

THE SPECIFIC FUNCTIONS OF CIVIL-LEGAL LIABILITY FOR BREACH OF OBLIGATIONS

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ABSTRACT

The article discusses the forms of civil-legal liability, particularly focusing on penalties as a method to ensure the performance of obligations and a means to encourage proper execution during the stages of contract formation and fulfillment. At the stage of a breach of obligation, penalties act as a measure of liability or a means to stop and eliminate the breach, or to compensate for the damage caused.

Additionally, the historical foundations of the forms of civil-legal liability are analyzed, highlighting that penalties have a cumulative, punitive nature towards the debtor. The article also addresses the functions of penalties, including their incentivizing, compensatory, punitive, educational, signaling, and warning functions.

Keywords: Damage, justice, liability, punishment, sanction, law, obligation, compensation for damage, preventive-educational function, reparative functions, principle, function, guarantee, warning function.

1. INTRODUCTION

Civil liability is, by its nature, one of the types of legal liability.

It is legitimate and justified to understand legal liability as a sanction imposed by the state to affect the wrongdoer. This is typically associated with the mandatory element of sanctions in the institution of legal liability.

Civil liability, as a type of sanction, involves imposing legally defined unfavorable legal consequences on the wrongdoer. These consequences manifest as the deprivation of certain rights, the replacement of an unpaid debt with a new one, or the addition of new obligations to an existing debt.

The significance of civil liability is revealed through its functions. First, the institution of liability performs a compensatory (restorative) function by obliging the wrongdoer to restore the violated rights, including compensating for the damage caused. Second, the threat of applying liability measures serves to educate participants in civil relations not to commit violations, to respect the law and the rights and interests of others, and to comply with accepted obligations. Third, civil liability, as a form of legal liability, represents the state's negative stance towards the violation, which is reflected in society's and the state's condemnation of the violation, ultimately manifesting as a punishment for the wrongdoer. Fourth, the application of liability measures to a person who has violated an obligation can negatively affect their material and financial situation and may lead to the bankruptcy of a business entity.

The leading idea behind the forms of civil liability is the compensation for the damage caused, which is associated with social functions, including preventive-educational and restorative (reparative) functions.

2. DISCUSSION

Civil liability is a form of legal relationship where an individual is obligated to compensate another individual for the harm caused by their actions. This obligation arises from the person's personal behavior or other situations defined by law, which fall within the scope of their liability[1].

In jurisprudence and legal doctrine, other definitions have been developed to describe this concept. One such definition states, "Liability is a legal relationship where the person called liable is obligated to compensate the unlawful damage caused to the person referred to as the victim"[2]

Based on this definition, the following key aspects can be noted: the person is responsible for their actions; these actions result in legal consequences; the person's actions deviate from the norms of law; the victim demands compensation for the damage; an obligation arises – the liable person must compensate the damage; the parties may voluntarily resort to the mediation institution; if this does not occur, the state's coercive mechanism is activated; the victim's subjective rights are protected by law; and the restorative function of liability is triggered.

During the process of shaping the principles and functions of civil liability, various theories, legal sanctions, and doctrines that emerged under the influence of time and social relations have played a significant role. This has led to the continuous formation of the content of civil liability and its functions. In this process, values such as morality, personal and social uniqueness, and religion have played a leading role, and their influence is clearly reflected in the content of liability functions and their repeated clarification.

Through the analysis of scientific literature created by legal specialists and the accumulated legal experience in case law, it can be concluded that civil liability has formed two key functions: a preventive-educational function and a reparative (restorative) function. These two functions are closely linked, and it is necessary to analyze them in connection with the main principles that regulate legal liability. In particular, the principle of full compensation for damage (restitutio in integrum) [3] and the principle of compensation in its original form (in natura) [4] are closely related to these functions.

Furthermore, it is necessary to acknowledge that these functions stem from the essence and purpose of civil liability[5]. Based on this acknowledgment, it can be concluded that civil liability, through its functions and the principles it consistently relies on, expresses, protects, and guarantees the legal status of an individual – that is, their status as a subject with civil rights and obligations in various spheres.

At the beginning of the historical process, the punitive and sanctioning function, which manifested in various forms, held predominant importance. However, due to societal development and educational factors, this viewpoint has changed. Now, the punitive function is mainly associated with criminal law, and its significance in civil law has diminished, with

an important principle – the principle of compensation for damage – taking its place. This principle finds its expression through the reparative (restorative) function.

However, before an act causing harm is committed, that is, before the factor that leads to the obligation of compensation arises, if there is an opportunity to reconsider the situation, preventive measures to avoid the harmful factors for the aggrieved party have been previously defined in a natural or equivalent form. It is at this point that the preventive (preventive) and educational functions of civil law liability come into play.

When analyzing this concept semantically, two aspects become evident:

1. The preventive aspect – preventing certain consequences, anticipating them in advance, and taking precautionary measures;
2. The educational aspect – shaping proper behavioral skills through understanding responsibility as a citizen and recognizing social duty.

This function stems from the following doctrinal principle: "Every individual must adhere to the behavioral rules established by law or local customs." In implementing this function, the main criteria are: behavioral rules, law, and customs.

The goal of the preventive-educational function is to reduce the number of damage-causing situations by understanding the obligation to compensate for damage, as any harm leads to the obligation to compensate. Even if the correct behavior in line with norms is not based on an individual's moral understanding, at the very least, it is grounded in fear of losing personal property.

Liability does not only mean causing damage or compensating for it. First and foremost, it implies the responsibility of foreseeing potential harm and taking measures to prevent it. It is through our behavior that we can avoid causing harm in the first place. Only by taking such steps can we prevent it. As the French say: "Mieux vaut prévenir, que guérir" – "It is better to prevent than to cure" [6].

The educational essence of this function is manifested in cultivating respect for fundamental social values within society. These values, formed based on civic duty, conscience, and integrity, encourage individuals to act cautiously to avoid harming the interests of others, and ultimately, to respect the law [7].

As for prevention, it is emphasized that it strengthens discipline in the contracts concluded [8], and its essence is reflected in the behavior of voluntarily restraining oneself in order to avoid actions that would be contrary to the law in the future. In fact, these aspects are embedded in human nature, manifesting in respect for legal norms, always acting with caution, carefully considering the proportionality and legality of certain actions, assessing and understanding their risks, and striving to prevent harm.

Caution and vigilance serve as guiding criteria that protect a person from situations where there is a likelihood of deviating from social behavioral norms. Such deviations can lead to the individual being obliged to pay compensation for harm caused to others. Thus, in the system of civil liability, prevention serves not only as a means of preventing violations but also as an educational factor that fosters legal culture, a sense of responsibility, and understanding of social duty.

The reparative (restorative) function forms the foundation of civil liability; it is included in this institution and derives from the norms found in Articles 324 and 985 of the Civil Code.

Only when there is actual, proven damage [9], and under the conditions that establish its existence, is compensation for that damage required. If the damage does not exist, the concept of civil liability loses its legal foundation.

It should be clearly emphasized that it is precisely the reparative function that establishes a clear boundary between civil liability and criminal liability. In civil law, the concept of damage naturally gives rise to the idea of complete compensation, whereas criminal law foresees punishment for the individual who commits the crime, and this punishment has a personal character. The principle of full compensation arises as a direct result of the reparative function and is based on the "requirements of commutative justice" [10].

At the same time, the reparative function has a relative nature, as in some cases, it may not be possible to fully compensate for damage due to its special characteristics. Even if compensation is possible, it may require additional labor and costs to restore social labor or reconstruct violated values. Here, we are talking not about material, but about non-material rights related to an individual's presence, physical, and moral inviolability. Their natural compensation is not even subject to discussion; compensation is typically determined based on the value of the damaged value.

Based on the above points, combining the two main functions of civil liability – reparative (compensation for damage) and preventive-educational functions – gives this legal institution a solid substance, restores the idea of justice, and serves to eliminate the negative effects arising from unlawful actions. This, in turn, leads to the obligation to fully compensate for the damage caused.

The importance of the factor forming preventive and educational mechanisms lies in the fact that it makes an individual, by priori – that is, before the damage occurs – anticipate and understand its negative consequences, and therefore accept the duty to refrain from actions that may harm others' legitimate interests. That is, such a function calls for the formation of a responsible, cautious civil behavior.

At the same time, we are not proponents of establishing a hierarchy in terms of priority or degree between these two functions – damage compensation and preventive-educational functions. It would be incorrect to assert that one is more important or superior to the other. On the contrary, both of these functions are of significant importance within the scope of civil liability and operate mutually and complementarily.

Thus, the harmony between these two functions plays an important and active role in ensuring the main idea of civil law – justice, protecting rights and interests, and safeguarding the subjective rights of individuals (or legal entities). From the standpoint of civil law, these subjective rights are aimed at ensuring the personal, material, economic, and social protection of the individual, meaning that these functions serve not only to strengthen legal order after damage has occurred but also to prevent it.

Scientific literature presents two views on the functions of civil liability forms.

The first group of scholars considers that the function of encouraging the proper performance of obligations under contracts and restoring the property rights of creditors, which have been violated or may be violated, is fulfilled by civil liability [12].

The second group of scholars attempts to substantiate the multi-functional role of liability, asserting that civil liability has a simultaneous function of punishment [13], educational, signaling, and warning functions, in addition to the incentive and compensatory functions [15]. Lucinda Miller, in her academic work, emphasizes that the penalty for a debtor, imposed by the creditor, is a punishment serving both general and private purposes [16].

3. CONCLUSIONS

In our view, the penalty, which is a method of ensuring the performance of obligations and a form of liability ensuring contractual relations, aims to enforce the discipline of the contract. We agree with the authors who believe that, in the law of obligations, the penalty performs the functions of encouragement, compensation, and signaling.

In this regard, the main function of the penalty is to encourage the proper performance of obligations and to restore the creditor's violated rights. At the stage of breach of obligation, the method of legal protection – forcing the performance of the obligation – combined with the penalty's encouraging function, takes on a restorative character.

Furthermore, the penalty also performs compensation and signaling functions at the stage of breach of the contractual obligation.

In our opinion, the compensatory function of the penalty is of primary importance in today's law of obligations.

Currently, the issue of strengthening the role of the penalty's encouraging function is a relevant topic that requires comprehensive study and resolution at both the legislative level and in legal practice.

The regulation of legal relations related to contractual obligations must be resolved with consideration of the economic interests of the participants in civil turnover.

In conclusion, the penalty performs the functions of encouraging the proper performance of obligations and restoring the creditor's violated or potentially violated property rights. Additionally, aside from its encouraging and compensatory functions, the penalty also carries punitive, educational, signaling, and warning functions. As a measure of property liability, the penalty, when applied alongside compensation for damages, raises the issue of the relationship between penalty payments and compensation, and their separate application leads to a violation of the principle of compensatory civil liability.

On the one hand, the penalty serves as a method of ensuring the performance of obligations, and on the other hand, as a form of civil-legal liability. The penalty performs encouraging, signaling, and the restoration of the creditor's potentially violated property rights during the conclusion and performance stages of the contract and ensures the proper performance of the contract. At the stage of breach of obligation, it turns into a distinct form of liability, displaying compensatory, punitive, and educational functions.

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2. S. Neculaescu, Reflecții privind fundamentalul răspunderii civile delictuale, în revista Dreptul nr. 11/2006, p. 41
3. This principle aims to eliminate all negative consequences arising from illegal actions. Its goal is to restore balance by returning the victim to the state before the harm occurred. This view stems from the very essence of the concept of civil-legal liability: restoring balance disrupted by harm and returning the victim to their previous condition. The reparative function manifests as a direct effect of the principle of *restitutio in integrum*: that is, the obligation to pay compensation for the damage caused.
4. This principle is defined in Part 1 of Article 330 of the Civil Code as follows: "Unless otherwise provided by law or contract, in case the obligation is not properly fulfilled, the payment of a penalty and compensation for damages does not exempt the debtor from fulfilling the obligation in its original form."
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