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Civil liability Crisis

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Abstract:

Civil liability is one of the most important topics addressed by the Civil Code in all legislation. However, this liability has become a difficult crisis, perhaps due to the shortcomings and stagnation that have become apparent in its pillars and its inability to achieve the functions assigned to it, which has pushed it to retreat, which has prompted modern legislation to cling to the insurance system and search for new mechanisms for compensation Perhaps the reason for the crisis that civil liability is suffering from is due to the clash of the pillars of civil liability and its traditional foundations with modern developments, which has made traditional liability unable to absorb modern and diverse dangers, which has created a real crisis that is ravaging liability.

key words: Crisis, civil liability, decline, Traditional, modern developments.

Introduction:

Civil liability has become suffering from a real crisis that affects all its foundations. Perhaps this is due to the radical transformations that daily life is witnessing at all levels. Since the Industrial Revolution and the transitional boom that accompanied this revolution, which affected all levels and moved to legal life, we find that this impact has caused liability to suffer a kind of stagnation and stagnation.

Classical civil responsibility, which belongs to the last century, has become unable to keep pace with the technological and economic boom that societies are witnessing, and thus responsibility has found itself standing helpless in the face of this amount of tremendous development, and perhaps this is clearly evident through the excessive deficit that the pillars of civil responsibility have begun to suffer from.

Such that the foundations and pillars on which civil liability is based have become incapable, and the role of error in them has declined and has become limited in our present time. Perhaps this is due to the emergence of new types of

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dangers and damages that liability has not been able to keep up with and error has not been able to comprehend and contain, in addition to the emergence of parallel theories such as the theory of danger and the theory of guarantee, which have drawn the attention of legislation and made them turn to them This is what made many theories in the twentieth century call for abandoning civil responsibility.

While other theories have emerged calling for the necessity of reconsidering the elements of classical civil liability and the necessity of introducing a comprehensive and radical reform of the foundations and pillars on which civil liability is based so that it remains in place in the future and is not removed due to the development of insurance, such that the future of liability has become dependent on the extent to which it provides compensation to people and on the extent of its effectiveness in carrying out the desired functions assigned to it[1], especially after the multiplicity of damages and the growth of many risks To the point that it has become a matter not only of compensating for damages, but also of expecting them to appear.

The aim of this study is to shed light on the most important factors and obstacles that were a direct cause of creating the civil liability crisis and preventing it from carrying out its functions normally, which made civil liability suffer from a kind of paralysis in its legal mechanisms. Perhaps this is what prompts it to raise the following problem: **What are the signs that show the civil liability crisis, what are the most important factors that were the reason for creating this crisis, and will the crisis be the reason for the disappearance of civil liability in the future?**

To answer the problem, the article is divided into two title:

THE FIRST TOPIC: Decline in the foundations of civil liability

THE SECOND TOPIC: Obstacles to implementing civil liability provisions

THE FIRST TOPIC: Decline in the foundations of civil liability

Civil liability is one of the oldest legal theories contained in the Napoleonic Code, and has since been transferred to all civil laws in general and Algerian civil law in particular, as it is the effective and efficient mechanism for achieving social justice. Civil liability is based on classical pillars and foundations that have remained rigid for a period of time.

But due to technological and economic developments, many modern dangers and harms have appeared, diversified and branched out, which were the result of the tremendous development produced by the tremendous scientific boom in all fields. Thus, classical responsibility found itself standing helpless to contain the

[1] Sanaa Khamis, Objective Product Liability as a Compensatory Mechanism for Victims of Defective Product Accidents (Comparative Study), Memorandum for a Master's Degree in Law, Mouloud Mammeri University, Faculty of Law, Tizi Ouzou, Algeria, 2015, p. 21.

situation. Perhaps this is due to the fact that the foundations of classical responsibility belong to the last century, and therefore it cannot be a treatment for the dangers and harms imposed by the present time Such that the foundations and pillars on which responsibility is based have become rigid and somewhat incapable of providing protection for the injured party on the one hand and achieving social justice on the other hand. Perhaps the reason for this is due to their failure to understand the means capable of protecting the injured party at times, or the difficulty of proving the availability of the pillars of responsibility at other times. Thus, a large segment of those.

affected have begun to suffer from losing their right to obtain compensation Which prompted legislation in general and the Algerian legislator in particular to search for Means and mechanisms that would achieve comprehensive protection for the affected person and accommodate the category of new dangers and damages, which created the emergence of a type of special texts that protect people in society.

In light of the worsening situation and the emergence of a crisis in civil liability, many modern theories have emerged calling for abandoning the adoption of civil liability and using other theories and mechanisms that are sufficient to give the injured party the compensation he deserves and those who breastfed the people who caused the damages[1]. Perhaps the greatest witness to the crisis that civil liability is going through is the terrible decline and destabilization that has affected its most important pillars, such as the pillar of error, the pillar of damage, and the stagnation that has affected these pillars.

FIRST REQUIREMENT: The role of the error pillar is diminishing in light of the increasing dangers

Civil liability has witnessed a stagnation in the application of its provisions at all levels. This is perhaps mainly due to the inability of error, which is the most important pillar of civil liability, to keep pace with the tremendous developments in daily life. Error has become incapable and its role in working to establish liability has noticeably declined, which has paved the way for many alternative theories that have become looming on the horizon, which in turn have reduced its role, perhaps the most important of which are the theory of risks and the theory of guarantee[2]

[1] Muammar Ben Tariya, The extent to which the idea of risks affects the legal system of civil liability for professionals, a memorandum for obtaining a master's degree in private law, Abu Bakr Belkaid University, Tlemcen, Algeria, 2012, p. 06.

[2] Hassan Ali Al-Dhunun, Al-Mabsut fi Sharh Al-Law Al-Madani: Error, Wael Publishing and Distribution House, Jordan, 2006, p. 17.

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The shortcomings of error were not only the result of a short period, but the inability of error to be the sole basis for liability appeared since the Industrial Revolution, and its decline continues to this day, especially after the diversity of damages and the many industrial and technological dangers, which created a crisis that ravages the existence of civil liability.

The decline of the element of error led to a radical shift in the entity of liability in the twentieth century. After compensation was a debt owed by the person who caused the damage, it has now become a right enjoyed by the injured party. This has made many jurisprudential theories sound the alarm and call seriously for the necessity of reforming the classical elements of civil liability, most notably the element of error So that the future of the latter has become linked to the extent of its ability to provide protection and compensation to the affected party[1], especially after The number of damages and the growing focus of many risks, to the point that it has become a matter not only of compensating and repairing the damages, but also of expecting them to appear, which is something we clearly witness in expected and unexpected damage and environmental damage.

Firstly: Effective theories in reducing the role of error

Many theories have led to a terrible decline in the role of error in civil liability. Jurisprudence and the judiciary have long established that the occurrence of damage is the basis for the establishment of civil liability. The majority of jurists agree, but the matter is different with regard to error, such that it is considered a subject of violent and widespread debate whether it is a fundamental pillar for the establishment of liability or whether it is unnecessary, meaning that liability can be established in isolation from it This led to the emergence of many jurisprudential theories that directly contributed to the decline in the status of error, which made many theories assert that these modern mechanisms and theories led to the shrinkage and decline of the element of error in liability and that these theories became the alternative to establishing civil liability without error, which will be completely dispensed with in the future[2].

1- Implications of the theory of bearing the consequence and its repercussions on the error corner

Daily life and the intensification of social damages have proven the deficiency of error as a basis for establishing civil liability and reparation for damage. It has become a given not to rely on and be satisfied with personal error alone as a basis for establishing liability and reparation for damage, which has led to the emergence of several new theories and ideas that seek to remove the

[1] Ali Filali, Obligations: The Act Due to Compensation, Third Edition, Mouffem Publishing, Algeria, 2012, p. 83.
[2] Ibid., p. 87.

traditional idea that error is necessary to establish tort liability Instead of the error being the basis for the establishment of liability, it has become an obstacle that often prevents its establishment or a reason for its negation. Also, instead of the error being an argument for the injured party, the latter has become an argument against him that leads in many cases to the loss of his right to receive compensation[1].

Perhaps this is what made jurists search for mechanisms and theories that would fill the gaps left by the element of error, and jurisprudence has been guided to a theory that would compensate for the element of error in civil liability, perhaps the most important of which is the theory of bearing responsibility.

The content of the theory of liability, according to jurists, is that the responsibility of the follower for subordinate actions is based on the idea of liability, meaning that the person bears the risks of his actions, whether they are wrong or not. Some supporters of this theory are content to deny the necessity of error for civil liability to exist and decide that every wrong action that causes harm to others obliges its perpetrator to compensate for this harm. French jurists call this idea the theory of complete risks.

The theory of bearing responsibility has become like a new officer in responsibility that works to support it and fill the shortcomings left by the error in it, so that this theory has become like a safety valve that ensures that civil liability is considered a modern standard that works to establish liability[2].

While some of the jurisprudence has taken the consideration of bearing the responsibility, it completely denies the element of error, such that taking error as a basis or essential element of civil liability is abandoned. Also, most opponents of the traditional idea of error do not stop at this point and merely deny the error Rather, they are deliberately demolishing that traditional idea that sees error as an indispensable pillar for establishing civil liability, which has made them search for an alternative or a new standard and control for liability away from the idea of error. Therefore, we find that each group of them has adopted its own standard that it believes is the most appropriate for establishing civil liability.

2- Warranty compliance theory

The inability to adopt the theory of bearing responsibility as a new standard for the establishment of civil liability, and the inability to apply this theory to all cases due to the absolute impossibility of doing so, and in the face of the disastrous failure to apply this theory, the jurists searched for a new theory that would solve

[1] Ali Hassani, The Legal Framework for Compliance with Guarantees in Products, PhD Thesis, Abu Bakr Belkaid University, Tlemcen, Algeria, 2012, p. 334.
[2] Mustafa Abdel Hamid Ayyad, Involuntary Sources of Obligation in Libyan Civil Law, Qar Yunis University Publications, Benghazi, Libya, 1990, p. 21.

the place of the corner of error or address the deficiency present in Civil liability resulting from the decline in the role of error. Jurists have come up with a new theory that combines error and the theory of bearing responsibility. This theory is represented by the theory of guarantee[1].

The content of this theory is that the person commits to a guarantee, which thus achieves compensation for the injured party. An example of this is the commitment of the follower, for example, or the guardian of the dangerous thing, to compensate for the damages that result from the thing or the follower.

The theory of guarantee also gave civil liability two functions: guarantee and penalty. Guarantee is achieved through the presence of damage and without the need for the injured party to prove it, whether physical, material or moral, without considering the behavior of the perpetrator. The penalty is added in the form of an additional sum of money in the event of committing a mistake[2].

This theory is based on the idea of excluding error as an element of responsibility and limiting it to the harmful act and the causal relationship between the damage and the real act that occurred. It is an objective theory that searches for damage without bothering to search for the behavior of the one who caused this damage, which is represented by the error.

Secondly: The contribution of cases in which there is no error to the decline in its status

Article 124 of the Algerian Civil Code stipulates that "every act, whatever it may be, committed by a person through his own fault, which causes harm to others, obliges the person who caused it to occur to compensate," meaning that every transgression is considered an illegal act as a general rule However, this rule has exceptions where the infringement becomes permissible, so the liability of the perpetrator is not established despite the harm committed against others, and these cases lead to the absence of the error, and thus these cases have become effective in reducing the role of the error in civil liability Such that these cases indirectly emptied civil liability of the element of error, so it is not investigated whether the person is at fault, such that the error is considered justified, and thus it is not taken into account and the judge does not pay attention to it. These cases brought down the curtain on the error as an element and basis for the establishment of liability and led to its abandonment[3].

[1] Hussein Amer and Abdel Rahim, Civil Liability, 2nd Edition, Dar Al Maaref, Cairo, Egypt, 1979, p. 120.

[2] Souad Bakhtawi, Civil Liability of the Debtor Professional, Master's Thesis, Specialization in Professional Liability, Faculty of Law and Political Science, Abu Bakr Belkaid University, Tlemcen, Algeria, 2012, p. 50.

[3] Jamil Al-Sharqawi, The General Theory of Commitment, Book One: Sources of Commitment, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 1995, pp. 466 and 467

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1- Status of execution of orders or application of the law

A person can deliberately deny the error in civil liability by removing this characteristic from the material element of the error represented by the transgression so that his act is described as an act free of illegality and thus liability does not exist If he proves that his action was the result of carrying out orders or applying the law[1].

So that the employee and the public worker are not personally questioned about the damages caused to others as a result of the actions they carry out as long as they are implementing orders issued by the president or issued in accordance with the law and obeying them is obligatory, which is what the Algerian legislator confirmed, as Article 129 of the Algerian Civil Code[2] stipulates that implementing the president's order makes the assault a

legitimate act if the following conditions are met :

*The perpetrator of the act must be a public employee, whether he works in central or decentralized administration or public interests with a legal personality .

*The work must be the direct result of the work performed by the employee in implementation of the orders of the boss within the framework of the job he performs .

*The employee must prove that he has done the work and taken all the foresight, vigilance and caution required by caution. The employee's standard of conduct in this regard is that of an ordinary employee, but this does not mean extending the implementation of the president's orders until the crimes are committed .

If these conditions are met, the employee who carried out the president's orders will no longer be responsible, but they are the responsibility of the commanding president.

There may be a legal text that orders an act that is usually illegal and permissible, but if it is stipulated in the law and implemented, the perpetrator whom the law has designated for this act and authorized to do so becomes not responsible for the damage Which was caused by the implementation of a legal text that ordered or authorized him to do so, and this case is very similar to the case of implementing the president's order .

*In this case, the law must have ordered or authorized this .

*The error must be as specified by law .

*The danger is imminent, threatening the person or others in life and money with real danger .

[1] Belhaj Al-Arabi, The General Theory of Obligation in Algerian Civil Law, Part 01, Office of University Publications, Algeria, 2004, p. 64.

[2] Article 129 of the Algerian Civil Code

Responsibility is not established, and the person responsible for the act is asked if he is implementing a legal ruling, such as a policeman who uses a weapon to stop a thief, for example .

In these cases, we find that the error is not taken into account, and these cases are considered forms of error regression

2- State of necessity and legitimate defense

There are other cases that lead to the absence or justification of the error, which are also other forms that conclusively indicate the decline of the error in tort liability. These cases are represented in the case of necessity and the case of legitimate defense. If the damage committed against others results from the application of a legal text that orders or authorizes an act that is usually illegal, but as long as necessity imposed it or legitimate defense, it becomes permissible and does not arrange the liability that in turn, compensation is arranged to compensate for the damage, and this is due to the reduction of the error.[1]

A state of necessity is when a person finds himself forced to pay a serious danger by sacrificing something less than or equal to him, which leads to harm to others in order to avoid greater harm to him or others. This is what is stated in the text of Article 130 of the Algerian Civil Code, which states that "whoever causes harm to others in order to avoid greater harm to himself or others shall not be obligated except to compensate as the judge deems appropriate." In order to implement the text of this article, the following conditions must be met :

*The danger is imminent, threatening the person or others in life and money with real and immediate danger.

*The source of the danger must be foreign to the one causing the harm and to the one being harmed, such as the action of nature or the action of others .

*The risk to be avoided must be much greater than the damage caused .

The state of legal defense is also considered a state of states that lead to the absence of error and the idea of error regression appears. The state of legal defense can be defined as the state in which a person is forced to do an act that is not legislated by law to repel an unlawful state aggression directed at himself or his money or at the soul of another or his money. Therefore, legal defense can, be considered as a license and even the performance of a duty imposed on him This is

what the Algerian legislator adopted in Article 128 of the Algerian Civil Code .

According to this article, the legal defense is one of the reasons for permissibility and the decline of error, which makes transgression, which is the material element of error, a legitimate act that does not entail any responsibility, and several conditions are required for this, which are as follows:

[1] Belhaj Al-Arabi, op. cit., p. 70

*There must be a specific danger threatening the person to himself, his money, or to the soul and money of others .

*The danger threatening the defending person must be an unlawful act

*The person must not be able to repel the assault by any other legitimate means

*The person must not exceed in his defense the amount necessary to repel the assault. If he exceeds that, he is considered at fault and is therefore required to compensate to the extent he exceeds it .

In this case, the person does not cause harm to others of his own free will, but rather is forced to do so to ward off aggression, so the absence of the illegal act and its transformation into a legitimate and permissible act eliminates responsibility, and thus compensation for the harm committed[1]

SECOND REQUIREMENT: a decline in liability due to the increase in insurance

Civil liability has witnessed a crisis at the present time, and perhaps this is due to the shortcomings of its pillars on the one hand and the difficulty of proving it on the other hand, to the point that it has become unable to provide the desired protection for people in society, which has made many jurisprudential theories call for refraining from taking civil liability to recover compensation and

In light of the crisis witnessed by civil liability, a new parallel liability system has emerged that seeks to achieve the same goals that civil liability seeks to achieve, which is insurance. This system has spread in a way that Great in societies, especially after it became an inevitable necessity imposed by states and legislation on people Mandatory.[2]

However, the widespread spread of insurance, with the blessing of legislative countries, led this system to affect civil liability, such that the widespread spread of insurance necessarily led to a contraction in the rules of civil liability, such that civil liability was practically abandoned, such that many jurisprudential theories began to see that insurance would lead to the disappearance of civil[3]liability in legislation and societies due to the difficulty of proving its pillars on the one hand or the shortcomings of its pillars on the other hand.

Firstly: The decline of the civil liability function

The excessive development of insurance, with the blessing of legislation, has led to the implicit disruption of civil liability functions. Civil liability has directly

[1] Article 130 of the Algerian Civil Code

[2] Hussein Ali Al-Dhunun, Al-Mabsut fi Civil Liability, Damage, Wael House for Printing, Publishing and Distribution, Iraq, 2006, p. 14.

[3] Muhammad Sabri Al-Saadi, Sources of Obligation, Tort Liability, Act Due for Compensation, Dar Al-Huda for Printing and Publishing, Algeria, 2011, p. 140.

become extremely difficult to achieve the desired functions it aspires to achieve and which it was created to achieve. This is perhaps due to the terrible and increasing development of the insurance system, such that civil liability functions have been dwarfed in light of the inflation of insurance.

Returning to the classic provisions of civil liability shows that civil liability no longer performs its preventive and deterrent function in light of the widespread spread of insurance. Civil liability has been largely unable to achieve the necessary protection for the injured party and protect him from all the dangers, damages and errors that surround him and that may affect his body, money or honor, which makes the preventive function of civil liability suspended.

Liability also witnesses a crisis that disrupts the deterrent function of liability, such that the person who caused the damage has become relieved from not paying compensation to the person who caused the damage to him, given the difficulty of the injured party in proving the error and proving the causal relationship between the error and the damage, and thus civil liability has become It does not perform its deterrent function, which has made people dare to make mistakes and cause damage due to the lack of a deterrent that works to stop them[1].

Civil liability has also failed to achieve the therapeutic function, as reality has proven, in many cases, the inability of civil liability provisions to provide compensation to the injured person, and he remains without compensation for the damage he suffered. Thus, liability has failed miserably in achieving the therapeutic function for the damages assigned to it, which prompted legislation to search for an alternative to obtain compensation and to achieve the therapeutic or corrective function in society.

Secondly: The development of the idea of insurance violates civil liability

The excessive increase in damages and the diversity of risks have led to the emergence of the shortcomings of civil liability and the stagnation of its pillars and foundations. In light of the crisis witnessed by liability, the insurance system emerged at the beginning of the twentieth century, which became a parallel system that raged with civil liability.

The insurance system has become a new form of collective liability to compensate for damages, or what is known as collective liability in some legislations, such that all members of society participate in repairing the damage caused to the injured party, which allowed the emergence of the idea of abandoning the financial effects of liability and moving towards the idea of cooperative to confront damages and risks, such that the provisions of classical

[1] Mourad Fajali, Compensation System for Violation of the Right to Physical Safety, PhD Thesis, Faculty of Law, University of Algiers, Algeria, 2015, p. 120

civil liability have become unable to keep pace with the effects of new risks and damages It has become insufficient to confront physical damage[1], which has led to the emergence of these modern theories, which are the basis of the insurance system.

Modern legislation has also turned to the insurance system as a simple system and not ambiguous in its aspect related to compensating the injured party, as it is a system that guarantees the achievement of direct compensation for the injured party without the need to search for the person responsible and whether the latter is at fault or not, which made the insurance system classified within the social risk system, as insurance is based on the idea that errors, damages and risks are Social calamities that affect people's physical, material and moral integrity must be combated and the necessary compensation must be provided to them. This has become a threat to classical civil liability and a direct threat to abandon it and refrain from its rules, considering it a sterile system that requires proof, which is often difficult, which wastes the right of the injured party to obtain compensation, which directly affects the rules of social justice and violates its balance[2]

THE SECOND TOPIC: Obstacles to implementing civil liability provisions

Although civil liability is one of the most important traditional theories, and its roots extend to all civil laws in most countries, it has become difficult to implement on the ground in societies and contain the dangers and damages that affect people, which has made civil liability provisions suffer from real obstacles in implementing their rules[3] and directly clash with the lived reality Perhaps this is due to the fact that classical liability has become unable to keep pace with the new dangers and damages imposed by reality and technological progress, in addition to the emergence of changing damages.

There are also many factors that have become a real obstacle to the application of civil liability provisions, perhaps the most important of which is the difficulty of proving the direct causal relationship between the error and the damage, and thus it is difficult for the judge to award compensation for the failure to actually carry out liability[4].

There is also a second factor that prevents the establishment of civil liability, which are cases of absence of liability, which in themselves directly negate it,

[1] Muhammad Ali Farah, Tort Liability between Theoretical Principles and Application Problems, New University House, Alexandria, Egypt, 2021, p. 215.
[2] Belhaj Al-Arabi, op. Cit., p. 76.
[3] Ali Filali, op. Cit., p221
[4] Jamil Al-Sharqawi, op. Cit., p225

represented by the foreign cause, force majeure, the victim's fault, and the fault of others.

These factors originally intended to reduce the scope of civil liability and became a real obstacle preventing the application of civil liability provisions, which made many jurisprudential studies sound the alarm about the decline of civil liability and the stagnation of its provisions, which made contemporary jurisprudence call this situation the civil liability crisis[1].

FIRST REQUIREMENT: Overlapping responsibilities are a real obstacle to the application of liability provisions

Perhaps the most important problem that may arise in the civil liability system is the overlap of two or more liabilities in the same damage, which makes it difficult for the judge to decide the type of liability that must be adapted in order to determine the necessary compensation for the injured party. This is known as the theory of absorption in liability, or in German jurisprudence it is also called the system of overlap between liabilities, and in Polish law it is also known as the theory of entanglement of liabilities.

The theory of civil liability, in short, means that liability for damage may take or include compensation for other damages associated with it, even if these damages are not directly the result of the fault committed.[2]

In other words, a person may be liable to compensate for indirect damages resulting from the original damage.

Firstly: The overlap between the responsibility of the controller and responsibility for personal action

There is often a clear overlap between the responsibility of the supervisory authority stipulated in Article 134 of the Civil Code and the responsibility for the personal act stipulated in Article 124 of the Civil Code, which makes it difficult for the judge to apply the provisions of civil liability due to the clear overlap between the two responsibilities.

Perhaps the best example of this situation is the father's or mother's failure to monitor their minor son, which in itself causes harm to others. In this case, we find the theory of absorption clear and apparent. Thus, the judge finds himself facing two responsibilities due to the availability of both conditions, which requires him to give priority to one responsibility over the other, which is known as the theory of absorption[3].

The theory of absorption requires the judge to apply one liability at the expense of another liability, which is known as the theory of absorption. However,

[1] Ibid, p 226.
[2] Ali Filali, op. Cit, p200.
[3] Ibid, p 201.

this is also considered a real obstacle to civil liability rulings due to the clear overlap between liability rulings, which unites many conditions between them.

Secondly: The overlap between the responsibility of the follower and the responsibility of the guardian of the thing

Often, we find that the responsibility of the follower overlaps with the responsibility of the guardian of the thing, which makes the judge helpless in the face of this ambiguous interference between the provisions of the two responsibilities and helpless in applying any type of responsibility, and this is due to the close proximity between the conditions of the two officials, which makes separating them difficult for the judge[1].

Perhaps the best example of this overlap is when a worker, during work, accidentally pushes another worker who fell dead into the well while they were cooperating in operating the water engine in front of the well to water the crops on the land where they work. In this case, we find a clear overlap between the provisions of the responsibility of the guardian of the thing and the responsibility of the follower, which makes it difficult for the judge to apply the ruling to collect compensation for the family of the injured victim.

The judge cannot determine responsibility except by referring to the cause that produced the damage, and from that the judge can estimate compensation, and thus the judge can decide on the prescribed responsibility.

SECOND REQUIREMENT: The interruption of the causal relationship is an obstacle to liability

Perhaps the most important challenge facing the application of civil liability provisions on the ground is the severance of the causal relationship, as the causal relationship is the direct link between error and damage, and its existence leads to the establishment of liability and enables the victim to obtain compensation.[2]

However, the causal relationship can often be severed for several reasons stipulated by the legislator in the text of Article 127 of the Civil Code. These reasons are represented by the foreign reason, force majeure, the victim's fault, and the fault of others. These cases lead to the severance of the causal relationship.

The interruption of the causal relationship means the end of the direct link between the debtor's fault and the damage suffered by the injured party, which leads to the absence of civil liability for the fault or damage. This link is usually broken by force majeure, an error on the part of the injured party himself, or an error on the part of a third person, as these factors become the direct cause of the damage and not the first error.[3]

[1] Jamil Al-Sharqawi, op. Cit., p236
[2] Belhaj Al-Arabi, op. cit., p. 77.
[3] Ali Filali, op. Cit., p201

It is not sufficient for liability to exist if there is error and damage, and if there is a contemporaneity between them. Rather, the error must be the reason that led to the damage. There may be error and damage[1], but there is no causal relationship between them, and therefore the responsibility of the person who committed that error does not exist.[2] The traditional example in this field is when a person puts poison in another person's food, and before the poison spreads through his body, another person shoots him dead. In this example, whoever put poison in made a mistake, but it was not this mistake that led to death, and thus the causal relationship between this mistake and the damage, which is death, was eliminated. A causal relationship may exist, but the fault is not present, and yet the person is responsible for the damage that occurred as a result of his action even if the elements of the fault were not present in his action.[3] This is the case of responsibilities based on bearing responsibility. It is the responsibility of the injured party to prove the causal relationship.

If the injured party proves the element of error and the element of harm, then causality is assumed between them.

Therefore, the independence of the causal relationship from the error angle does not appear clearly, and the causal relationship disappears behind the error angle. This independence only emerges in cases where responsibility is based on a presumed error. There is no difficulty in proving causality if a single cause led to the damage. But if the causes that led to the damage are multiple, then here arises the problem of proving the causal relationship between the error and the damage.

Conclusion:

We conclude from the above that civil liability is witnessing a severe and real crisis at the present time, and this is evident through the terrible decline that has affected its most important pillars. It is clear from this study that the civil liability system is a rich and wealthy system in terms of the functions it performs Especially the preventive ones, which seem to be witnessing development in light of the increasing jurisprudential interest in them and keeping pace with the French legislator and strengthening their role, especially through the mechanism of special punishment embodied either through a civil fine or punitive compensation, and not out of strictness in saying that the preventive function was, is and will remain accompanying the compensatory function.

The modern trend of the civil liability system is the desire for reform to keep pace with successive developments in various humanitarian activities in order to create a protective situation for the category of those affected, whose vast circle

[1] Ibid, p 202.
[2] Jamil Al-Sharqawi, op. Cit., p237
[3] Belhaj Al-Arabi, op. cit., p. 80.

poses a real threat to contemporary civil life. There is no dispute that risk assurance has become an urgent matter that various countries and systems in the world are trying to enhance through insurance institutions or mutual institutions and through what is known as guarantee funds and social security support and other things The new approach to civil liability has made protecting the victim more likely than protecting the official. A new type of risk has also emerged, called social risk, which played a fundamental role in abandoning the logic of civil liability and moving towards an automatic compensation system for bodily harm.

Civil liability is a new function, which is the preventive function. It has also led to the emergence of damages of a special nature, such as widespread damages or future retroactive damages that cannot be paid. This has led to the necessity of adapting the provisions of civil liability to adopt a new approach that differentiates between minor damages that can be repaired and serious and dangerous damages that cannot be repaired. Thus, searching for alternatives that are compatible with precautionary and preventive methods and avoiding risks instead of focusing on the interventionist nature and thus establishing a proactive precautionary liability Risk based.

Civil liability has become witnessing a real crisis that has affected its basic pillars and its provisions, making it difficult to implement on the ground in many cases. It has remained confined to the corridors of justice, which has made a large segment of those affected not receive the necessary compensation to cover their damages, which has prompted many legislations to move towards insurance, both mandatory and optional.

Through the article, we come up with the following suggestions:

*The necessity of making civil liability keep pace with developments, whether in terms of its elements or through methods of proving it, in order to obtain compensation.

*Closing the many legal loopholes that civil liability suffers from to avoid the persons who caused the damage evading the payment of compensation.

*The necessity of civil liability covering and keeping pace with new risks and damages, which guarantees the right to compensation.

*Making liability and insurance two integrated systems that protect the injured party and link them to the same controls and conditions.

*The necessity of containing the new principles in the Civil Code to give a smallpox update to the Civil Code.

*The necessity of separating the conditions of civil liability so that there is no overlap between responsibilities.

*The necessity of finding a real and effective solution to the problem of the interruption of the causal relationship in liability.

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