

Civil Liability Arising from Damage Caused by Products

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Abstract

This paper intends to identify the main legal issues that regard the recognition of compensation for damages; if a product or any of its component parts are defective, its manufacturer may be liable for damage under the Consumer Protection Act (CPA) or the common law of negligence, caused by a wrongful act of another. The first part of the paper aims to give general information on the provisions of the Civil Code with respect to liability arising out of products. This institute is an additional guarantee for the protection of consumers, in addition to special legislation (for example: Law no. 9135, dated: 11.9.2003 "Consumer Protection") existing in this field. With the purpose of handling these cases the civil rights law has provided civil liability arising from products, in order to be clear and well-defined the responsibility of subjects that will be considered as such. Forecasting these provisions serves as a guarantee not only for the protection customers' of health or property but also to increase the quality standards of marketing of products by manufacturers. In the second part we shortly treat the constituent elements of liability arising from products and investigating potential cases of wide occurrence, which have arisen from the doctrine to which we must say that, have been mostly of foreign origin. As part of the civil liability arising from the products are also the unfair competition actions (Art. 638-640 of the Civil Code) and fraudulent publications (Art. 635-637 of the Civil Code). These are addressed in a general way at the end of this paper and finally this paper closes with indemnification and the treatment of types of damages caused to consumers as a result of the faulty produced goods or by low quality services and the appropriate rewards for those damages.

Keywords: damage, liability, product, compensation.

1. Introduction

1.1 Methodology

The applied methodology of this research is a function of the goal set at the beginning of the study. This paper for its own characteristics is based on qualitative method of analyzing the matters described therein. The qualitative method includes within it the research, descriptive, interpretative and comparative method. The research method has been used throughout this paper. This method includes in itself the process of materials gathering in the written form as well as in electronic format. The research is a process that has followed the arrangement of bibliographic items in order to finalize this work.

The descriptive method is an indispensable means for clarification of different terms and concepts

The study was conducted exclusively as a theoretical treatment based on the method of the analysis of the main elements of the judicial relationship as the result of the liability arising from the damage from products. The methodology is intended to create full basic information about what the legislation provides to the Albanian civilians in the case of civil liability for the damage from products. The searching for information is focused on domestic and foreign literature and a considerable number of scientific articles that refer to the problem addressed in the study.

Legal analysis of civil liability arising from damages caused from products is further completed by descriptive method. Through it are reflected theoretical aspects of civil liability in the case aforementioned.

Descriptive method has an indispensable means for clarification of terms and concepts from legal aspects to practical ones by accomplishing recognition with theoretical part and approach to reality.

The original part of the paper consists in the interpretation of different matters somehow problematic in the field of damage from products.

Interpretative method best justifies the presence of jurisprudence based on data and facts carried interpretation on them.

1.2 Analysis result

Use of goods and services forms what is called consumption. We face consumption in everyday life from the moment we are born until our departure from this life. Everyone needs to buy goods and products to fulfill his needs and benefit from services that offer various commercial entities to facilitate his life.

Liability arising from products is one of the most important aspects of the contractual and extra-contractual damage institute. In civil movement of goods, it may happen that a part of the goods are faulty which result in damages. In this case, the law has disciplined the responsibility arising from products, in order for it to be clear responsibility in such cases.

This institute is an additional guarantee for the protection of consumers, in addition to special legislation (i.e.: Article no 9135, dated: 11.9.2003 "Consumer Protection") that exists in this field (Cani, 2011). Also this institute serves to discipline the entrepreneurs to offer a good service and bring to market high quality and safer products for their normal users. It must be said that in modern times and in terms of our society which is considered more as a consumer society, the liability arising from products and services is one of the most important aspects of the contractual and extra-contractual damage institute.

The aim of civil liability in relation to products is that the manufacturer must be considered responsible for the damage caused by the shortcomings of the product that it produces and puts into circulation (Di Majo, 2002).

In 25 years of transition from centrally planned to a market economy, the country's economic structure has undergone substantial changes. From an agricultural and craft economy, we've jumped to an almost industrialized economy where the circulation of goods has become increasingly greater. In this 'explosion' of products and consumption exchange, as well as from the application of new forms of trading like the 'electronic commerce' or 'e-commerce', we are faced with a high degree risk for the products' safety and consequently with the increased need of providing greater protection for consumers.

In case of damage from products what is raised for legal solution is the issue of remuneration, referring to the procedure that the injured party must follow to ensure compensation as closer to the actual value of the damage as possible. To answer this need, the responsibility for the damage of the products is historically categorized into two groups as *contractual responsibility* or *extra-contractual responsibility*, identifying the most appropriate standards to find the responsibility of the manufacturer.

Before exploring what the Albanian legislation provides regarding civil liability for damages caused by products will firstly explain what we mean by the terms: *'product'* and *'producers'* under the contextual meaning given to them by the law.

"Product" (Albanian Civil Code, 1994) within the meaning of the Civil Code is called a movable object even though it may be embodied in a movable or immovable object, as well as electricity, excluding agricultural products and products derived from hunting.

With *'agricultural products'* we define land products, livestock and fisheries, excluding the cases when these have undergone a first processing.

"Producer" (Albanian Civil Code 1994) according to the Code is called the manufacturer of a finished product, of a raw material, or the manufacturer of a component part of the product and any other person who appears as such (manufacturer), putting his name on the product, trademark or other distinctive sign. Without avoiding the responsibility of the manufacturer, is referred to as "producer" also any person who imports a product with the purpose to sell it, rent, lessee, or other forms of distribution, in the context of commercial activity. In this case, its responsibility is the same as that of the manufacturer.

2. Literature Review

2.1 The liability derived from products is classified as 'contractual' or 'extra-contractual'

In the Albanian right as by analogy provided also in other Community legislations, the notion of civil liability of the manufacturers (Nuni, Mustafaj, Vokshi, 2012), in contrast to the responsibility of the character and criminal nature, refers to liability arising out of contractual obligations (Albanian Civil Code, 1994), as well as to the extra responsibility, which further means violation of the obligations deriving from the law, from the rules of conduct or from of maturity and expertise standards (Albanian Civil Code, 1994).

However, this is not the criterion on the basis of which we classify whether the damage is contractual or extra-contractual (Fromont, 2009). According to our legal system, the assumptions for an extra liability are based on the criteria

of simultaneously meeting the four elements (Gjata, 2010): the fault, a caused damage, illegality of the act or omission and casual connection (Albanian Civil Code, 1994). Meanwhile, the contract is a legal action through which one party or many parties create, change, or cancel a legal relationship. The content of a contract is freely determined by its parties, within the limits imposed by the legislation in force (Albanian Civil Code, 1994). From that, the contractual liability is identified in connection with the violation of the source and the type of damage that follows. This distinction is specified by the fact that the contractual obligations are not only those for which the parties have expressly agreed, but also those arising from the law according to the respective type of contract (Legier, 2009).

A discrete criterion analyzed especially by the doctrine, but also by the jurisprudence, belongs to the entity barring the responsibility from which it arises (Galvano, 2006). In fact there are few cases where third parties are included under the contractual responsibility for the direct fulfillment of any obligation arising from the contract (Vermelle, 2008), in the event that is subcontracted by the responsible entity.

Hypotheses raised to confound the responsibilities are possible because many practical cases have shown that there is a line between the contractual obligation and the extra one. This happens in particular, in the case of damage from products as in the sale contract (Albanian Civil Code, 1994), as well as in the case of extra-contractual damage where we find accordance between the provisions of Article 630 of the Civil Code (Responsibility of the manufacturer) and Articles 710/3 and 716 of the same.

2.2 Responsibility of the manufacturer, an objective responsibility.

Inspired by the Roman law, the Albanian legislation has always applied the principle of guilt extra-contractual liability, unlike Anglo-Saxon countries which have established an objective responsibility of the manufacturer, regardless of the existence or not of guilt. This criterion is based on the factual finding that, in any industrial system, the products may show defects of the design and/or in-series production, and such defects can exist sometimes regardless of the fact that the producer has exercised reasonable care to prevent the marketing of defective products.

On the other hand, if any such products may harm the customer, someone must necessarily bare the compensation burden. Setting the liability objective consists of barring the liability obligation to the manufacturers (so it could be continuously covered by an insurance policy), rather than charge it to the consumer or trader community. The burden of responsibility for any damages caused by the products, is part of what is called 'business risks', whose cost is amortized (by being included in the growth price) from the manufacturer, just like any other risk.

Based on the principles of objective responsibility in order to obtain compensation, the damaged party must prove the existence of the extra responsibility elements, the existence of damage, of the defect, the casual link between the defect and the damage and its illegitimacy. The damaged party is not required to prove the existence of guilt being it a trivial fact if the producer has used appropriate care to avoid the defective products consequences.

Based on the requirements of the law but also the norms of the European Directive 85/374 EEC on the manufacturer's responsibility for damages from products, the new discipline on the objective liability emphasizes that for a redress it is not a requirement the existence of a contractual relationship between the producer and the damaged consumer. Also, is null and void any contract clause that excludes or limits the liability of manufacturers to damaged subjects from their products.

2.3 The Concept of "handicapped" Product

The Civil Code contains 7 articles (excluding section 'Misleading publications' and 'Unfair competition') dedicated to the responsibility for the damages from products (Albanian Civil Code, 1994).

According to the regulatory (Dollani, 2014) definition an item is considered as flawed when, considering all the circumstances, it does not give the assurance that is expected from it. To assess the expectations on product safety (if damaged or not in its main functions) according to the Civil Code (Llangozi, 2011), three factors should be taken into consideration:

The first circumstance is related to the appearance of the product (Albanian Civil Code, 1994), which includes the degree of accuracy of the information provided by the manufacturer, the way the product is put into circulation, its presentation, the noticeable features, instructions for use and mandatory warnings.

The second circumstance that should be considered relates to the expected reasonable use of the product (Law no.9779, 2007), therefore the degree of accuracy of design that is the basis of the product stating the uses and reasonable behavior that can be predicted during it.

Finally, it is necessary to know the time of the distribution of the product (Albanian Civil Code, 1994). No product

can be regarded as defective because a new and better product of the same nature and function is in circulation.

If a product causes damage (death, personal injury, damage to property during private and within the preset financial limits), these will be compensated by the manufacturer, even if the injured party is not the buyer of the product in question (Nuni, Mustafaj, Vokshi, 2012). The manufacturer can demonstrate a lack of responsibility in some specific cases (Alishani, 2009).

2.4 The cases of exemption from liability

The manufacturer is responsible for the damage caused by the defects (*Albanian Civil Code, 1994*) of its products, unless in the cases when: the manufacturer has not put the products in circulation yet; under certified circumstances (*Albanian Civil Code, 1994*), it is estimated that the deficiencies that caused the damage did not exist at the time of the distribution of the product, or they were related to a later time; the product was not manufactured for sale or any other form of distribution, on any particular economic purpose from the manufacturers, nor manufactured or distributed as part of an enterprise or professional activity; the shortcomings are due to the fact that the product has been traded in accordance to the rules imposed by public bodies (*Albanian Civil Code, 1994*); scientific and technical knowledge could not reveal the flaws in the time of distribution of the product; in cases of the production of a raw material or the manufacture of a component part of the product, which results in the formation of defective end product, or as a result of incorrect instructions given by the manufacturer of the product (*Albanian Civil Code, 1994*).

The responsibility of the manufacturer is reduced or waived if, under the circumstances, the damage was caused by the shortcomings of the product, as well as by the fault of the injured person or any person for whom the injured person is responsible (Gjata, 2010). The producers' responsibility is not reduced when the damage is a common consequence of the shortcomings of the product and the behavior of a third party.

2.5 Other entities that are equivalent to the producer and the claim for damage compensation

If the manufacturer can not be identified, each supplier will be considered as a manufacturer, unless in cases when, within a reasonable time, he shows to the injured person the identity of the manufacturer or the person who supplied the product (Reimann, 2003). When more than one person is liable for the same damage, each of them is responsible for the entire damage.

The claim for damages brought against the manufacturer, in accordance to the first paragraph of Article 628 (*Albanian Civil Code, 1994*) of the Civil Code, shall be forfeited after three years from the date the aggrieved person has had or should have had knowledge of the damage, defects, and the identity of the manufacturer. The right of the injured person against the manufacturer for damages, according to the first paragraph of Article 628 of this Code, shall expire ten years from the date that the manufacturer has put into circulation the product that caused the damage.

3. Conclusions

To conclude this brief overview of the issues of liability for damage caused by products, it is important to highlight some key principles which are in focus in the Albanian product liability doctrine, by providing legal entities, be they individuals, natural, or legal domestic and international persons, some useful suggestions about key issues related to the damage from products, thus helping them to prevent or at least limit the side effects.

It is necessary to note that Albania has an almost complete legal framework with regard to civil liability for damages caused by malfunctioning products and the final efforts are being made to complete and update it in accordance with the political developments in its path towards the EU integration and with the economic development with the new forms of doing business.

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- Articles 628-634 of the Civil Code

See article 629 Of Civil Code- The manufacturer's liability is reduced or annulled when, according to circumstances, the damage is caused both by the product's defects and the injured person, or by a person to whom the damaged person is responsible. The manufacturer's liability is not reduced when the damage is a common result of the product's defects and the behavior of unrelated third parties

According to Article 630 of Civil Code An object, is considered defective when it does not deliver the guarantee expected from it, taking into consideration all the circumstances, in particular: a) product appearance; b) the reasonable use of the product; c) the time when the product is put into circulation. The product cannot be considered defective only by the fact that a more perfect product is circulated later

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