Civil Liability of Board members in a Joint-Stock Company

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Abstract:

Members of the Board of Directors of a Joint Stock Company, acting as the administrative body responsible for managing the company, are granted broad powers and extensive authority to act in the name of the company and on its behalf. They are entitled to take all necessary decisions to achieve the company's interests. However, if they commit errors in management, violate *jus cogens* rules applicable to joint stock companies, or exceed the powers granted to them under the company's articles of association, they may incur civil liability. This liability arises when such misconduct causes damage to the company, its shareholders, or third parties dealing with it. Responsibility may be incurred individually or jointly among board members, and it applies whether these errors occur during the normal operation of the company or in the event of its bankruptcy.

Keywords: Civil Liability, Board of Directors, Joint Stock Company, Manager, Management Error, Contractual Liability, Liability for Personal Acts, Joint Liability.

INTRODUCTION

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The joint stock company is regarded as one of the most important forms of commercial companies in general, and capital-based companies in particular. It is considered the most effective structure for capital accumulation due to its large capital size, the limited liability of its shareholders, and the ease with which shares representing its capital can be transferred. These characteristics have made it especially attractive to investors seeking profitable opportunities. As a result, joint stock companies play a decisive role in economic development, evolving from mere profit-oriented entities into institutions closely connected to the national economy of the state [1].

The Algerian legislator has regulated this type of company in detail, particularly the joint stock company managed through a board of directors, which represents the traditional or classical model of corporate governance. In this structure, the board of directors is entrusted with managing the company by exercising its powers to act in the name of the company and for its account, and by taking decisions necessary to achieve its objectives. These powers must be exercised within the limits defined by the company's articles of association and the provisions of the Commercial Code[2].

Accordingly, members of the Board of Directors incur civil liability when performing management functions if they commit errors in the execution of their duties. In such cases, they are held civilly liable for the damage caused, particularly toward the company itself, its shareholders, and third parties dealing with it. In order to protect the interests of these parties, the Algerian legislator has devoted specific provisions to regulating the civil liability of those responsible for managing joint stock companies, covering all stages of their

relationship with the company, including the phase of bankruptcy.

The study of the civil liability of members of the Board of Directors of a Joint Stock Company is therefore of significant importance. It helps define the legal framework governing their position and clarifies the nature of their liability. It also contributes to protecting the interests of the company, shareholders, and creditors. Furthermore, its importance lies in assessing the adequacy of the general rules of civil liability provided in the Civil Code, as well as the special provisions contained in the Commercial Code, in regulating this form of liability and determining its distinctive features within the context of joint stock companies.

In light of the above, the following research problem may be raised: *To what extent is the civil liability of members of the Board of Directors of a Joint Stock Company characterized by specificity under Algerian legislation?*

To address this problem, the study adopts a descriptive approach to present the concepts related to civil liability and the conditions for its establishment, while highlighting its particular characteristics as applied to members of the Board of Directors of a Joint Stock Company. In addition, an analytical approach is employed through the examination of relevant legal provisions contained in both the Civil Code and the Commercial Code.

Accordingly, the concept of civil liability of members of the Board of Directors of a Joint Stock Company will be examined in the first section, followed by a determination of the scope of this liability in the second section.

The First Topic: The Concept of Civil Liability of Members of the Board of Directors of a Joint Stock Company and Its Legal Nature

Since civil law constitutes the general legal framework applicable in the absence of specific rules, the study of the concept and scope of civil liability actions requires reference to civil law provisions governing liability. This is particularly important in matters not explicitly regulated by commercial law, which, in many of its provisions, expressly refers to civil law[3].

The First Requirement: The Concept of the Civil Liability Action for Members of the Board of Directors of a Joint Stock Company

Civil liability has been defined in multiple ways, both linguistically and legally, in addition to definitions provided by legal scholars. Jurists have also proposed various classifications of civil liability. Therefore, this study necessitates identifying the different types of civil liability relevant to the subject matter.

Section One: Definition of Civil Liability

From a linguistic perspective, responsibility refers to "everything that an official bears in charge of a task, whereby responsibility for its success or failure rests upon him." This definition implies that the responsible person must possess legal capacity and sound judgment.

From a legal perspective, responsibility is generally defined as the consequence incurred by a person as a result of violating a rule of conduct. It has also been defined as "a legal status

imposed by law on a person when he violates a legal or contractual obligation without a right recognized by law"[4].

Civil liability may also be defined as follows: "A breach committed by a person of an obligation imposed upon him. This breach gives rise to responsibility toward the injured party and obliges the perpetrator to compensate for the damage suffered. The injured party has the exclusive right to claim compensation, and this right is considered purely civil"[5].

Accordingly, civil liability clearly refers to a set of legal rules that bind individuals who cause harm to others, requiring them to compensate the injured party for the damage incurred. In general, such compensation imposed on the "responsible party" results from a breach of an obligation that exists prior to, or independent of, a contract or is imposed directly by law. Civil liability therefore arises when the responsible party fails or refuses to fulfill contractual obligations or neglects a legal duty requiring him to refrain from causing harm to others. The primary purpose of this obligation, which forms the basis of civil liability, is to compensate the injured party for the damage resulting from the failure or refusal to perform obligations voluntarily assumed under the law.

On this basis, the civil liability of the members of the Board of Directors of a Joint Stock Company may be defined as the legal obligation imposed on those members as a result of their breach of duties and obligations established by law or by the company's articles of association, or as a consequence of errors committed in the course of management. Such liability results in an obligation to compensate for damage caused to the company itself, to shareholders, or to third parties.

Section Two: The Legal Nature of the Civil Liability of the Members of the Board of Directors

In order to determine the legal nature of the liability borne by members of the Board of Directors, it is necessary to identify the nature of the relationship governing these members and the shareholders affected by their actions. On this basis, the precise concept of civil liability applicable to them can be clearly defined.

Members of the Board of Directors are regarded as agents of the company who receive remuneration for their management functions and for the transactions they carry out on behalf of the company[6] The source of this agency relationship lies in the will of the shareholders[7] , who entrust the General Assembly with the authority to appoint them. Accordingly, the Algerian legislator stipulates in Article 432 of the Commercial Code that: "The partner shall refrain from any activity that may harm the company or that is contrary to the purpose for which it was established."

"He shall safeguard and protect the interests of the company in the same manner as he manages his own interests, unless he is entrusted with management in return for remuneration, in which case the level of diligence required of him shall not be less than that exercised by an ordinary person."

Accordingly, each member of the Board of Directors is bound by the obligations of an agent. In performing his duties, he is required to exercise the care of an ordinary person and to act within the limits of the powers granted to him by law and by the company's statutes. In principle, no civil liability arises merely because the company realizes profits or incurs losses, since it operates within a commercial framework where profit

and loss are inherent risks. Even when a manager demonstrates diligence and prudence in managing the company's affairs, he cannot guarantee its success or profitability under all circumstances[8], . On this basis, the rules governing agency apply to members of the Board of Directors with respect to the contracts they conclude and the acts they perform on behalf of the company.

By contrast, some jurists adopt an opposing view, considering managing directors to be custodians of the company's assets under their control. This custody is not limited to movable and immovable property, but also extends to confidential information acquired during the exercise of their functions, including information related to the company's activities and future strategic plans[9].

Since members of the Board of Directors act as agents of the company, third parties are, in principle, required to direct their claims for compensation solely against the company. The company's legal personality and independent financial liability thus constitute a protective mechanism for Board members against direct legal action by third parties.

Nevertheless, the Algerian legislator has expressly established the personal civil liability of members of the Board of Directors. This provision expands their liability for personal faults committed, including those committed toward third parties, in accordance with Article 124 of the Civil Code, particularly when such members act in their own name.

The criterion adopted by the Algerian legislator, as well as by legal doctrine and judicial practice, for establishing such liability is the existence of proven fault. This fault is assessed according to the standard of the ordinary person. Accordingly,

members of the Board of Directors incur personal liability when they commit an individual fault, even where the conduct constituting that fault does not directly conflict with the general interest of the company[10].

The Second Requirement: Types of Civil Liability of the Members of the Board of Directors of the Joint Stock Company

The purpose of establishing civil liability is to compensate for damage resulting from the breach of an obligation owed by the responsible party. Accordingly, legal doctrine distinguishes, on the basis of the source of the obligation to compensate, between two types of civil liability. The first type arises from the contractor's breach of contractual obligations stemming from a contract binding the responsible party to the injured party, in which case the liability is contractual. The second type arises from the breach of a legal obligation[11] originating directly from the law and imposed in the form of general duties applicable to all individuals. In this situation, the liability is tortious[12].

Section One: Contractual Liability

Contractual liability is the liability that results from the breach of an obligation arising from a valid contract. Where a contract is legally valid[13], the contractor is required to perform all obligations imposed upon him in kind. However, if he fails to perform these obligations, his contractual liability is incurred [14].

The liability of the members of the Board of Directors is considered contractual in nature with respect to both the company and the shareholders when they breach the obligations arising from the company's articles of association

or from subsequent contracts. These instruments define their commitment as a body entrusted with management and administration within the company. In such cases, Board members are regarded as agents of the company and of the shareholders. They are therefore required to exercise the diligence of a careful person in carrying out the managerial tasks entrusted to them. They are held liable for any damage caused to the company or the shareholders when they fail to exercise this level of care or commit errors related to the performance of their management duties.

In this respect, Article 172 of the Commercial Code provides: "In obligations to act, where the debtor is required to preserve a thing, to perform an act, or to exercise caution in the execution of his obligation, the debtor shall be deemed to have fulfilled the obligation if he exercises, in its performance, all the care exercised by an ordinary person, even if the intended result is not achieved, unless the law or the agreement provides otherwise. In all cases, the debtor remains liable for fraud or gross fault"[15].

Since the manager in a joint stock company is considered a debtor toward the company or the shareholders, he is required to perform the duty of management with due care. The execution of this obligation requires a level of diligence equivalent to that exercised in managing personal affairs, namely the care of a careful person, for which the company provides appropriate remuneration[16].

Civil liability may arise for members of the Board of Directors toward the company or toward the shareholders. In such cases, the company or the shareholders may claim compensation for the damage suffered as a result of an error committed against them. For liability to be established, the

elements required under the general rules of civil liability must be fulfilled, namely fault, damage, and a causal relationship between them. Accordingly, the scope of the contractual liability of members of the Board of Directors, when they breach their contractual obligations, is determined by the following conditions:

1- The existence of an agency contract between the members of the Board of Directors and the company:

There must be a valid contract binding the parties. Where contractual liability does not exist—such as when the contract has not yet been concluded during the negotiation stage, or when the contract is void or voidable and has been declared void, or when the contract has been dissolved—and where no contractual relationship exists between the members of the Board of Directors and the contracting company[17] , there is no basis for holding them liable for damages. This is due to the absence of a fundamental element, namely the contract itself.

2- Breach by the members of the Board of Directors of their contractual obligations:

The damage suffered by the company or the shareholders must result directly from the breach by the members of the Board of Directors of the obligations arising from the contract. These obligations are determined by the will of the contracting parties, in accordance with the principle of (*pacta sunt servanda)* The contract is the law of the parties, and consist of the conditions expressly stipulated in the contract.

In addition, other obligations may fall within the scope of the contract pursuant to legal rules, customary practice, and principles of equity[18] , as well as the nature of the obligations

and transactions involved. This is reflected in Article 107(2) of the Civil Code, which provides: "The contract is not limited to the obligations expressly stated therein, but also extends to all obligations arising from it in accordance with the law, custom, and equity, having regard to the nature of the obligation" [19].

3- Establishment of liability within the framework of the contractual relationship:

Contractual liability can only arise within the context of an existing contractual relationship. Accordingly, the debtor bound by the contract—or a third party acting on his behalf—must be responsible for the non-performance of the obligation, meaning that he is the party who breached the obligations assumed under the contract. On the other hand, the injured party must be the contracting party, that is, the creditor. This requirement is based on the principle of the relativity of contractual effects, according to which the effects of a contract apply only to the contracting parties, while third parties neither acquire rights nor bear obligations under it[20].

If the contractual link is absent, contractual liability cannot be applied, and recourse must instead be made to tort liability. In other words, tort liability constitutes the general rule, whereas contractual liability represents an exception that applies only when its specific conditions are satisfied[21].

Section Two: Tort Liability

The Algerian legislator has established the general rule of tort liability, namely liability for personal acts, under Article 124 of the Civil Code, which provides: "Any act committed by a person through fault that causes harm to another obliges the

person who caused it to compensate for the damage." It is therefore clear from the content of this provision that liability for personal acts arises from the commission of a wrongful act attributable personally to the responsible party and resulting in harm to others[22].

On this basis, tort liability consists of a set of legal rules that require those who cause harm to others to provide compensation to the injured party. This obligation to compensate results from the breach by the responsible person of a prior legal obligation imposed by law[23].

The liability of a manager in joint-stock companies arises when he commits an act intentionally, negligently, or by mistake, whether the error is serious or minor, and whether it is committed in good faith or bad faith. This principle is confirmed by Article 124 of the Civil Code, which provides that "every act committed by any person through his fault, and which causes harm to others, obliges him, in all cases, to provide compensation."

Accordingly, it becomes clear that liability for the personal (tortious) acts of members of the Board of Directors of a joint-stock company arises only when there is a breach of a fixed legal obligation, namely the obligation not to cause harm to others, in the absence of a contractual relationship with the injured party[24] .In such cases, liability requires the fulfillment of its essential elements: fault, damage, and a causal relationship linking the fault to the damage, in order to justify compensation[25].

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The tort liability of members of the Board of Directors toward shareholders arises from acts involving fraud, violations of the law or of the company's articles of association, abuse of authority[26], or general misconduct in the management of the company's affairs. Examples of damage resulting from fraudulent conduct include providing false information concerning the company's assets or the success of its projects in order to induce others to contract with it, or diverting company funds for purposes other than those for which they were allocated or agreed upon [27].

The Second Topic: The Scope of the Civil Liability of the Members of the Board of Directors

The civil liability of members of the Board of Directors is governed by the general provisions of civil liability. These provisions require that a member be held accountable for committing a wrongful act related to the management functions entrusted to him, provided that this act causes damage to the claimant, who must also establish the causal link between the wrongful act and the damage suffered. Such liability may be borne individually by a single member in certain cases, or jointly with other members in other situations.

The First Requirement: Conditions for the Civil Liability of the Members of the Board of Directors

Since members of the Board of Directors, as managers, are entrusted with the administration of the company and with safeguarding its interests, they are liable for damage resulting from their errors in ordinary circumstances. Their liability may extend even to situations involving the bankruptcy or judicial settlement of the company.

Section One: Conditions for the Incurrence of Civil Liability of the Members of the Board of Directors in Normal Cases

In determining the elements of civil liability, whether contractual or tortious, the Algerian legislator relies on the general rules set out in the Civil Code. These rules are based on the existence of three essential elements: fault, damage suffered by the injured party as a result of that fault, and a causal relationship linking the fault to the damage[28].

First: Fault

Fault constitutes a fundamental element in the field of civil liability and represents its core foundation. In general, the mere occurrence of damage is insufficient to establish liability unless that damage can be attributed to a specific fault. Damage may occur to a person without the existence of any fault, in which case it is considered a fortuitous or accidental event. Likewise, damage may result from a person's conduct without constituting a fault, provided that such conduct is normal and socially accepted behavior. In these situations, civil liability is excluded[29].

Jurisprudence generally defines fault as a breach of a legal or contractual obligation[30] In other words, there must exist a source that imposes an obligation upon a person, and this obligation must be legally binding. When the person violates that obligation, he is deemed to have committed a fault, and if such fault results in damage, he is required to provide compensation.

Based on this definition, fault may give rise either to contractual liability (contractual fault) or to tort liability

arising from a wrongful or harmful act (tortious fault), particularly when the injured party is a shareholder or a third party. In all cases, liability cannot be established unless the claimant proves the existence of a fault[31].

1- CONTRACTUAL FAULT

Contractual fault refers to the fault resulting from the debtor's failure to perform an obligation arising from a contract. As long as the debtor is bound by a valid contract, he is required to perform his contractual obligations [32] The breach of these obligations forms the basis of the company's claim and determines the liability incurred. In this context, each member of the Board of Directors is liable toward the company, in his capacity as its agent, when the agency contract is not performed with due care and diligence. The fault lies in the manager's deviation from the proper execution of the agency and the negligence or default committed in the performance of his duties, which leads to his civil liability.

In this regard, the legislator has specified the forms of fault falling within the scope of the civil liability of members of the Board of Directors in normal circumstances, pursuant to Article 715 bis 23 of the Commercial Code, as follows:

A- Violations of legislative or regulatory provisions applicable to the joint-stock company:

When members of the Board of Directors violate the legislative or regulatory provisions governing joint-stock companies in the exercise of their powers, they commit faults that give rise to civil liability. Such violations include, in particular:

Errors committed by directors in connection with the incorporation of joint-stock companies[33], which may result in the invalidity of the company's contract, whether committed intentionally or negligently [34].

- Failure by the Board of Directors to supervise the activities of the Chairman.
- Receipt of remuneration or benefits exceeding the amounts prescribed by legal provisions.
- Obtaining cash loans in violation of statutory requirements[35].
- Minute of Board Meeting[36].
- Omission to summon the Annual General Meeting[37] or failure to summon the class of shareholders set out in Article 816 of the Commercial Code.
- Failure to enable the partners to exercise their right to access the company's documents[38] or to violate the rules of quorum and majority[39].
- Carrying out acts by the administrators that do not fall within the scope of the subject matter of the company as determined by law[40].
- Neglecting to obtain the permission of the General Assembly with regard to acts for which permission is required by law[41].
- Abuse of administrators in the management and administration of the company's affairs, such as failure to insure the company's funds from fire risks[42].

B- Violation of the Provisions of the Company's Articles of Association

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Since the articles of association constitute a contractual instrument, members of the Board of Directors are required to comply with the mandatory provisions contained therein when managing and administering the company. Failure to respect these provisions gives rise to their civil liability whenever such conduct causes damage to others who have a legitimate interest in claiming compensation. This applies particularly where the violation is committed intentionally. Examples include cases in which directors exceed or abuse the powers granted to them under the articles of association, as well as instances where the Board of Directors violates conditions relating to prior approval or the exercise of pre-emption rights in the transfer of shares[43] .

C- Fault in Management

In accordance with the general principles governing civil liability, members of the Board of Directors may be held accountable for the harmful consequences of certain acts even where they have not violated statutory provisions or the terms of the company's constitutive contract. The notion of fault encompasses any conduct that is contrary to the management duties entrusted to directors, making those duties a primary source of their personal liability. Due to the ambiguity surrounding the concept of fault in management, it must be distinguished from similar notions before defining its scope and determining the rules governing its proof[44].

In light of the above, fault in management may be defined as "the violation by the manager of one of the obligations connected to the management tasks entrusted to him." It therefore follows that fault in management is a broad concept that includes all acts or behaviors contrary to managerial duties, whether those duties are prescribed by the Commercial

Code, the Civil Code, or the company's articles of association. Such fault may consist of positive or negative acts, as well as intentional or unintentional conduct, provided that it results in damage to the company, its shareholders, or third parties. This is because the manager bears civil responsibility for the execution of management functions and for safeguarding the company's interests.

2- Omissive Fault

Within the framework of tort liability, fault is defined as "a deviation by a person from the normal behavior required by law, while being aware of that deviation." This deviation constitutes a breach of a general legal obligation, namely the obligation "not to cause harm to others," and results from the failure to exercise the necessary care, caution, and foresight in order to prevent harm.

As a general rule, a managing director is not personally liable, regardless of his capacity (whether legal manager or de facto manager), for management errors that cause harm to others, so long as he acts in the name of and on behalf of the company and within the limits of its corporate purpose. In such cases, responsibility rests with the company rather than with the individual manager. Conversely, where the manager's conduct falls outside the scope of the company's corporate purpose, personal liability may arise.

By way of exception, a managing director may incur personal liability toward third parties for management acts that fall outside the company's corporate purpose. This is consistent with the provisions of Articles 623(1) and 638(3) of the Commercial Code relating to members of the Board of Directors and its chairperson in joint-stock companies[45]

However, in light of the general theory of legal personality, third parties normally have recourse only against the legal person, which alone is bound by the acts performed in its name, and civil claims are therefore, in principle, brought solely against the company.

In these exceptional circumstances, the company may not invoke the manager's excess of authority against third parties unless it proves that the latter knew of the excess or could not reasonably have been unaware of it given the surrounding circumstances. The mere publication of the company's articles of association is not, by itself, sufficient to establish such knowledge.

Accordingly, it is clear that a manager may personally bear civil liability toward third parties on the basis of a "personal fault unrelated to the corporate purpose." In such cases, he is obliged to compensate for the damage caused, provided that the injured party proves the existence of a fault committed outside the scope of that purpose[46].

In light of the foregoing, it may be stated that fault in management generally gives rise to liability only on the part of the legal person, namely the company, which alone is obliged to compensate for the damage caused to others. By way of exception, however, the manager may incur personal civil liability toward third parties for the harmful consequences of his managerial errors in the following cases:

- Where he acts jointly with others in his own name and for his own account, even if the act falls within the scope of his professional competence.
- Where he abuses the powers conferred upon him as the legal representative of the company he manages.

- Where he performs acts that fall outside the scope of his managerial authority, that is, acts unrelated to the exercise of his management functions or acts that do not fall within the corporate purpose of the company[47].

In this respect, legal doctrine distinguishes between errors committed by the manager in the exercise of his managerial and representative functions and errors committed outside that scope. This distinction mirrors the approach adopted in administrative law between service-related fault and personal fault committed outside the exercise of official duties. Accordingly, where the manager's conduct constitutes merely a management error, without violation of the law or the company's articles of association and without the use of fraudulent means, he does not incur personal liability toward third parties, provided that he acted in the name of and on behalf of the company. In such cases, the company alone is obliged to compensate for the damage, in a manner comparable to the liability of public administration in cases of service-related fault.

By contrast, where the manager's conduct involves fraud or a violation of legislative or regulatory provisions, he incurs personal liability toward third parties. In addition, the company may also be held liable on the basis of the employer's responsibility for the acts of its subordinate[48], where the damage is caused by the manager in the performance of his duties, on the occasion thereof, or as a result of them, in accordance with the general rules of civil liability[49]. In such cases, the company retains the right of recourse against the manager to recover compensation if the fault committed is considered serious[50].

From a practical perspective, however, it remains difficult to identify clear applications of the personal liability of the acting manager toward third parties based on an analysis of Articles 623 and 638 of the Commercial Code. Under these provisions, the acting manager is not held personally liable unless the company proves that the third party dealing with it was aware that the manager had exceeded the limits of his authority.

Second: Damage

Damage constitutes the second fundamental pillar of civil liability, whether arising from a contractual or tortious act. Fault alone is insufficient to establish civil liability; it is also required that the manager's actions cause harm to the company's interests or to those of third parties. The Algerian Civil Code emphasizes the necessity of damage for the establishment of liability in several provisions, most notably Articles 124 and 182 bis. However, the legislation does not define the term explicitly, leaving it to jurisprudence and judicial interpretation to clarify its scope.

The majority of legal doctrine defines damage as "harm that affects a person in one of his rights or in a legitimate interest",[51] whether material or moral. In all cases, the injured party seeking compensation must prove the existence of such damage using all available means of evidence. Damage, given its nature, is generally categorized into material and moral damage[52].

1- Material Damage

Material damage refers to harm affecting a person's rights or legitimate interests that can be assigned a monetary value, as

it directly impacts financial interests[53]. Material damage is among the most common types of harm experienced by commercial companies as a result of the management of their interests by their representatives. Examples include financial losses resulting from negligent or abusive use of company funds.

In the context of company management, a manager's misconduct may also cause damage to the company's reputation, such as harm to its trade name or creditworthiness. This type of harm may also affect in-kind rights of a specialized nature (e.g., commercial property rights), which can be difficult to quantify because the harmful effects may not be immediately apparent but emerge over time. Material damage is closely linked to the interests of the affected company, which can be impacted in various ways[54], Examples include:

- The manager refrains from competing with another company in which he has direct or indirect interests.
- The company's revenues are reduced due to renting its commercial property to another party in a manner that yields less financial benefit, rather than exploiting it for higher gain.
- The company's resources are limited as a result of unfair competition.

The financial interest affected must be legitimate, meaning that it does not violate public order or public policy[55].

2- Compensation for Moral Damage

Moral damage refers to harm affecting a person's rights or legitimate interests other than financial, such as harm to

social, psychological, or reputational interests[56]. While moral damage does not directly result in financial loss, it can have indirect financial consequences. For instance, harm to reputation may adversely affect the company's business relationships, reduce creditworthiness, or cause financial difficulties.

An example of moral damage in commercial companies is the commission of fraudulent acts or theft against the company's creditors. Such acts carry serious moral and financial consequences, as they undermine confidence in the company's management, reduce business dealings, and may ultimately contribute to its financial instability or even bankruptcy[57].

Moral damage, which some jurists also refer to as non-material damage, constitutes an unlawful infringement on the psychological or reputational aspects of a person [58].In the context of companies, this includes harm to the company's commercial name or reputation in the market, also known as commercial property rights. While moral damage may not directly cause financial loss, its consequences often indirectly affect financial interests and economic projects. This occurs because such harm impacts the company's relationships with third parties, whose confidence in the company's credibility and reputation may be undermined. Estimating this type of damage is particularly challenging, as its effects may not manifest immediately but emerge over time.

The Algerian legislator explicitly recognized compensation for moral damage under Article 182 bis of the Civil Code, added by Law 05-10, confirming that compensation for such harm is legally permissible.

Third: Causal Link Between Fault and Damage

Causation constitutes the third essential pillar of tort liability. It requires the existence of a direct relationship between the fault committed by the responsible person and the damage suffered by the injured party[59].

Article 124 of the Civil Code provides that "any act committed by a person that causes harm to others obliges the person who caused it to provide compensation." For liability to be established, there must be a causal connection between the act constituting the fault of the manager and the harm suffered by the injured party, whether the company, shareholders, or other stakeholders.

Accordingly, the right to compensation is contingent on demonstrating this causal relationship between fault and damage[60] , Challenges arise in cases involving multiple causes or circumstances that contributed to the occurrence of the damage. Among the theories developed to address this issue, the most significant is the theory of the productive cause, which holds that the factor with an effective role in causing the damage bears responsibility[61].

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From a practical perspective, proving the causal relationship between fault and damage can be difficult. Managerial acts may only produce observable harm long after they are committed, often in a different economic context than that in which the acts occurred. Despite this, managers' liability is determined based on violations of legislative and regulatory provisions applicable to companies, breaches of the company's articles of association, and non-compliance with commercial customs. Liability arises whenever the company, its shareholders, or third parties suffer harm as a result. The assessment of all facts constituting the causal relationship ultimately falls within the discretion of the trial judge[62] .

Section Two: Conditions for the Civil Liability of the Members of the Board of Directors in Aggravated Cases

Partners in companies of persons shall be personally and unlimitedly liable for the debts of the company, but in capital companies they shall not be liable for the debts of the company except to the extent of their contribution to its capital, as is the case in joint-stock companies. The financial liability of the legal person shall constitute the general guarantee for the creditors of these companies [63].

As an exception to this, the Algerian legislator acknowledged the responsibility of the managers for the debts of the joint-stock company in the event of judicial settlement or bankruptcy under Articles 715 bis 27 and 715 bis 28 BCE when one of the cases mentioned in Article 224 of the CCE is available,[64] namely:

- –The acting manager, under the shadow of the legal person, carries out business in his personal interest.

– Or dispose of the company's property as if it were his own.
– Or arbitrarily proceeded in his own interest to exploit a loser that can only lead to the legal person's cessation of payment.

It is clear from the content of this article, which applies to joint stock companies of both types, that the legislator has imposed strict civil liability on those who manage them on the basis of presumed errors specified in the text of the law. The fact that the administrators committed one of these errors is sufficient to oblige them to bear the debts of the company from their own funds if their error contributed to the formation of the deficit or the entry of the company into the stage of bankruptcy and judicial settlement[65].

It should be noted that, in this context, fault is considered a simple presumption that allows for proof to the contrary. This approach is expressly recognized by the Algerian legislator in Article 578(3) of the Civil Code, which provides: “In order to avoid the responsibility imposed on them, the managers or partners involved must provide evidence that they have conducted the management of the company’s affairs with the same activity and diligence expected of a paid agent.” Accordingly, if it can be demonstrated that a financial deficit arose due to reasons beyond the manager’s control, his liability is consequently discharged.

Under the general rules of civil liability, the burden of proof rests with the plaintiff (the injured party), who must establish that the fault was the cause of the harm suffered. This is relatively straightforward when the case involves violations of legislative or regulatory provisions, or breaches of the company’s articles of association. Conversely, proving

managerial errors, as discussed earlier, may present significant practical challenges, particularly when the acts are complex or relate to the exercise of managerial discretion.

To address these challenges, judges may seek the assistance of specialists and experts. They may also consider prevailing customs and practices in company management, using the standard of the ordinary person to assess the presence and seriousness of the fault. Ultimately, the evaluation of fault and the determination of its degree of severity fall within the competence of the trial judges, subject to review by the Supreme Court[66].

Second Requirement: The Basis for the Civil Liability of Board Members

The manager's failure, error, or negligence in exercising the care required to manage the company renders him responsible for any mistakes that cause harm to the company. This responsibility may be individual or joint with other directors, and it applies toward the company, its shareholders, and third parties, as confirmed by Article 715 bis 23 of the Commercial Code.

Section One: Personal Responsibility

A director is held individually liable when he commits a fault in the performance of his duties or in connection with them within the company. Individual liability is established only if the director commits a distinct error that causes harm to the company or others, either by violating legislative or regulatory provisions, breaching the company's articles of association, or committing a managerial error[67].

Consequently, the acting manager may bear personal civil liability toward the company, its shareholders, and third parties for management and administrative acts [68] in cases where he alone commits errors without the participation of other directors. Examples include exceeding the limits of authority granted to him or entering into agreements outside his competencies [69].

It should be noted, however, that establishing the personal liability of one manager does not absolve the other directors from civil responsibility. If it can be shown that they monitored or were aware of the negligent acts, or that they failed to exercise the necessary care and diligence to prevent the error, they may also be held liable for their lack of oversight or participation in the company's affairs[70] .

Section Two: Joint Liability

If the managers commit a joint error in the management and management of the company [71], they are jointly liable for the resulting compensation. The basis of this solidarity for the members of the board of directors lies in the principle of "unity of authority" governing the work[72] of these members. If a wrong decision is issued and approved by a majority, all members are jointly liable for the damages resulting from it. In this case, the court shall determine the share of each member in compensating these damages.[73]

Accordingly, joint liability applies by operation of law to the managers of a joint-stock company when an error is attributable to multiple members of the Board of Directors or the Board as a whole. This occurs in cases where they violate the provisions of the law applicable to joint-stock companies, breach the company's articles of association, or commit managerial errors. In all such cases, the misconduct

constitutes an act contrary to the company's interests, whether through an act exceeding the scope of the company's purpose or a decision causing significant negative effects on the company.

However, members who formally objected to the actions of their colleagues and recorded this objection in the minutes of the Board meeting from which these actions originated are exempt from joint liability. Mere absenteeism, if justified, does not absolve responsibility; rather, unjustified absence may itself be considered negligence, which incurs liability. This provision aims to prevent directors from avoiding joint responsibility by deliberately abstaining from attendance[74].

The Chairman of the Board, as the company's legal representative, holds the authority to act on behalf of the company in contracts, agreements, and other transactions. Consequently, any mistakes committed in the exercise of these powers may give rise to liability whenever they cause harm to the company or third parties.

The chairman's civil liability arises from breaches of legal obligations under applicable legislative and regulatory provisions, breaches of the company's articles of association, or managerial errors. Liability arises whether the breach was committed intentionally or through negligence, and whether it involves acts of commission or omission. In all cases, the chairman's responsibility is personal and individual if the error is committed solely by him without participation from other directors. However, if other directors are shown to have been complicit in the error, they may be held jointly liable.

CONCLUSION

From the above, it is clear that the civil liability of directors of a joint-stock company with a Board of Directors, while governed by the general provisions of civil liability in the Civil Code, is also subject to special provisions that broaden its scope. These provisions assign liability to all board members and recognize multiple forms of managerial error, whether committed individually or jointly. Such liability applies both during normal operations and in the event of the company's bankruptcy.

Accordingly, the civil liability of members of the Board of Directors of a joint-stock company can be defined as: the legal obligation to compensate for harm caused to the company, shareholders, or third parties as a result of their breach of duties under the law or the company's articles of association, or due to errors in management. This obligation entails the compensation of damages resulting from their actions.

Recommendations

- Adopt specific provisions regulating the civil liability of members of the Board of Directors, tailored to their legal status as managers, particularly regarding the legal basis for liability and the standard of care, which should reflect that of a "careful person."
- Review and improve the provisions governing joint-stock companies, especially in light of economic developments, to ensure they remain relevant and effective.
- Reassess the Arabic wording of commercial law texts in comparison with the French wording, as analysis indicates that the French texts often convey the more

accurate legal meaning, and better coordination between the two is recommended.

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