

Parents' Liability For The Damage Caused By The Child

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Abstract

Parents' liability for the damage caused by the child is a kind of liability for the others. Regarding the meaning of the terminology of liability for the others we should say that various authors have used different terminologies, however it is important to be understood that the essence of this liability remains unchangeable to all authors and to all normative acts of various states regulating this kind of liability.

Parents' liability for the damage caused by their child shall mean cases when the parents should compensate the damage caused by their minor child, so when they have been liable for the damage caused by the child. In order that this liability to come into consideration there should be fulfilled the conditions such as: a) Child that causes the damage should be minor, b) Child should be living with one or both parents. It is important to emphasize that parents shall be together liable for the damage caused by their child in cases when they live together, however in cases when they live separately, the parent to whom the child is entrusted for maintenance and care shall be liable for the damage caused by the child.

Legal framework has regulated noticeably clear this matter by dividing into categories the parents' liability for their children. In the first category are all minors up to the age of seven (7) and in this case parents are liable without taking into consideration the fault. A similar regulation is that of Kosovo, Croatia and Serbia while Albania does not have such a regulation. In Albania there are excluded from the liability all minors under the age of fourteen (14) and for the damage caused by them there shall be liable the parents or custodian, so it depends who takes care after them. The second categorization is related to the minors from the age of seven (7) until the age of fourteen (14). In these cases, Kosovo, Croatia and Serbia have determined that parents shall be obliged to be liable for the damage caused by the minor of such age except if they can prove that they are not liable for the damage caused by the child. Hence, we continuously have to do with a similarity in legal framework between Kosovo, Croatia and Serbia regarding the

regulation of this liability. The third category shall include the minors from the age of fourteen (14) until the age of eighteen (18) where they shall be liable according to general rules of liability. Regarding the comparative aspects of normative regulation of parents' liability for the damage caused by the children we should say that Kosovo, Croatia and Serbia have regulated similarly this kind of liability but there are some differences in the legislation of Albania based on which there are categorized differently the minors that are excluded from the liability for the caused damage.

Keywords: Damage, Liability, Minor child, Parent

Introduction

Cause of damage in the most rights is part of formal sources of obligational right. It is a rule that the person who has caused damage to the other should be liable for the damage caused. However, in some cases there is an exception from this rule since regarding the damage caused by a certain category of persons, such persons are not liable for the damage caused but there the persons that have been responsible and supervisors towards them shall be liable, hence they are liable for the damage caused by the others. Parents' liability for the damage caused by the minor child is part of the liability for the others. This liability in the theoretical treatments is found in various designations however in its content it is completely the same to all authors that treat it.

In this paper, we will focus at parents' liability for the damage caused by their minor children. It is important to identify the cases in which the parents are liable for the damage caused by their children and cases in which they are exempted from this responsibility. Regarding this, we will analyse the authors that have treated this kind of liability as well as legal framework focusing in the Laws on obligational relationships and civil codes of some countries such as Kosovo, Croatia, Albania and Serbia. Through this analysis and comparison we will come at identification of similarities and differences in theoretical treatments and legal framework of the abovementioned states.

Methodology

Regarding the completion of this paper there shall be used the contemporary research methods. The focus will be on the cases of causing the damage by the minor persons and parents' liability for the compensation of that damage. Through the analytical method there shall be done the analysis of theoretical and normative treatments regarding this issue. Moreover, we will point out the comparison of normative framework of some states with the purpose of identification of similarities and differences regarding the liability of the parents for the damage caused by the minor

children. It is obvious that in such cases there are shown distinctive and similar circumstances but through the comparison method there shall be compared the legislations of the abovementioned countries and there shall come the concrete theoretical and normative conclusion regarding this kind of liability.

Meaning of terminology “liability for the others”

Parents' liability for the damage caused by the children is a kind of liability which is part of liability for the others. At the liability for the others, the liable person for compensation of the damage shall not be the person who has caused that damage but the other person who has legal relation with the person that has caused the damage (Alishani, 2002, 487).

When we talk about the liability for the others, it is important to mention that various authors have used various terminologies. They have designated this kind of liability as: "Liability for the others" (Alishani, 2002, Radišić, 1979, Živković, 1972), "Liability for the cause of damage dependent on the kind of subject" (Semini-Tutulani, 2006), "Liability for the actions of the other" (Miloshević, 1972, Dauti, 2013), "Liability for the actions of the others" (Légier, 2008).

Besides the theoretical treatments this issue is covered even by legal framework of various states. Kosovo has, in the Law on Obligational Relationships in Kosovo, designated this kind of liability as liability for the other (LORK, 146), this is completely similarly determined even by Serbia in the Law on Contracts and Torts (LCT, 164), even Montenegro similarly to Kosovo and Serbia, through the Law on Obligations has determined this liability as liability for the other (LOM, 158). Unlike the abovementioned countries, Croatia, in its Civil Obligations Act, has designated this liability as liability for another person (COAC, 1055). In the Republic of Albania this kind of liability is not mentioned expressively in the Civil Code however it is included in general within the obligations deriving from the cause of damage (CCA, 608). France regulates this matter with a Civil Code and has determined it within "Crimes and Quasi-crimes" (KCF, 1384).

Among all theoretical and normative designations mentioned by authors and Laws of various countries there can be ascertained that this kind of liability has various designations either in theory or framework however in the content it is completely the same; hence only the designations are different but the content completely the same.

Hence, there should not be any conjecture when we come across various designations of this liability, since in content we should know it is the same kind of liability.

Meaning of the parents' liability for the damage caused by the children

This kind of liability is part of the liability for the others. This liability shall mean the fact that the parents are liable for the damage caused by their minor child. Thus, parents are liable for the damage caused by their minor child and are obliged to make compensations of the damage (Alishani, 2002, 489). It is important to mention that this kind of liability goes to the parents without taking into consideration whether they are biologic parents or adoptive parents of the child (Légier, 2008, 154), so it may be ascertained that is no importance of the relationship aspect of the child with the parents.

Parents are liable to grow up well and educate their children (Tahiri, 2-nd-ICBLAS, 2015, 270), in order that they, in the future, shall not be destructive persons for the society. We say this since in case of adequate grow up and education, it is more difficult that the children to undertake illegal actions from which there will be caused damage to other persons. However, despite the abovementioned explanation, in practice there are cases when children commit illegal action as a result of which there is caused damage to other persons. In such cases when the children conduct illegal actions and cause damage to other persons, the parents of the children are liable for the damage compensation. This derives as a consequence of parents' liability towards their children. Both or only one parent may be liable for the compensation of the damage caused by the child. This is dependent on the access the parents have had over their child. Both parents are liable for the damage caused by their child since they are guaranteed by international and national framework to take care after their children together or upon agreement (Commentary UDHR,2008, 86, CRCH,7 and 9),

Obligation that the states should harmonize their internal legislation with the international one has derived from the international legal framework and regarding this we should have into consideration that in national laws there is determined the obligation of both parents to take care after their child together and based on this determination they shall be liable for the compensation of the damage caused by their child.

However, except the cases when both parents are liable for the damage caused by their minor child, there are cases when only one parent is liable for the damage caused by their minor child. This is applicable in those cases when only one parent takes care after the child, in cases of the limitation or deprivation of parental responsibility as well as when parents live separately (Tahiri, 2-nd ICBLAS, 2015, 271, Tahiri, Reforms RJSS No 2/2015, 96 and 99). Hence, in these cases only one parent shall be liable for the child and in case the child causes damage to other persons, then the compensation of the damage should be carried out by the parent that is liable to take care after and supervision of the child. However, in case the child is at the other parent's home with whom he does not live but is visiting him and

at this time the child causes damage, then in this case the liable person for the compensation of the damage shall be the parent who is liable for supervision of the child but not the parent who is being visited by his child (Légier, 2008, 155), so, in such cases as a determinant fact shall be taken the liability of the parent whose duty is to take care and supervise the child but not the parent at the home of whom the child was staying temporarily while he is not liable for the care and supervision of the child.

Legal framework of Kosovo has determined clearly that the parents are liable for the damage caused by their minor child (LORK, 142 and 147). Similar to Kosovo, Croatia with its Civil Obligations Act, has determined that the parents shall be liable for the compensation of the damage caused by their minor child (COARC, 1056).

In order this kind of liability to be determined and realized there should be fulfilled some conditions in advance.

A) The child that has caused the damage should be minor,

This is the fundamental and general condition upon which in order the liability for compensation of the damage to be taken into consideration, firstly there should be caused the damage, while in this case the damage should be caused by a minor child. This is determined in this manner since the minor child is not conscious for the illegal action from which there will be caused the damage which means the minor child has no delict capability. Even that a minor child's age is considered the age until the minor reaches the adulthood, in our case this is not completely with the same meaning since at this kind of liability thereare categorized the cases of parents' liability for the damage caused by their children. This categorization is regulated in details by the Laws on obligational relationships and civil codes of various countries.

B) The child should be living with both parents or with one of the parents (Dauti, 2013, 189).

In this case, the child should be living with both parents or only with one of them, if this is determined by a decision of the competent body. In the first case, both parents are liable for the damage that would be caused by the child, while in the second case the parent who is liable for supervision of the child shall be liable for the damage caused by the child. Parents shall also be liable for the damage caused by their child even when the child is under care of another person but the action of the child derived as a consequence of bad education by the parents. Hence, in this case the bad education by the parents shall be the crucial fact based on which the parents are obliged to compensate the damage caused by their child. This is directly related to the obligation of the parents to care for and educate their child in order that he/she will not be a member who brings damage to society and if parents fail

to fulfil their obligation in this aspect, then they will be liable for the illegal actions of their children.

Legal framework has determined clearly the cases when the parents are liable for the damage caused by their child. Law on Obligational Relationships No. 04/ L-077 in the Republic of Kosovo has expressively determined that parents are liable for their minor children in the following cases:

- 1) The minor until the age of seven (7) shall not be liable for the damage caused by himself/herself, but the parents shall be liable regardless to the fault(LORK, Article 142.1 and 147).

In this case if a minor until the age of seven (7) causes a damage to the other, he/she shall not be liable for the damage he/she has caused. Legal framework has protected the minors of this age but it has conveyed the liability for their damage to the parents since they are liable for the damage regardless to the fact of they are guilty or not(FLK, Article 15.2).Hence, the purpose of lawmaker was not to let the damaged person uncompensated, however, at the same time it has protectedthe position of the minors of this age since if there would be required liability for the damage caused by the minors of this age, it would be unfair for sure since they do not enjoy the delict ability, which means they do not have the ability to be liable for the illegal actions (Dauti&Berisha&Vokshi&Aliu, 2013, 173), and for this reason, parents shall be liable for the damage caused by the children for that period of time the children are under the care and supervision of their parents.

Similar to Kosovo, but in a more advanced manner, Croatia has regulated the parents' liability for the damage caused by their minor children. Croatia has determined that parents shall be liable for the damage caused by their child until the age of seven (7) regardless to the fault (COARC, Article 1056).Parents shall be excluded from the liability for the damage caused by their child only in case that at the time of causing the damage the child had been entrusted to another person and he is liable for the cause of damage (COARC, 1056.3).In this case, parents should prove their innocence by giving evidence that the child had not been under their care and supervision at the time of the cause of damage and that they are not related in any way to the actions of their child who has caused the damage. However, in some other cases, Croatia has determined clearly that even if the child is under the care of any other person, but the cause of damage has derived as a consequence of bad education by the parents, then the parents of the child shall be liable for the damage and are obliged to make the compensation. In such cases if the person, under the care of whom there has been the child, has made the compensation of the damage caused by the child, he/she has the

right to require form the parents of the child to return the compensation he/she has made to the damaged party (COARC, 1059).

A completely similar presentation is noticed even at the legislation of Serbia, according to which parents shall be liable for the damage caused by their child until the age of seven (7) regardless to the fault(LCTS, 160 and 165). In Serbia, parents shall not be liable if their child is entrusted to another person for supervision and care and at the moment of the cause of damage that person shall be liable and obliged to respond for that damage(LCTS,165.3). Thus, in this case the lawmaker has excluded the parents from the liability since they are completely out of control and supervision towards they children and the cause of damage should derive as a consequence of the carelessness of the person the child had been entrusted to.

Unlike Kosovo, Croatia and Serbia, the Republic of Albania has regulated this liability differently. In Albania, persons that have not reached the age of fourteen (14) and persons with a full disability to act shall not be liable for the damaged caused (CCA, 613).Here, they have not categorized the minors until the age of seven but they have included all the minor without distinction under the age of fourteen (14) by exempting them from the liability for the caused damage. In such cases, according to Civil Code of Albania, the parents of the minor or his/her custodian shall be liable, depending on the fact that who has been liable and supervisor of the minor that has caused the damage(Tutulani-Semini, 2006, 256).

Based on all that was said above there should be made an exclusion which is related directly to the rightness principle upon which the damaged party cannot remain without compensation. In these cases when parents that are liable for the compensation of the damage caused by their minor child are not capable of compensating the damage, while the minor child has a property from which there can be made the compensation for the damage then in these cases the minor child should make the compensation for the damage caused by himself/herself even that according to legal framework he/she shall not be liable for that damage but his/her parent shall be liable.

2) The minor from the age of seven (7), until the age of fourteen (14), shall not be liable for the damage caused, while parents shall be liable instead of him/her except if there is proved that during the case of the damage the minor has been able to judge (LORK, Article142.2 and 147.4)

In such cases there is presented a more various situation compared to the first one. Here, the children from the age of seven (7) to fourteen (14) in case of causing a damage shall not be liable, and regarding the compensation of the damage their parentsshall be liable except if there is proved that the children have been conscious for the act conducted. If the minors of this age have been conscious for the act conducted then they shall be liable and

obliged to make the compensation of the damage caused by themselves. In these situations, the legal framework has clearly determined that the parents should be liable for the damage caused by their children from the age of seven (7) to fourteen (14), except if they prove that their child has been conscious for the act conducted(LORK, 142.2 and 147.4).If parents manage to prove that their child has been capable to judge at the moment of the cause of damage, they will be exempted from the obligation on compensation of the damage caused by their child who is charged to make this compensation. Regarding this matter we should say that the legal framework of the abovementioned states is completely similar.Kosovo, Croatia and Serbia have, by their Laws, determined the obligation of the parents to be liable for the damage caused by their minor child that has reached the age of seven (7) except in case that they prove that the child has been able to judge at the moment of the cause of the damage, and if they manage to prove this they are exempted from the liability (LORK, 142.2 and 147.4, COARC, 1051.2 and 1056.4, LCTS 160.3 and 165.4).Hence, the essential condition in these circumstances is presented at the possibility of the parents to prove that the child has been capable to judge at the moment of the cause of the damage in order that they can be exempted from the liability of compensation of the damage caused, otherwise they shall be liable for the damage caused by their child who has reached the age of seven (7). Through such a legal determination there has been created the possibility for the parents to prove their innocence through which there is derived even the exemption from the liability when such a thing may be really proved. At the end we can say that the lawgiver has, in these cases, created security to the parents who in reality have been innocent regarding the damage caused by their child who has reached the age of seven (7). Talking otherwise, in such cases the parents shall be liable in principle for the damage caused by their child who has reached the age of seven (7) except in case they are able to prove their innocence regarding this liability.

3) The minor upon reaching the age of fourteen (14) shall be liable according to the general rules on liability for the damage(LORK, 142.3).

The minor, upon reaching the age of fourteen (14) acquires the delict ability and in this case he/she shall be liable for the damage caused(Dauti&Berisha&Vokshi&Aliu, 2013, 174). In other words, the minor who has reached this age according to the Law shall be liable for the damage caused and should respond for it according to the general rules on liability. However, this can be applicable if the minor of this age is capable to judge for his/her actions. In these cases parents shall not liable for the damage caused by their child who has reached the age of fourteen (14) except if he/she is not able to judge. If there happens that a minor of the age above fourteen (14) causes a damage to the other and in this case the minor is not

capable of judging his/her actions then parents or the person to whom the minor was entrusted shall be liable for that damage. Thus, the fundamental condition of this liability based on which the minor is liable for the damage caused shall be his/her consciousness for his/her actions. Various authors have given special attention to this matter and, by right, have ascertained that there should not be exempted from the liability the minor who has reached the age of fourteen (14) and who caused damage to the other due to temporary unconsciousness created through his/her actions such as use of drugs and alcohol from which there has been caused his/her temporary unconsciousness at the moment of the cause of damage (Tutulani-Semini.2006,257). In such cases there should be liable the minor who through his/her actions has caused the condition of temporary unconsciousness from which there is caused the damage.

The normative determinations of the abovementioned states are completely similar regarding the liability of the minor who has reached the age of fourteen (14). In these cases the minor shall be liable by himself/herself for the damage caused if he/she had been capable to understand his/her actions(LORK,142.3, COARC,1051.3, LCTS,160.3, CCA,614). This liability derives based on the general rules of liability for the damage caused.

Finally it is important to mention that all illegal actions from which there is caused a damage to the another person should have a liable person who shall respond for the damage caused, either the person who has caused the damage or the person who has been the supervisor or custodian of the person that caused the damage. This has been done with the purpose of compensation of the damaged person, since we should have into consideration one thing, that there should never remain uncompensated the person damaged by such cases of the cause of the damage and even by the cause of damage in general when the person responds himself/herself for the damage caused.

Conclusion

Based on the analysis and comparisons of the theoretical treatments and normative framework of various states we have ascertained that the parents' liability for the damage caused by their children is part of the liability for the others. Regarding this we should say that the terminology of the liability for the others differs at the points of view of various authors, and this variation in certain cases may bring uncertainty but when there is analyzed the content of each of the theoretical treatments there is noticed there they are completely the same but differ only in their terminological aspect.

Regarding the cases of parents' liability for the damage caused by their minor children we can ascertain that in order the parents to be considered liable for the damage caused by their child there should be met some conditions. Conditions that should be fulfilled, in this case, shall be the infancy of the child and his/her co-living with both or one parent. Hence, the child must be at minor age and must live with parents and under their care. This determination is identified through the research on all authors who have treated this kind of liability. However, besides these conditions we should say that in the theoretical treatments as well in legal determination of the countries that were into focus of this research there have been identified even some categorizations of minors upon which they are excluded from the liability for the damage caused by them as well as cases when they are liable themselves for the damage. In this aspect, the lawgivers of the abovementioned countries have determined that the children under the age of seven (7) shall not respond for the damage caused by them and the parents or responsible person shall be liable instead of the children regardless if the children are guilty or not. Regarding this we should say that the legal framework of Kosovo, Croatia and Serbia have done this categorization completely similarly based on which the minors are excluded from the liability. Lawgivers and authors of these countries have considered that the minors of this age have not acquired the delict ability. Unlike the abovementioned countries, Albania has, by the Civil Code, determined differently this liability by including all minor under the age of fourteen (14) into persons that are not liable for the damage caused. This different determination makes Albania to be backward regarding the regulation of this matter since other countries have determined other circumstances for persons who have reached the age of seven (7).

Second categorization of the minor that are not liable for the damage caused includes the minors from the age of seven (7) until fourteen (14). Within this age, the minors are not liable if they cause any damage to anyone except if they have been capable to understand their actions at the moment of the cause of the damage. In these cases parents or responsible persons should be liable for the damage caused by the child except in case they can prove that the child had been capable to understand his/her actions at that moment. Even in this case there are identified legal determination completely similar between Kosovo, Croatia and Serbia.

The third categorization is related to the minors who have reached the age of fourteen (14). According to the abovementioned authors and legislations the minors of this age shall be liable for the damage upon the general rules of the liability for the damage caused which means they shall be liable themselves for the damage caused by them. However, in these cases we should have into account that this liability of the minors may come into

consideration only if he/she has been capable to understand his/her actions at the moment of the cause of the damage, otherwise the parents or person who has been taking care after the minor shall be liable. One thing should be taken into consideration, that there shall not be excluded from the liability the minor who at the moment of the cause of the damage has been unconscious temporarily due to his/her action as a consequence of use of drugs or alcohol that has caused the temporary unconsciousness of the minor due to which there has happened the cause of damage. Regarding this we should say that the legal framework on this categorization does not differ in the abovementioned states whereby we can ascertain that the third categorization of this kind of liability is determined completely similarly in Kosovo, Albania, Croatia and Serbia.

Finally we can ascertain that parents' liability for the damage caused by the children has not been treated enough and there is a need for a continuous attention to this kind of liability in order to be parallel to the social activity. Here, we are having into consideration the social developments which may bring new cases of this liability, so it is important that these cases to be treated in theory and to be determined in the legal framework in order that this field of the right to be regulated as much as better.

Abbreviations

UDHR -	Universal Declaration of Human Rights
CRCH -	Convention on the Rights of the Child
FLK–	Family Law in Kosovo
LORK -	Law on Obligational Relationships in Kosovo
COARC-	Civil Obligations Act in the Republic of Croatia,
LCTS -	Law of Contract and Torts in Serbia,
LOM –	Law on Obligations in Montenegro,
CCA –	Civil Code in Albania
CCF –	Civil Code in France
RJSS -	Regional Journal of Social Science
ICBLAS -	International Conference on Business, Law, Administration, and Social Sciences

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