

# *Exemption of civil dilectual responsibility*

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*Prof. Dr. Agim Nuhiu*

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## **Abstract**

*Causing damage is also related to objective law. Violation of subjective right is a violation of the concrete material legal norm. Whenever the subjective right is violated or violated, its holder is guaranteed the right to protection by a certain legal norm, respectively to avoid the consequences that have come from illegal actions. The person who, illegally and culpably, causes damage to another person or his property, is obliged to compensate the damage caused. The person who caused the damage does not respond when he proves he is not at fault. Damage is considered illegal when it is the result of a violation or violation of the interests and rights of another, which are protected by the legal order or good customs. The damage must be a direct and immediate consequence of the action or omission of the person. Failure to prevent an event by the person who has the legal obligation to avoid it, charges him with liability for the damage caused.*

*Keywords: harm, subjective right, guilt, responsibility, law.*

## **Basic reviews on civil liable criminal liability**

When an action is the cause of a certain consequence, then the person to whom the harm is attributed, will have obligations within the limits of liability for his harmful actions. That person will be liable for the damage caused if the fact of the predictability of the damage is established by a reasonable person at the time of the activity and taking into account in particular the proximity in time or space between the harmful activity and its consequence. , or the extent of the damage in

relation to the normal consequences of such activity. In addition, the nature and value of the protected interest, the basis of liability, etc. must be proven.

In most cases of causing damage to the motor vehicle, there is no evidence or assumption of a causal link between the motor vehicle and the consequence caused.

In the case of multiple actions, and when it is certain that none of them caused the damage in whole or in any part of it, then it is assumed that all actions have contributed to causing the consequences, equally<sup>1</sup>.

In those cases we say that there is no liability of the insured or other user of the motor vehicle with which the damage was caused. Based on this, the Insurance Association has the right to refuse compensation for the damage caused by the motor vehicle from the base of motor third party liability insurance, because the conditions for filing the insured case are not met. Factors that prevent such a thing, a priori exclude the tortious civil liability of the insured or other user of the motor vehicle. They are released from liability if they prove that the damage results from a circumstance which is outside the item, the action of which can not be foreseen, nor can it be avoided or removed<sup>2</sup>. Different systems recognize different factors that completely release the alleged responsible person from the obligation to compensate the damage. The Macedonian legal system recognizes the following factors that preclude tortious civil liability: force majeure, the action of the injured party and the action of a third party.

## **Exemption of civil dilectual responsibility**

Exclusion of dilectual civil liability is done in cases of force majeure<sup>3</sup>. Force majeure is an external event that is not anticipated, or that cannot be predicted exactly when it will occur, and that cannot be afforded or avoided<sup>4</sup>.

When it comes to the exclusion of liability, we can say that the law defines the circle of persons who are not responsible for the damage caused. A person who due to mental illness, mental retardation or other causes is not able to judge, is not liable for the damage caused, unless it is proven that he caused the damage at the time when he was able to judged. Whoever causes harm to another in a state of temporary incapacity for trial is liable for it, unless he proves that through no fault of his own he has been brought into such a state. If in this condition he has been

<sup>1</sup> Art. 3:105, Principles of European Tort Law, European Group on Tort Law, <http://civil.udg.edu/php/biblioteca/items/283/PETL.pdf>, 10 june 2012.

<sup>2</sup> Vukashin Stanishic, Responsibility in the case of driving a motor vehicle in the car, *Pravni Zivot*, no. 9-10 of 1992, p.1297.

<sup>3</sup> Corinne Renault – Brahinsky, *L'essentiel du Droit des obligations*, 2011-2012, 7-e édition, Gualino, Iextenso éditions, Paris, p.95.

<sup>4</sup> Dauti Nerxhivane, *Law of Obligations*, Prishtina, 2002.p.163.

brought to blame by someone, the damage will be borne by the one who brought him to such a state<sup>5</sup>.

In all cases when the existence of force majeure must be proved, in the first place its property must be proved as an external event that is not foreseen and then it must be distinguished as a category of actions that are natural events such as. earthquakes, floods, etc. These external and unforeseen actions, science has treated but despite this they in practice can not be controlled<sup>6</sup>. It is important that concrete action to qualify as a major force must be characterized as an unforeseen, inevitable and external event.

So only event which cannot be predicted and controlled can qualify as force majeure. In contrast, the action that the injured party has been able to and has been forced to foresee is a covert event<sup>7</sup>. In the context of a motor liability judgment, it is important to note that only extraordinary events, which are not taken into account and which do not act in normal situations can raise the issue of releasing the responsible person from compensation for damages. The event in car accidents, must be unforeseen, respectively caused suddenly and out of control of traffic participants.

In addition to these characteristics, the other characteristic element of the natural event is the inevitability of causing the event. This characteristic describes the harmful action in the case of causing earthquakes, floods and droughts as a natural phenomenon<sup>8</sup>.

In addition to the event being unforeseen and inevitable it must be external. In other words, in order for the event to qualify as a force majeure, in addition to causing it suddenly and not offering the opportunity to avoid its harmful impact, it must appear outside the dangerous object. According to this there is no force majeure if the damage is caused by defects in the processing of the fabrication of the motor vehicle, or by the sudden breakdown of the motor vehicle, the exit of the wheel from the motor vehicle, because they are not accounted for causes which occur outside the motor vehicle<sup>9</sup>.

The possessor of the thing is released from liability if he proves that the damage results from some cause located outside the thing, the action of which could not have been foreseen nor removed or avoided<sup>10</sup>.

According to the Spanish Civil Code, the responsibility of the person who has acquired the status of testator will not be transferred to his heirs, if it is proven that

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<sup>5</sup> Compare the content of Article 141 of Law no. 04 / L-077, on relations of obligations of the Republic of Kosovo.

<sup>6</sup> See: Radiiqi J Jakov, Law Obligations, Belgrade, 1990.p.126.

<sup>7</sup> Ibid, p. 126.

<sup>8</sup> Alishani Alajdin, , Law of Obligations, general part, Prishtina, 2002 .p. 513.

<sup>9</sup> Toshevski Bllagoj , Nadomestuvanje na shteta pričineto so motorno vozilo, thesis, Skopje, 1980, p. 63.

<sup>10</sup> Article 163, point 1 of the LCT.

the damage was caused by supernatural power or random force and despite the proper care of the animal user<sup>11</sup>.

When it comes to the exclusion of responsibility it is worth noting that supernatural power and chance force are not the same. No one will be held liable for the damage caused as a result of the action of force majeure, an action that is unforeseen and inevitable. Force majeure can be planned to happen, but it cannot be avoided or overcome. Meanwhile, random force is the result of having a normal care, which if foreseen would be avoidable. An unforeseen circumstance is any event that occurs within the user's possession of the animal. For other circumstances we have no exception to the liability of the owner or user of the animal. These are, therefore, external circumstances that have influenced the infliction of harm from the animal. Predictable and avoidable circumstances and predictable and unavoidable circumstances are considered as external circumstances. The owner or user of the animal is not released from liability for damage caused by the animal, if the damage was caused intentionally or by negligence. Intent and negligence in this case are considered voluntary actions of the owner or user of the animal. The act of the owner or user of the animal or any third person leading the animal to cause harm is not considered an act of force majeure and as a result the liability of the specific person is not excluded. Liability will arise even if the animal has been injured or killed by the act of causing harm. We consider that the same attitude should be applied in cases when the damage is caused by an animal lost or escaped through the fault or negligence of the owner or user of the animal. There will be no exception to the liability even if the animal after loss or escape as a result of supernatural power, has roamed freely and caused harm. Consequently, even the owner of the animal who has abandoned it in order to terminate ownership over it, will bear the responsibility for the damage caused by that animal.

This release is made or exists because force majeure is an unforeseen external event which can neither be afforded nor avoided<sup>12</sup>. This causes the allegedly responsible person to be called upon to act in force majeure and to be released from the obligation to compensate the damage.

Also, the action of the injured party excludes the liability of the owner or user of the motor vehicle for the damage caused in car accidents. The action of the injured party, as opposed to force majeure, is a relative element of the exclusion of liability for damage caused by the motor vehicle. Which means that not all actions of the injured party exclude tortious civil liability. It generally depends on the degree of guilt of the injured party. Release of the responsible person from liability, due to the action of the injured party may be complete and partial, depending on the degree of guilt of the injured party. If the injured party is himself guilty of the

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<sup>11</sup> Compare the content of Article 1905 of the Spanish Civil Code.

<sup>12</sup> Alishani Alajdin, work quoted, p. 513.

damage, then the possessor is not liable for the damage, if the injured party is partly guilty of the damage the compensation is partially reduced<sup>13</sup>.

Complete release from liability exists when the injured party as a whole is at fault for the damage caused<sup>14</sup>. He must prove that he could have foreseen, avoided or avoided the consequences, taking into account his abilities, while on the other hand he has not succeeded in it despite the appearance of great care as a housewife, good, good economist as well as despite driving the motor vehicle in accordance with the prescribed rules<sup>15</sup>.

The guilt of the injured party, unlike the guilt of the injured party, is never presumed, but only proven<sup>16</sup>. In the procedure of proving guilt it is important to mention that it does not take into account the fact that it refers to possible defects or defects of the motor vehicle, but the existence of care and attention of the driver of the motor vehicle in relation to the harmful action of the injured party.

The injured party may cause the damage intentionally or by gross negligence. When the facts are proved that the action of the injured party has resulted from intent or gross negligence, then for the right a circumstance arises, according to which the possessor of the dangerous thing is released from the responsibility for compensation of damage<sup>17</sup>. The Macedonian legislator in the Law on Relations of Obligations, in Article 163 point 2, has accepted the exclusion of tortious civil liability, ie the release of the possessor of the dangerous thing from liability if he proves that the damage was caused by the action of the injured person, which he could not have foreseen and whose consequences he could have avoided or avoided.

It is important to address in the literature of civil law the position on tortious civil liability, in cases where the injured party knew that the driver of the motor vehicle was drunk and agreed to drive with him, and until the accident in traffic has arrived due to irregular driving of the driver due to the influence of alcohol. Here, the injured person can be directed to the compensation of the damage

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<sup>13</sup> Stanisic Vukoshin, Responsibility in the case of driving a motor vehicle, was arrested, *Pravni Zhivot*, no. 9-10 / 1992, p. 1298

<sup>14</sup> Corinne Renault – Brahinsky, *L'essentiel du Droit des obligations*, 2011-2012, 7-e édition, Gualino, Lextenso éditions, Paris, p.95.

<sup>15</sup> Toshevski Bllagoj , work quoted, p. 64.

<sup>16</sup> Radishiq Jakov, *Law Obligations*, Belgrade, 1990., p. 147.

<sup>17</sup> The Court of Appeals in Stip, Judgment, nr. 1974/08 which refers to the determination of civil legal liability for damage caused in a car accident, that liability has been based on the circumstances that make the exclusion of liability. According to the court, the passenger who was aware that the driver of the motor vehicle had consumed alcohol and that in the blood results in 1.51, and got into the motor vehicle which slipped off the road and crashed into trees that happened off the road, does not belong to him. Compensation of material and moral damage by the insurance community where the motor vehicle has been insured from liability to third parties, on the grounds that boarding the motor vehicle knowing the alcoholic state of the driver is considered compliance for possible damages that were caused by the driver of the motor vehicle. The adjudication of damages is based on the rules of exclusion of civil legal liability for the damage caused. The very fact of being aware of the alcoholic state of the driver of the motor vehicle corresponds to the fact of causing the damage by the injured party himself.

to the participants in the traffic, so that they respond in solidarity based on the principle of subjective responsibility, taking into account the degree of guilt of the participants for the harmful event. So, in such cases the liability will not be excluded, but the owner of the motor vehicle based on the principle of subjective liability will be liable for civil legal liability for the damage caused.

Exclusion of the liability of the owner or user of the motor vehicle for the damage caused in car accidents, is done even in cases when the action of a third person has affected the damage. If the damage caused stems from a third party, he will be liable for the damage. Exemption from liability is made if it is proven that the damage results from a circumstance which is outside the item, or the damage was caused by the action of a third person. The possessor of the dangerous thing is released from responsibility if he proves that the traffic accident was caused by the fault of the third person or the injured party. In cases where there is fault of the third person, he will be held accountable according to the criterion of subjective responsibility<sup>18</sup>.

In Article 144 of Law no. 04 / L-077, on the relations of obligations of the Republic of Kosovo, the permitted assistance itself is institutionalized. According to this legal solution, whoever in the case of self-help causes harm to the person who has caused the need for self-help has no duty to reward him. Self-help means the right of every person to avoid a violation of the right when imminent danger threatens, if such protection is necessary and if the manner of avoiding the violation of the right responds to the circumstances in which the risk is caused.

In cases where the damage is caused partly through the fault of a third party, the owner or possessor of the motor vehicle will be jointly liable according to the rules of objective liability and the third person according to the rules of subjective liability, with the right of recourse from the other, if the other does not compensate the damage in proportion to the degree of guilt.

The owner of the motor vehicle can be released from liability for the damage experienced by the careless child who acted in front of the motor vehicle even when that child, taking into account his development, is not able to understand his own action and therefore does not one can speak of his guilt<sup>19</sup>.

The victim will bear his or her losses even in cases where there are uncertain causes within the victim's sphere that may have caused the damage. This shall apply to the extent that it corresponds to the likelihood that the harm may have been caused by another circumstance, occurrence or activity within the victim's own sphere<sup>20</sup>.

<sup>18</sup> Stanisic Vukoshin, Responsibility in the case of driving a motor vehicle, was arrested, *Pravni Zhivot*, no. 9-10 / 1992, p. 1298.

<sup>19</sup> *Ibid*, p. 1298.

<sup>20</sup> Art. 3:106, Principles of European Tort Law, European Group on Tort Law, <http://civil.udg.edu/php/biblioteca/items/283/PETL.pdf>, 10 June 2012.

Exclusion of civil legal liability for the damage caused can be done if the protection based on justifications has been realized. Necessary protection, state of need, avoidance of damage from the other are circumstances provided by law, which exclude civil legal liability for the damage caused. According to Article 143 of Law no. 04 / L-077, on the relations of obligations of the Republic of Kosovo, whoever causes damage to the attacker in necessary protection has no duty to compensate the damage, except in the case of exceeding the necessary protection. If someone causes the damage in a state of extreme need, the injured party may seek compensation from the person who is guilty of causing the risk of damage or from the persons from whom the damage was avoided, but from the latter no more than have benefited from this. Whoever suffers damage by avoiding the risk of damage from the other has the right to demand from him the compensation of that damage to which he has been reasonably exposed.

Liability for damages may be excluded if the injured party has acted lawfully and as necessary, in the protection of his protected interests against an unlawful act, because at the given moment, the assistance of the authorities cannot be taken. Even the consent of the victim, for the injured party is considered protection based on excuses. Liability for damages may be waived or reduced if the injury was caused by an unpredictable and irresistible circumstance, by a force of nature (*force majeure*), or by the action of a third party. Liability may be waived or reduced in proportion to the victim's contributory fault and to any other matters which will be relevant to establish or reduce the victim's liability if he or she is a participant in causing the consequences. Joint and several liability exists when the damage suffered by the victim is attributed to two or more persons. Liability is joint and several when two or more persons knowingly or unknowingly cause harm to the victim. Joint and several liability also exists in cases when the damage is caused by the independent behavior or action of a certain person, but they are attributed to the other person as well as when the damage is caused by the responsible person and the action of the other person who provided certain assistance and is also responsible for the damage caused. When two persons are subject to joint and several liability, the victim may claim full compensation from each responsible person. The responsibility lies with all pests, which means that each person is liable to the victim only for the part of the damage due to him. A person subject to joint and several liability may cover the share of expenses incurred by the other debtor, the victim, in connection with the same damage. The obligation will depend on the degree of guilt<sup>21</sup>.

So, for the exclusion of crucial responsibility is the inability of the possessor to avoid the consequence caused under the influence of the action of the third person.

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<sup>21</sup> Compare the content of Art. 7: 101, Principles of European Tort Law, European Group on Tort Law, <http://civil.udg.edu/php/biblioteca/items/283/PETL.pdf>, accessed 10 June 2012.

## Conclusions

The existence of guilt which actually exists is assumed in the segments of the decision to exercise the right to compensation. It is assumed that it belongs to the owner or user of the motor vehicle participating in the car accident. Unlike this segment, other issues are judged on the basis of fault, especially in the realization of the right to reimbursement of expenses incurred by the insurer from the realization of the obligation to compensate the damage to the injured third party. Thus, in the procedure for adjudication of liability for damage caused by a motor vehicle, causal liability and fault-based liability are complementary. Assuming the responsibility of the owner or user of the motor vehicle for causing the damage, the legislator has made it in order to create a more favorable position for the injured party in the compensation procedure.

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