ASPECTS OF CIVIL LIABILITY, AS A FORM OF SOCIAL LIABILTY, IN THE CONTEXT OF ECO-ECONOMY

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ABSTRACT
This study aims to treat certain aspects of civil liability, as a form of legal liability and social responsability in the context of today's economy. In the current global context, for the economy and thus society can survive one must take into account compliance with environmental sustainability. Implications of this line of development on the civil liability will be analyzed in this study.

Keywords: *civil liability, social responsibility, eco-economy, environmental liability*

Introduction

The present paper addresses a topic of utmost importance to the legal environment, respectively an institution which constitutes the very foundation of civil law, namely civil liability.

This paper proposes as main objectives the presentation of civil liability institution as a form of legal liability, considering first the general framework of its social liability in terms of joint relationship between law and society.

We are trying this way to bring a touch of novelty and originality in addressing this issue, on the one hand by presenting the novelty brought by the new Civil Code in this field and on the other hand by a multidisciplinary treatment of the analyzed subject.

In this sense, we are trying to present a definition of the notion of social liability, through the analysis of the relationship between law and society, presenting several definitions and views promoted by a number of prominent people from various fields, including lawyers, historians philosophers etc.

Another novelty and originality issue is presented by capturing the institution of legal liability in the context of eco-economy, considering the need to draw attention to the role of this institution, particularly important in finding solutions to provide an adequate protection and direction of citizens and environment in the scenery of the economic and environmental crisis that presents at the beginning of this millennium.

However, appealing to logic and comparative methods, we analyze this institution in the context of the new regulations of the Civil Code, considering discussing at certain points the choices of the legislature of 2011, such as, for example, on the subjective concept of civil liability. We consider very important, though, that the new regulation allowed the legal possibility of civil liability in situation where fault is less important, the most important matter being prejudice repair.

Liability issues have known an oversized attention from doctrine and judicial practice since the time of Roman law, and its legal nature was considered in turn to be that of punishment and compensation for damage, whether the doctrine and law stopped at the subjective concept, promoted with high intensity for a long time, whether it was proposed its objectification, whether it meant accepting a mixed concept, considering that the principle of the liability is based on the author's fault, but yet situations may have existed, which would have required the intervention of liability without requiring proof of fault of the author.

We also analyze the suggestions of certain national doctrine voices, which consider that, in the current era, objectification of the principle of civil liability is necessary, presenting also arguments for and against these proposals.

Such objectification proposal of the civil liability, had, as a premise, the adoption of the precautionary principle by the common civil law, taken from environmental specific civil liability.

One of the innovations that this chapter is capturing is an attempt to combine specific elements of this liability with elements of common law civil liability, by trying to propose a new vision of civil liability in general, vision whose consequences upon the basic elements of civil liability are analyzed herein.

1. General considerations on legal liability – form of social liability in the current eco-economic context

Motto: "*For the first time, a civilization is consuming from the natural capital instead of living out of the interest that capital provides."*

"Transforming our environmentally destructive economy into one that can sustain progress depends on a Copernican shift in our economic mindset, a recognition that the economy is part of the earth's ecosystem and can sustain progress only if it is restructured so that it is compatible with it. The preeminent challenge for our generation is to design an eco-economy, one that respects the principles of ecology. A redesigned economy can be integrated into the ecosystem in a way that will stabilize the relationship between the two, enabling economic progress to continue.

Lester Brown

Social liability appears as a special relation created between society and individual, in which human conduct should be allowed to take the form of rights and freedoms recognized by society, established by the provisions, principles or values of that society, and whose failure to comply would lead to a form of social sanction, whether we speak of moral, economic, political or legal liability.

Human society, to be able to survive and evolve at the same time, imposed a specific individual human conduct, limited by rules of coexistence of plural nature, from moral and customary rules to legal rules which govern every sector of public and private life, their breach attracting a reaction of rejection, of condemnation of the human subject, compelling it to obey social norms, presenting various tools used to compel the subject, the most important being the preventive tools, but also the disciplinary ones.

Individual behavior is subject to assessment and feedback from institutionalized society, with the help of social norms, required to shape decisions and behavior of the individual, aiming them in the direction of the dominant social order. Social liability involves social sanctioning of the attitude of the individual which is inconsistent with the established social norms.[1]

"Ubi societas ibi ius", thus when we discuss society, we also imply law, as two realities that cannot survive one without the other.

The relationship between law and society, although necessary through the nature of the implied reality, is presented in a very interesting manner by Petre Andrei as: "the ideas of just, unjust, need of legal norm were born with the birth of society, that is why legal values are social values, whose role is to regulate the function of social reality."

Liability, as a branch of social liability, aims the negative consequences which an individual would bear if its conduct is contrary to legal norms, created by civil society, consequences which would manifest through the creation of new judicial reports, shortly of new obligations.

[1] E. Lupan, M. Şt. Minea, A. Marga, *„Dreptul mediului. Partea specială."* Edit. Lumina Lex, Bucharest, 1997, p. 367.

Ecological, economic and legal. Three areas that cannot live without each other, in the present millennium, where an amazing evolution of science and technology is present, an intense exploitation of the natural – renewable and non – resources in order to support a global economy strengthened to provide for the ever growing human population.

Along all these, humankind, master without limits of the surrounding nature, due to ever exploitation environmental intense degradation, finds itself in the position to impose legal limits in order to restore the ecologic and economic environment.

Thus occurs the civil liability, which is destined to prevent destruction of the planet by the individual, in the chaos created by the struggle for survival.

Ecologic challenges of the new millennium, particularly in terms of operating principles of the economic system, outline the efforts size this new path requires.

The first significance results from the ecologic and environmental characteristics of the latest decades. These represent the period in which factual elements may be listed, such as illnesses caused by pollution, floods and landslides, lower production of fish, desertification, reduced soil fertility, species extinction and many others that were amplified. On the other hand, profit and welfare arguments, strongly supported the development of economic activities which contributed significantly to the manifestation of the effects listed above. Threshold of the millennium is where "gaps seeds" sprout and the man is forced to reassess their place in the biosphere, to formulate a perspective on the functioning of ecological systems that created them, being faced with millennial action of population growth limit, as a result of depletion of the resources that support it.[2]

The notion of liability has had a large number of definitions over time in specialty doctrine, one of the definitions we support being as follows: "Legal liability is the related rights and obligations complex, which – by law – is born as a result of committing an illegal act, and which constitute the framework of society imposed coercion, with the purpose of insuring the stability of social reports and mentoring members of society to respect the rule of law"[3].

Liability had a double role, in terms of eco-economic analysis: on the one hand, the role of protecting the environment from destructive human actions, especially against the pollution, perhaps the greatest enemy of the environment and human, and, on the other hand, to protect man against environmental changes and environmental products through its creations and interventions, we refer in particular to liability for damage that occurs in genetically modified organisms produced.

Thus, the use of genetically modified micro-organisms requires those who are concerned to assess health and environmental risks of their activity, even if they are not known.

Liability has several forms depending on the branch of law that interferes: civil legal liability, criminal legal liability, legal liability administrative law, financial law legal liability, etc.

In the case of responsibility for the protection of ecosystems is distinguished civil liability, criminal liability and liability offenses.

Social responsibility, first, and juridical liability, secondly, must be considered in the context of contemporary society, in the development course of global economy, which generated a high consumption of renewable and non-renewable resources and created serious ecological imbalances, which, irreparably, affect the environment.

The problem of the environment, affected in a more rapid rhythm and increasingly in danger of complete destruction, is now examined by all political and legal mechanisms in the world in the attempt to find solutions for overcoming the eco-economic crisis in which humanity is the present moment.

In this regard, a general objective of the Sustainable Development Strategy for an enlarged European Union is "continuous improvement of quality of life for present and future generations

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[2] F. Bran, I. Ioan, *Eco-economia ecosistemelor si biodiversitatea*, Editura ASE, Bucharest, 2004, p. 5-7.

[3] M. N. Costin, *O încercare de definire a noţiunii răspunderii juridice*, in Revista Română de Drept nr. 5/1970, p. 83.

through the creation of sustainable communities able to manage and use resources efficiently and to the potential environmental and social innovation of the economy to ensure prosperity, environmental protection and social cohesion ".[4]

So the concerns of modern economists who have to face human drama confronted with the alarming decline of many species of plants and animals, massive cutting of forests, the increase of world population and the decrease of food supply and other problems of similar nature, are turning to "the increase of the human welfare through sustainable economic development, given the global and regional environmental effects of large transfers of energy and raw materials, which take place in human development and maintenance for life. "[5]

2. Discussions about some aspects of civil liability as a juridical liability form

Civil liability is a fundamental institution of civil law, and one of the basic forms of legal liability, which has aroused the interest of theorists and practitioners worldwide.

The foundation of the liability institution is, above all, the need to constrain the person who causes prejudice to another, to repair that prejudice. It is the principle formulated by the European Group on Tort Law in European Tort Law Principles of Contents: "A person to whom damage to another is legally attributed is liable to compensate that damage".

One well-known voice of the French doctrine, following the specific case jurisprudence noted that "specific to civil liability is restoration of the prejudiced equilibrium as much as possible, and restoring the injured party at the state previous to the prejudice suffered, at the expense of the wrong-doer".

The above cited author, notes that the current practice has the tendency to give priority to the notion that states that the role of civil liability is to repair the damage and restore the previous situation, if possible, and not that of punishing the author of that injury, the punitive function is thus left in charge of other types of liability, such as criminal, administrative etc[6].

Yet not all acts of deeds that create an injury to someone other than the author entail civil liability.

As noted by French doctrinaires[7], the object of civil liability is the prejudice repair, who's author will be considered responsible from legal point of view and proof of the existence of a prejudice is not enough to have a right to repair, but there must exist a characterization of the "deed generating retribution" to be able to give birth to a repair obligation, repair which will cover only the damage that can be legally estimated as products of the illicit deed.

Civil liability has been given several definitions by specialty literature, the common feature being the existence of an obligational report on which grounds a person is indebted to repair damage caused to another by its deed or, in cases provided by law, by the act of another.[8]

As a legal institution, civil liability is comprised of all legal norms regulating the obligation of any person to repair a prejudice caused to another by its non-contractual or contractual deed, for which is required by law to respond[9].

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[4] *http://circa.europa.eu/irc/opoce/fact_sheets/info/data/policies/environment/article_7294_ro.htm.*

[5] D. Chiriac, C. Humă, A. Mihăilescu, *Dimensiunea ecologică a consumului de bunuri şi servicii*, edition coordonated by M. Stanciu, Expert, Bucharest, 2008, p. 17.

[6] Ph. Malaurie*, Liberte et responsabilite* , Defrenois, Paris, 2004, p. 351.

[7] Ph. Malaurie, L. Aynes, Ph. Stoffel-Munck, *Les obligations*, ed. 5, Defrenois, Paris, 2011, p. 9.

[8] To see I.M. Anghel, Fr. Deak, M.F. Popa, *Răspunderea civilă*, Ed. Ştiinţifică, Bucharest, 1970, p. 9-11; M. Eliescu, *Răspunderea civilă delictuală*, Ed. Academiei, Bucharest, 1972, p. 5-8; I. Albu, V. Ursa, *Răspunderea civilă pentru daunele morale*, Ed. Dacia, Cluj-Napoca, 1979, p. 23-24; L. Pop, *Drept civil. Teoria generală a obligaţiilor. Tratat*, Ed. Fundaţiei „Chemarea", Iaşi, 1996, p. 158; P. Drăghici, *Faptul juridic ilicit cauzator de prejudicii*, Ed. Universitaria, Craiova, 1999, p. 41.

[9] To see: I. Albu, V. Ursa, *op. cit*., p.24.

Legislative base of these rules is the Civil Code entered into force on 1 October 2011 and other special laws.

2.1. **The conception of the New Civil Code editors on liability structure: duality or unity?**

The necessity to adapt the liability to the transformation of social relations even if it is recognized although, at times, by the legislator in 2011, is without major changes in regulatory and foundation of this institution.

The new regulation preserves the unique, but not unitary nature of civil liability, with its two forms, tort and contractual liability, expressly establishing general rules for each one.

As it was only natural, the new lawful starts treating the institution in question, from the obligation to repair the damage caused to individuals through an illicit deeds, joint obligation of both forms of accountability, responsibility being ultimately just a mechanism to repair damage.

The institution of civil liability is regulated by the provisions of the Civil Code, more precisely the Book V, Title II, Chapter IV.

Regarding the possibility of cumulating the two forms of civil liability, art. 1349-1350 stipulates that one cannot choose between contract and tort liability, according to the provisions most favorable if the law does not so provide.

The new Civil Code provisions do not contain a legal definition of civil liability, so it was left to the doctrine this entire responsibility for such an approach.

Civil liability, in a simple definition, it contains a person's obligation to repair the damage unjustly suffered by another person, through the injury of its rights and interests.

Both types of liability have, as a starting point, the breach of an obligation.

Tort refers to the duty of everyone to fully repair all the damages caused to another person through the breach of the obligation to respect the rules of conduct which the law or local custom requires and shall not affect rights or legitimate interests of others-art. 1349 alin1-2 of the New Civil Code.

The contractual liability includes the duty of every person party to a contract to repair damage caused through default of another party that has contracted art. 1350-2, paragraph 1 of the New Civil Code.

There are still differences between the two forms of liability, but the new Civil Code, as the old code, adopted a theory of joint civil liability.

In its conception there is only one liability, seen as a legal institution, but with two regimes. The two regimes play a complementary role. The legal regime of tort liability is considered as the common law and the legal status of contractual liability has derogatory nature.

The purpose and key elements are common to the two responsibilities: injury, wrongful act, causal link between the wrongful act, damage and negligence. Fault is not essentially different, it always derives from a breach of existing obligations.

2.2. **The critique of the vision of the New Civil Code regarding the concept of subjective liability**

As noted in the international doctrine[10], accidents at work, traffic accidents, nuclear accidents and then the whole series of sources of danger created by technical progress led to a more pronounced process of socializing responsibility in all its components and a decline of individual responsibility.

[10] G. Viney, *La declin de la responsabilite individuelle*, Ed. Librairie Generale de Droit et de Jurisprudence, Paris, 1965.

It is noted however that the vision of the legislation in 2011 remains dependent on subjective liability based on fault, focusing on punitive function of civil liability and not on the reparative function, which would give preference to the repair of the damage suffered by the victim and not to the punishment of the author.

The importance of this difference between the two angles of view is that subjective civil liability in certain legal relations does not meet the requirements of reparation, either because of the difficulty in the author's fault probation, either because the author is obliged to respond even in the absence of the concept of guilt, on the principle of security, risk, family solidarity, etc.

This orientation of liability in 2011 was criticized in Romanian doctrine and for good reason.

It was said that what once was able to sustain that "to talk about liability without fault, of fault without an illicit deed was like talking about a man without a head, a car with no engine, a syllogism without premises"[11] today may not be available. Fault, the traditional basis of liability may not give a reasonable answer for more and more damages that cannot be attributed to individual behavior.[12]

Such evolution of liability has made some voices assert that nowadays "there is a crisis of tort liability, a reconstruction of it."[13]

Civil liability is therefore into a permanent change, adaptation, especially in a constantly spreading. It's like a spider webs and invades all areas of law "and becomes a right which tends to absorb all others, goods, people and even contracts."[14]

Therefore, it would be required a new approach to civil liability, one of its objectification, since the foundation of liability in negligence is not a solution to meet its application to situations that require the most diverse damages even if the fault cannot be established.

2.3 A new vision of civil liability in the current eco-economic context. The precautionary principle

2.3.1 General considerations

Motto: *"L'homo sapiens, who for more than five millennia of building a civilization with its values and shortcomings, but which respected itself, transformed in the last two centuries into homo economicus and, with the passing from the industrial age to the technological era, it seems to become, at a frightening speed, "catastrophicus homo".*

Constantin Teleagă

Part of the national doctrine, in recent years, taking into account the eco-economic context in which we live, characterized by economic and environmental crisis faced by humanity, respectively depletion of natural resources, the alarming rate of pollution of the environment and other factors of the same nature, has developed a new legal concept, which seems at first sight, and abstract concept, purely theoretical, namely the precautionary principle.

Gradually, this concept, which until twenty years ago was almost unknown, begins a transformation into a legal factual reality, due to the idea that, as said[15], no one can predict the future, and the new risks arising from unrestrained development of science and technology require the need

[11] P. Esmein, *Le fondement de la responsabilite contractuelle*, in Revue trimestrielle de droit civil, 1933, p. 627.

[12] S. Neculaescu, *Răspunderea civilă delictuală în Noul Cod civil-Privire critică*- in Dreptul, nr. 4/2010, p. 46.

[13] S. Carnal, *La construction de la responsabilite civile*, Presses Universitaires de France, Paris, 2001.

[14] Ph. Malaurie, L. Aynes, Ph. Stoffel-Munck, *op. cit*., p. 11.

[15] C. Teleagă , *Principiul precauţiei si viitorul răspunderii civile,* in Revista Română de Dreptul Mediului, nr.1(3)/2004, p. 29.

for a "a remedy of law to punish those who do not adopt an appropriate behavior to this new existential situation"[16].

Although this concept first appeared in the science of environmental law, perhaps the first area facing risk and prejudice caused to humankind environment and health , most times without a possibility to establish a fault of the polluting agent, it has spread rapidly in other areas of legal and social fields.

The precautionary principle has emerged and developed due to the attempts of the doctrine to find a viable solution in a context that nor moral liability, or classic civil liability, would have the necessary power to protect the two elements at stake: the planet and the humankind.

A new type of ethical responsibility is necessary because the rationality of science, which occurs abruptly in biological life, not only may reverse the order of nature but also the human destiny[17].

Analysis of eco-economic causes of the crisis we face today, revealed that for a long time, the industrial society of the XIX century, which believed that technical progress is humankind's bright future, considered that nature was an inexhaustible reservoir of resources and a waste bin for the waste left behind by the exploitation of these resources, in the service of man and progress[18].

Analyzing the eco-economic road followed by mankind in a historical context, as well noted by a Romanian author[19]: "the twentieth century continued this tradition to which were added, through military equipment, means of destruction previously unimaginable, which has the particularity to "pollute" the litter box inherited from uncontrolled industrialization processes. The object of the quantitative growth had to reach a critical mass and humankind conscience to realize its own capacity for self-destruction, for something to start to change. But change is slow and problematic. Nature responds slowly to aggression and technological society is unable to measure time with the same standards with which Prometheus unleashed to conquer the universe, losing on his way, if not on the Milky Way, to which it aspires, the sense of measure"[20].

"Man has gained much ground on human natural temporality and human temporality tends to defeat the natural one definitively."[21]

As stated above, the principle in question has arisen in environmental law with the other two principles: the polluter pays principle and the principle of prevention.

The relationship between environmental law and civil law is one of direct connection and interdependency, environmental law has always resorted to the principles and elements of classic civil liability and civil law has the tendency to borrow elements that appear in the environmental law such as, for example, the precautionary principle, which we believe will be adopted by civil law in a matter of years.

What civil liability, specific to reports that have as a constitutive element the environment, took from civil law is the classical schematic of civil liability recorded in the principle "the polluter pays": the author of the illicit deed which acts negligently or with intent, produces a prejudice, and so, between the deed of the author and the prejudice there is a causality report, and thus the author is bound to repair it.

The principle of prevention, which we mentioned earlier, foresees the obligation to intervene before the damage would occur, but the matter is about a prejudice that is certain and a causal relationship between the action to be prevented or the unaccepted omission and prejudice.

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[16] D. Mazeaud: *„Responsabilité civile et précaution*" in Responsabilité Civile et Assurances Nr. 6 bis/2001. p. 72.

[17] H. Jonas*, Le principe de responsabilité* , Paris, Cerf, 1990, p.174.

[18] N. de Sadeleer*: „Les principes du pollueur – payeur, de prévention et de précaution"*, Bruxelles, Bruylant/AUF, 1999, p. 37.

[19] C. Teleagă, *op. cit*., p. 30.

[20] C. Teleaga, *op.cit*.,p 30.

[21] J.P. Delage, *„Une histoire de l'écologie"*, Paris, La Decouverte, 1991, p. 250.

The principle subject to discussion[22], the precautionary principle, implies that there is a prejudice, which was not yet produced, and the eventuality of the prejudice is not proven without a doubt and, as stated, the risk is uncertain, its realizations is possible at most, plausible, thus it would be a preventive action, anticipated in the context of uncertainty regarding risk, difficult to define, but which is applicable in the positive law.

The precautionary principle was born due to shortcomings of legal instruments in classic civil law where "damage is uncertain, but a risk impact would also have such consequences that repair, meaning a return to the previous situation, is excluded, and its dimensions are unpredictable and incalculable."[23]

But, as said by supporters that want to take over the principle of common law liability, the law is about to be changed through an evolutionary process that will mean the adoption of this principle. "The evolution that marks the transition from a legalistic model of justice, formal and logical, to a teleological justice whose ambition would be to find appropriate solutions to the objective choice…"is in progress.

2.3.2 The precautionary principle and the civil liability

Envisaging anticipatory preventive action in response to uncertainty, the precautionary principle represents an important milestone in risk reduction. The question is no longer merely how to prevent assessable risks, but rather how to anticipate risks pervaded by uncertainty. By leaving behind the realm of 'sound science', precaution necessarily gives rise to conflict.[24]

The precautionary principle was born in international environmental law, is a forward-looking concept: it is used to determine what can be allowed to happen in the future. There, instead of using a behavior marked by prudence as the standard evaluation of past actions of an individual to judge the legality of its actions? In civil law, the answer is "yes." Apply the precautionary principle in civil law abolishes the foreseeability test and transforms liability based on fault in strict liability.[25]

With the emergence of this principle, there are theorists who have tried a combination of classical notions of civil liability with the notions expressed by this principle, but not the current form of proposals emerged, lacking the force of arguments that would give the concrete of a possible legal regulations.

However the idea of civil liability which must be reconsidered for the purposes of admission and application of the precautionary principle is one innovative and prospective.

At first glance, there is an incompatibility between civil liability as is currently regulated and the precautionary principle.

It is easy to see from where comes this apparent incompatibility, if we analyze the elements of liability and the foundation of this institution and what suggests the precautionary principle.

Thus, civil liability is to repair the damage already produced, and the precautionary principle aims to protect the community and the environment of major risks, but uncertain.

There are authors who consider that In this latter case it is not about the repair of the damage but the repair of a risk, therefore if creating a risk means a material repairable injury, we can talk about civil liability.[26]

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[22] C. Teleagă, *op.cit*., p. 30-31.

[23] *Ibidem*, p. 30.

[24] N. de Sadeleer: *"The Precautionary Principle in EC Health and Environmental Law"* in European Law Journal Volume 12, Issue 2, pages 139–172, 2006.

[25] Bruce Pardy, *Applying the Precautionary Principle to Private Persons: Should it Affect Civil and Criminal Liability,* Les cahiers de droit, nr. 1, vol. 43, 2002, p. 63.

[26] Geneviève Pignarre: *„La responsabilité, débat autour d'une polysémie"* in RCAss nr. 6 bis/2001, p. 15.

Insights in the current liability is difficult to accept the idea that civil liability has as object a risk, as long as the damage has not occurred, because this institution, now, does not punishes the author unless we can speak of a certain damage to be repaired.

As said, now is often necessary to prevent, neutralize, eliminate questionable but possible dangers, taking action even under uncertainty, and this urgently. Because damage uncertain, but possible, have very specific size and because, at least in principle, they are not repairable.

We agree basically with the proposal of the author, that in such a conception, tort liability, has the right to leave the rigid land of classic law to explore the virgin territory of the uncertainty and to play an active role in today's globalized society.

Precautionary principle should allow tort liability facing orientation that goes beyond the horizon of the foreseeable future, precisely because it threatens us with force increasing unpredictability. In this view elements of liability would largely change largely.

The precautionary principle, applied retrospectively, is inconsistent with the rules of tort liability as they presently exist. It is not compatible with the elements of negligence or nuisance because all of these causes of action now require fault in the form of foreseeability. Whether the precautionary principle should be applied to tort actions for environmental harm depends upon whether those fault requirements are appropriate. Strict liability is more consistent with the dominant purpose of tort actions derived from actions on the case: to compensate. Tort liability is not primarily intended to punish defendants, but to compensate victims harmed by the actions of others. To require fault on the part of defendants before liability will be imposed frustrates that purpose, and confuses the mandate with that of criminal law. The key determinant of liability should be causation, not fault. Thus, it is consistent with the purposes of tort law to apply the precautionary principle to the actions of alleged tortfeasors[27].

Proposing a new orientation to civil liability, or due to striking a news and they announced radical changes, even the formation of a new kind of liability should consider changes that would require the adoption of this principle on the concepts and elements which is based on classical civil liability: negligence, injury, causal link.

2.3.3. Fault in the new vision of civil liability under the precautionary principle

As we already know, guilt is a constitutive condition of common law liability, namely the subjective responsibility.

In civil law, concept of fault is used in place of the notion of guilt, without making any difference between them and includes several levels: the fraud or intent, negligence and imprudence. Unlike civil law, criminal law uses the notion of guilt, not guilt as synonymous, but as a form of it with intent.

Fault has been defined in legal literature as abnormal behavior, unexpected in conflict with the rules that define the normal conduct a balance of social harm[28].

Therefore it was said that "lack of caution is responsible for liability for negligence. We find that as the scale and scope of risk lies in many sectors of social life, guilt must be revised because it becomes urgent to find a responsible"[29].

Fault in the precautionary principle would correspond to an insufficient diligent, thorough examination of all aspects of neglect due diligence to their depletion. Raising the bar, imposing a duty to anticipate risk, diligence carried to its ultimate consequences, the principle redefines the scope of fault. It promotes an ethic of prudence in which each of us is asked to reconsider its

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[27] B. Pardy, *op.cit*., p. 70.

[28] A. Bénabent: *„Droit civil. Les Obligations“,* Paris, Montchrestien, 1997, p. 323.

[29] C. Thieberge – *„Libres propos sur l'évolution du droit de la responsabilité - vers un élargissement de la fonction de la responsabilité civile“*, in Revue Trimestrielle de Droit Civil (RTDC) nr. 3 sept. 1999, p. 572.

approach to the unpredictable, which gives rise to a new conception of fault. Therefore, caution and diligence obligation would form a new structure of fault. Guilty in this case as one that in a situation of uncertainty or doubt don't adopt an attitude of caution. The duty of care would require more professional attention, especially in health and ecology and would require the detection of what may constitute a potential danger, systematic monitoring, evaluation, production expertise of all the processes that generate risk.[30]

2.3.4. The injury, causal link and the precautionary principle

In the current design of tort are to be repaired only the certain damages which occurred or will definitely occur, and does not fall under tort liability the future , possibly, hypothetical damages.

But the precautionary principle suggests the adoption of measures which take into account the uncertain damage, irreversible, which, as I said, are currently incompatible with the principles of common law liability.

Difficulties exist in the causal link because, as it was mentioned, precautionary prejudice is conditioned by multiple causality whose identification is not easy.Therefore it was concluded that the expected liability of the precautionary principle is without prejudice and without liability victims, based on non-repairable damage anticipation of change. It is designed to provide liability risks and thus avoid the major damage.[31]

Draft of this type of liability is yet to be outlined. Even if we don't reject from the beginning the idea of innovation and healthy foundations in what regards the sustainability of the precautionary principle, there still are steps to be taken to implement such a vision of civil liability. Even then, such liability would only add elements to the classic civil liability, without removing the whole basis of liability as it appears.

Conclusions

This paper has addressed an issue that has presented a great interest to lawyers, theorists and practitioners, since the formation of law; due to its importance, being called a "keystone" of the entire legal system, respectively the institution of civil liability.

The institution mentioned above was presented in the wider context of judicial liability, as a form of social liability, having thus tried to offer an appropriate definition to each of the liability notions.

Social and responsibility, and thus liability, the most important form of social responsibility, were analyzed yet in the eco-economic context in which we find ourselves at the beginning of the millennium. It was necessary to adopt a such initiative as long as the economic crisis and especially ecologic crisis is more acutely felt, and, as it is well known, the legal element – and we particularly mean civil liability – is an instrument to find solutions for this kind of issue.

We also analyzed the perspective of the legislature of 2011 on the foundation of subjective liability, choosing to devote, as a rule, the liability based on fault, but not exclude the possibility of intervention of an objective liability in situations established by law.

Adopting the concept of subjective liability has been criticized by specialized literature, considering that in the new millennium the point of view regarding the institution of liability should be abandoned. So we should abandon the idea that is more important to punish the author then to repair the prejudice. If so far the sanction was a main objective, from now on the social and eco-economic realities impose a an approach towards prevention and, if prejudice has already been caused, we should first attempt to repair and only then we might direct towards punishing the author.

[30] C. Teleagă, *op.cit*., p. 45.
[31] C.Teleaga,*op.cit.*, p. 45.

We should thus allow criminal and administrative liability to sanction the author of an environmental prejudice and allow civil liability to become mainly a protective legal environment and only secondly a mean of sanctioning the illicit deed.

We believe that the trend of civil liability is to objectify, yet without completely removing the notion of fault, which still finds applicability. The point of view upon civil liability must be changed, and an objective liability must be adopted at the point where it intervenes, without trying to appeal, with no real proof, to assumptions.

We tried thus, to capture the inter-connection and inter-condition relationship between ordinary civil liability and environment specific civil liability, analyzing the points where they interfere by borrowing different elements.

Such "loan" is the takeover by the special civil liability, from the classic civil liability of the classical scheme which involves: wrongful act, injury, causal link and in some cases fault.

This scheme finds perfect application of the "polluter pays" principle, which maintains the concept of guilt taken from common civil law.

But, a basic principle entered the specific law environment, the precautionary principle, which proposes a slightly different objective liability, the novelty being a liability for a prejudice which has not yet occurred, but whose possibility of occurrence present minimal data.

We conclude that, although the proposed draft for the adoption of the precautionary principle in joint liability would be a step forward in the evolution of this institution, which probably will be done over the years, currently doctrinal proposals have failed to create a strong existential framework of an objective liability which would sanction individual behavior in a precautionary manner before the injury would occur, or even before the prejudice would become cert.

ACKNOWLEDGEMENTS

Project co-financed by the European Social Fund, through the Sectorial Operational Programme for Human Resources Development 2007 – 20013, POSDRU/CPP 107/DMI 1.5/S/77082/2010: "Doctoral training grants for eco-economics and complex bio-economics for safety and security of food and forage from anthropogenic ecosystems", coordinated by the National Institute of Economic Research, "Costin C. Kirițescu", Romania, in collaboration with Titu Maiorescu University Bucharest, Lucian Blaga University of Sibiu, Vasile Goldiş University - Arad, Universiy of Oradea, University Nicolae Titulescu - Bucharest, National Institute for Research and Development for Microbiology and Immunology, "Cantacuzino" Bucharest and S.C. SIAT S.A.

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