties, but despite this effort the damage was caused, i.e., commission of illegal actions with harmful consequences for third parties did not occur depending on the measures for prevention by parents but was totally independent of parent's desire and preventive actions.

As above it is worth mentioning that the legal doctrine provides for that the parental liability is solidarity liability. This means that each of the parents shall be liable towards third parties in the same manner and with the same degree of liability for the damage caused by their child.

Parental duty to oversee the minor is suspended when the child is with the teachers or performing a job at a third party. A precondition for parents' liability for the damage caused by their child is that the child lives with them (Masimo 2006).

This paragraph makes clear that parents are liable for their actions, for those harmful actions that their children have committed while they had been under the supervision of their parents. Otherwise it is not lawful that these individuals are charged with liability for a damage caused by someone else, hence by the children and above all not in their presence. Therefore, if the children are under the care of teachers at the time when damage has been caused, the teacher will be liable for the damage caused.

Under the foregoing paragraph, if a minor is working at a third party, the liability to supervise and take care of the minor falls to the individual where this minor is working at, therefore this individual shall be liable for the damage caused, always taking into account the criterion of age, and the individual who has been tasked with overseeing the child has taken all necessary measures as appropriate to avoid or prevent the damage shall be discharged from liability (Francesco 1999).

Article 627/2 of the Civil Code of the Republic of Albania provides for: "*Parents or guardians who have paid compensation for the damage caused by minors or by people to whom the ability to act is totally removed, have no right to require from them the restitution of the compensation for the damage they paid*"⁴.

Based on this article we come to conclusion that when children become major, i.e., with full legal capacity to act, they will not be hostage of the actions they have committed in childhood, when their formation had not existed yet. Individuals who have indemnified for the damage caused by the children, being the parent, the teacher or the guardian, cannot claim in the future the return or restitution of the money they have spent on compensation of damages.

The above definitions provided for in the Albanian legislation on this issue are similar and almost the same with the foreign international legislations, but especially the European Union member states' legislation.

3. Characteristics and introductions

Liability of the parents for the damages caused to third parties by their children, willfully or by negligent, is mainly related to monetary damages, so they have liability to compensate the individuals affected by the damage resulted from the illegal actions committed by their children.

Considering the fact that liability to children is essentially liability for the actions of the other individual, most countries have restrictions on the amount of money that parents or guardians must pay for parental liability (Williams 2007).

Additionally, there are also insurance companies which, through their policies provide coverage of certain acts related to this topic, depending on the circumstances. In general, based on the majority of legislations in the world, parents and guardians are liable for damages caused by their minor children, generally ages 8 to 18 years old.

Many courts in the world find parents liable, according to the different legal provisions related to the right of obligations, theory that charges an individual with the liability for illegal actions caused by someone else, but with the condition that between these two individuals, i.e., the individual causing the damage and that of which liability is attributed to, exists a special relationship (Judith and Sheryl 2008). This closely relates to the theme which we are treating because there exists a very special relationship between parents and children, and the children are too little to be charged with financial liability for their illegitimate actions, therefore parents and guardians shall be liable due to detrimental actions of their children and therefore shall provide compensation for the damage caused. According to the doctrine related to the right of obligations, parents, guardians, or any other individual designated as guardian for the child

⁴ Civil Code of the Republic of Albania, Article 627/2

shall be liable for injuries or damages caused by the child who was under their supervision.

During an interview the lawyer ROSKA (2011), was addressed a question. How is it possible that parents can be held liable for actions caused by their children? Up to what age? He replied that parents have in general no legal liability for their adult children, although he has expressed that parents can be charged with legal liability for damage caused by their children for "intentional or malicious" actions.

Parents but also children are liable for any damage caused to third parties by negligent. It is really a little bit difficult to determine whether children have caused damage intentionally or by negligent, also for a parent in special cases, but if the child plays with his parents' gun and causes damage to others this is qualified as parental negligence because parents failed to take any measure to avoid such damage. They have seen their child playing with the gun, and it is known that this device puts human life in danger. In this case we have to do with failure to perform supervision of the child by a parent, but also with negligence because the parent himself has left the weapon in a place which is easily visible and tangible by the child (Burnett 2004).

Parental liability is closely associated with the age of the child. In most legislation in the world it is provided the same treatment on this topic. Children are not liable for their actions up to a maximum age of 18, and by age fourteen to eighteen they have partial liability, which means that liability does not fall entirely on the child because they are too little to make income for themselves, much more to compensate third parties for damages incurred (Brining 2001). But apart from the economic aspect we should emphasize the child's psychological state, because based on studies made around the world children who are not yet eighteen years of age do not have appropriate training to perceive and act as a reasonable adult, so they lack maturity and economic impossibility.

The same cannot be said for an individual who has reached nineteen years of age. From the social point of view, in the eyes of parents children always remain children and parents feel that they have more moral or spiritual liability towards their children and with desire may be responsive to the third parties for any obligation that children have (Millar & Goldenberg 1998), but before the law children of this age are liable for their illegal actions caused intentionally or by negligent, so they will be responsible for the actions committed by them.

4. Treatment of this topic in the British legislation

In terms of accidents caused by children, it is difficult to prove that illegal action was committed by negligent of the child because they are too little to understand the consequences of their actions but even if this fact is confirmed the individual affected cannot directly ask the child for compensation, because in most cases children are unable to compensate or indemnify the damage they cause, as we mentioned before (Spinak 2004).

Regarding this argument, the English legislation provides for some cases when request for damage compensation is addressed to children.

- The child against which has acquired property, then the affected individual has the right to seek damage compensation.
- It could happen as per cases that the request for compensation is addressed to him after six years, during which period the child can become capable to compensate the damage that he has caused.
- If a child is unable to pay for damage compensation caused by him/her, his/her parents shall respond to third parties for the actions of their child because the family has insurance. If under national laws there are insurances companies that cover these categories of damages caused by children, the compensation will be done by this insurance (Hazel 2002).

Under the English law, parents or guardians are not liable for damages caused by their children even though they may have moral liability (Lamb 2005).

But this does not mean that parents should neglect supervision or observation of their children. Therefore, if a child is accompanied with his parents or with an adult and performs a harmful action for someone else, while the parent watches and allows him to continue to perform this action in violation with law, then the latter will necessarily be charged with statutory liability and will respond before justice authorities.

But even when the child is not accompanied by an adult and causes an accident, the parent will still be liable because he did not supervise his child, was not present to observe his/her child or did not assign a guardian to observe the child on behalf of the parent.

5. Parental responsibility stipulated in the Parental Liability Act

The Parental Responsibility Act was enacted in May 2000. This Act makes it possible for parents to be sued for damage or losses caused by their minor children: "where a child takes, damages or destroys property, an owner or a person entitled to possession of the property may bring an action in Small Claims Court against a parent of the child to recover damages"⁵.

The purpose of this Act was to encourage parents to teach their children to respect law but this also means the scope for recognition of liability.

This Act has considered some important facts which the court should be based on before taking the decision to find parents liable for the harmful actions caused by their children, very briefly summarized as follows:

Age, child's mental capacity, any mental disorders, the fact whether this child at the time of causing the damage was accompanied or not by his parent.

These circumstances which are taken into account by the court appear to have international nature because every legislation provides for that before a parent is charged with liability for the unlawful acts of their children, these facts should be evaluated before, but as already mentioned above there should be taken into account the parents' attempt to prevent damage by their children.

6. Parental liability provided for in the Italian legislation

Under the Italian legislation, the Article 2048 of the Italian Civil Code has provided that: "*The father and mother, or guardian, are responsible for the damage caused by the unlawful act of non-emancipated minor children or persons subject to protection, who live with them.*

*The tutors and those who teach a craft or an art are responsible for the damage caused by the unlawful act of their students and apprentices at a time when they are under their supervision The persons referred to in the preceding paragraphs are released from liability only if they prove not to have been able to prevent the fact*⁶.

Under the provisions stipulated in this legislation, the parent shall be liable for damages caused by their children against third individuals, and it is also specified that parents will be released from liability for this kind of non-contractual damage after confirming that they have taken all measures necessary to avoid damage as per the circumstances but again have not been able to avoid such damage.

But I think that parental liability for damages caused by their children is relative, for the fact that according to the law of most countries in the world it should definitely be proven that the parent has not taken any action to avoid the damage or has not taken all the measures considered necessary depending on the specific circumstances for each case (Kruk 2011).

Therefore, in most cases it is really difficult to prove negligence of parents regarding due supervision of their children and making it possible that an illegal action does not happen. But here we are dealing with cases where children are not accompanied by their parents and in this moment they cause damage to third parties, but again we can say that it is the parent who must be charged with liability for the illegal action and shall take measures to compensate or indemnify for such damage because it was the duty of the parent to take measures in advance to observe or monitor the child at any time, even by another individual appointed by the parent (Kruk 2011). This determination has been provided for in most of the world's legislations.

7. French Civil Code on parental responsibility as a non-contractual damage

With regard to the French legislation on this issue, Article 1384 of the French Civil Code has provided for as following:

"Father and mother, if they exercise parental authority, they are jointly responsible for damage caused by their children living with them"⁷ From the above article we conclude that even this legislation has provided for parental responsibility for the damages resulting from their children' acts who live together with their parents, and they respond jointly before justice. If we consider the legal literature on this topic we observe that even the legislation of the countries which are less economically developed have set almost the same rules related to parental responsibility. Therefore, we conclude that the legal provisions of the aforementioned countries do not have to do only with developed countries, but

⁵Parental Responsibility Act, May 2000

⁶ Italian Civil Code, Article 2048

⁷ French Civil Code, Article 1384

they find application in all the legislations of the world.

As foregoing, it can be said that the parent's main duty to avoid parental liability for damages caused by their children's acts is taking of measures to avoid the damage and the parent has the burden of proof to prove this thing before justice. Otherwise parents will be found guilty and will be liable to compensate third parties rather than the child who has caused damage.

What measures will be taken against children who have caused damage?

This is an issue which requires special treatment and analysis but in the context of this paper we can briefly say:

Children who have caused harm to others can be sent to rehabilitation institutions that offer psychological support, knowledge on laws and legal rules necessary for their age and formation. These institutions influence the formation of children as parents should have influenced on them in case of neglect by the latter, but also provide a much broader knowledge about what to do and not to do.

8. Conclusion

Concluding we can say that parents are liable for the damage caused by their children, but a prerequisite for charging the parent with liability for this kind of damage is to find whether parents have or not have taken due measures to avoid or prohibit the damage.

Parental liability is closely connected with verification of this fact. This is stipulated in most of the legislations of the countries all over the world and the core is almost the same. If we analyze each law, we will undoubtedly find small differences between them.

It should be emphasized that with further development of the society, in terms of this kind of non-contractual damage, a number of insurance companies have started to include in their insurance policies the coverage for damages caused by children.

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