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The Qualification of Professional Liability as a Form of Legal Liability as Basis for an Approach to the Problem of Malpractice in Physical Education and Sport

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The activity of physical education and sport has become, and needs to continue to be, an object of interest for legal practitioners and for those who wish to include this activity in the context and within the rigors of civilised conduct of the highest morality, but also in a strict legality and liability framework.

The violation of certain rights inherent to human beings regarding their life, health, physical and mental integrity via professional errors (malpractice) manifested in the management, at different levels, of sporting activities, may cause injury to athletes and their dependants. This paper aims to present the liability of all the participants to sporting activities (including managers of sporting activities and organizations involved in these activities) regarding the impact of professional errors occurring in activities of physical education and sport - deeds which may give rise to legal liability, since professional liability, under the conditions of the new Romanian Civil Code and of relevant European Law, has become a form of civil liability.

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About the institution of legal liability. The forms of civil liability

This paper - which may cause / trigger the drafting of a larger study on malpractice in sports (we shall use, in particular, the term sports activity - ***sport*** according to the legal definition contained in the European Union documentation)[1], can contribute to acquiring a legal culture regarding the institution of (legal) liability - referring to infringements on the rules of legal ethics (even Olympic ethics)[2] operational in contemporary society - by legal culture we understand the accumulation of legal knowledge relating to the legal phenomenon, but in close connection with all other knowledge about all fields which form the basis of the existence of human

[1] **The White Paper on Sport**, which entered into force at the same time as the Treaty of Lisbon (01 December 1999) took over the definition of sport included in the **European Sports Charter** (adopted on 24 September 1992, revised on 16 May 2001) - Article 2, Paragraph (1), Letter a). Thus by ***sport*** we understand *"all forms of physical activity which, through casual or organized participation, aim at expressing or improving physical fitness and mental well-being, forming social relationships or obtaining results in competition at all levels"*. Law No 69/2000 on physical education and sport, which has undergone many amendments and additions after to the date of its publication in the Official Journal of Romania, Part I, drawn up after the entry into force of the ***European Sports Charter*** contains a definition different from that of the White Paper on Sport: through ***physical education and sport*** it is meant "all forms of physical activity aimed, through an organized or independent participation, to express or to improve the physical condition and spiritual comfort, to establish civilized social relations and to lead to results in competitions of any level" (Article 1, Paragraph 2). Another observation (somewhat contradictory to the meanings assigned to both the term physical education as well as the concept of sport), according to which "physical education and sport shall include the following activities: physical education, sport in schools or universities, sport for all, professional sports, physical exercise with maintenance, prophylactic or therapeutic purpose".

[2] See: Voicu, A. V, *Some Arguments Regarding the Necessity of Changing the Paradigm of Olympic Education in Agreement With an Adequate Juridical Pedagogy*, in International Sports Law Review Pandektis, 2016, Vol. 11 Issue 3/4, p. 388-397 and Voicu, A.V., Voicu, B.I., *Aspects of Moral and Legal Legitimacy of the Ideology of Sport in Contemporary Society,* in International Sports Law Review Pandektis, 2015, Vol. 11 Issue 1/2, p. 457-464;

society, as part of universal culture and civilisation. Any trainer in didactics and education for a given domain must acquire legal knowledge, through which we understand the minimum informational requirements relating to fundamental rights and freedoms, several concepts regarding compliance with the legal norms, certain legal obligations which every citizen must comply with, a few notions about the principles and forms of legal liability, types of penalties applicable for different forms of illegal conduct, and, as the case may be, their consequences.[3]

Therefore, we believe it is necessary, in the context of the object of this study, to make certain observations concerning one of the forms of the institution of legal liability[4], the most important institution of any legal system, namely concerning civil liability. The traditional doctrine, in the Civil Code, "subjects civil liability, at least at a technical level, to different regimes, depending on whether it consists of civil tort liability or civil contractual liability"[5] so that civil law shall encompass two forms of liability: *tort liability* and *contractual liability*, covered by the New Civil Code, in Chapter IV, Civil Liability. We shall motivate in what follows the new legal nature of the institution of professional liability.

Tort liability[6]*,* regarded as being the common law liability in

[3] Rebreanu Veronica, *Câteva reflecţii privind cunoaşterea dreptului [Certain Observations Concerning the Knowledge on Law],* Article UJ Premium, 19 November 2018.

[4] Costin, M. N., *O încercare de definire a noţiunii răspunderii juridice [An Attempt to Define the Concept of Legal Liability]*, in "Revista Română de Drept" [The Romanian Journal on Law], no. 5/1970, p. 83: "Legal liability is the complex of related rights and obligations, which - according to the law - shall arise as a result of an illegal deed and which constitutes the framework for the implementation of the state's coercion through the application of legal sanctions in order to ensure the stability of social relationships and the guidance of the members of society towards compliance with Law and Order" - thus defined, legal liability shall not be reduced and cannot be confused with legal penalty.

[5] Eliescu, M., *Răspunderea civilă delictuală [Civil Tort Liability]*, Publishing House: Editura Academiei, R.S.R., Bucharest, 1972, p. 7.

[6] The new Romanian Civil Code, Article 1,349 Tort Liability - "(1) Each person has the obligation to comply with those rules of conduct imposed by law or by custom and to restrain from causing harm to the rights and the legitimate interests of others by means of actions or omissions. (2) Those that are not incapacitated and infringe this obligation shall be held liable for all damage

civil law[7] - because "once the conditions of civil contractual liability fail to be met in a given situation, if that situation triggers civil liability, this can only be tort liability"[8] - defined as "the obligation of a person to fix either the injury caused to another through an extra-contractual illicit deed, or, as the case may be, or for the injury for which they are required by law to be answerable"[9].

Contractual Liability[10], the special liability in civil law, is regarded as "the obligation of the debtor of an obligation in a contract to remedy the injury caused to his creditor by the non-fulfilment, *lato sensu,* i.e. the delayed performance, unsatisfactory performance, or non-performance in whole or in part. It arises between contracting parties in breach of a concrete and determined obligation[11].

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that has been caused, and shall have to repair all damage. (3) In the situations specifically provided by law, a person is obliged to repair the damage caused by the act of another person, by things or animals in his or her custody, as well as by the ruin of a building. (4) Liability for damage caused by defective products shall be enforced by special law".

[7] Voicu, A.V., Răspunderea civilă delictuală cu privire specială la activitatea sportivă [Civil Tort Liability with Special Regard to Sports Activities], Publishing House: Lumina Lex, Bucharest, 1999, p. 41: among traditionalist theories we note the following: the theory of the duality of civil liability and the theory of the uniqueness of civil liability.

[8] Pricope, P., *Răspunderea civilă delictuală [Civil Tort Liability]*, Publishing House: Hamangiu, Bucharest, 2013, p. 282, with reference to Eliescu, M., op. cit., p. 62-63, footnote no. 96.

[9] Pop, L., Drept civil român. Teoria generală a obligaţiilor [Romanian Civil Law. The General Theory of Obligations], Publishing House Lumina Lex, 2000, Bucharest, p. 177.

[10] The new Romanian Civil Code, Article 1,350 Contractual Liability - "(1) Every person shall be obliged to perform the obligations he or she has contracted. (2) When, without justification, a person fails to fulfill his or her obligations, he or she shall be liable for the damage caused to the other party and shall be bound to repair this damage, in accordance with the provisions of the law. (3) Unless otherwise stated by law, neither party may replace the application of the rules concerning contractual liability by reference to other rules that would be more favorable".

[11] Pop, L., op. cit., p. 354.

On Professional Liability

Until the entry into force of the New Civil Code (NCC) of Romania, as of 01 October 2011, *civil tort liability* did not coincide with *professional liability in general, including that pertaining to sports activities.* Professional liability was not included in the category of legal liability[12]. At that time, one of the authors of this study, according to the doctrine and legal reality of that period, stated[13]: "However, the liability which may arise out of the pursuit of sports activities is not specially regulated in the Civil Code, nor in the Criminal Code or other special laws[14]... because at the time of drafting of the main codes in Europe sports activities only occurred sporadically, and did not constitute an important social phenomenon[15] - outside Transylvanian civil law, faithful to the Roman law, in particular as regards obligations, which contains an interesting disposition in Article 1,299, Chapter XXX of Part II[16], by which the person practicing a profession and not having the required special knowledge is declared liable"; neither the French Civil Code, nor the current Romanian Civil Code (the Civil Code in force in 1999) do not contain any special provisions relating to professional liability[17]. In this situation, the law and the doctrine have applied the general principles of civil liability and, in the case of the profes-

[12] Voicu, A. V., op. cit. 1999, p. 73.

[13] Ibidem, p. 73-74.

[14] Voicu, A. V., 1999, with reference to Gaşpar, C., *Răspunderea civilă şi asigurarea în accidentele sportive [Civil liability and insurance in sports accidents]*, „Legalitatea populară" [Popular Legality] Journal, no.6/1957, p. 657.

[15] Voicu, A. V., *O privire comparativă asupra răspunderii civile a medicului şi antrenorului* [*A Comparative Approach to the Civil Liability of the Physician and the Coach*], at the National Scientific Symposium organized by the Romanian Council on the Science of Sport and by the Centre of Research for Sport Problems, held in Bucharest, 7-8 Nov. 1996, published in the Conference Volume, p. V3- 1-5.

[16] Gionea, V., Răspunderea civilă a liberului profesionist (medic, avocat, arhitect) [The Civil Liability of the Freelancer (Physician, Lawyer, Architect)], Braşov, 1943, Biblioteca Universităţii din Cluj, p. 18: "Article 1,299 stated that: the professional shall be held liable for the damage caused by the lack of the qualities which, according to their occupation, they must have".

[17] Ibidem, p. 16.

sional, detailing the liability of architects, lawyers and doctors in particular"[18].

Today, the New Civil Code[19], as well as the EU Regulations, in respect of the forms of civil liability, indicate the emergence of the third form of civil liability, namely that of professional liability. Therefore, we shall be able to address the issue of civil liability, stating at the same time the inclusion into common law of civil tort liability, and also referring to the new form of civil liability: professional liability.

Identifying the acts of malpractice in the activity of physical education and sport, we shall achieve not only an overview of the emergence of obligations through the creation of damage to athletes, but also an attempt to particularize the professional liability of those who carry out activities in the field of sports (occupations relating to sport) including that of coach and / or professor of physical education. Because "a professional cannot find himself in other relations with someone to whom he could cause injury, acting as a professional, unless he has a contractual relation, or, excluding this, by an intentional or deceitful deed, the cases of damage, or,

[18] Idem.

[19] The New Civil Code, Article 3 - The general application of the Civil Code "(1) The provisions of this Code shall also apply to relationships between professionals, as well as relationships between them and any other matters of civil law. (2) Every person who operates an undertaking shall be deemed to be a professional. (3) The systematic exercise, by one or more persons, of organized activity which consists of the production, management or alienation of goods, or the provision of services, whether or not it has a lucrative purpose, constitutes the operation of an undertaking". Article 4 - The implementation of international treaties on human rights "(1) In relation to matters covered by this Code, the provisions relating to the rights and freedoms of individuals shall be interpreted and applied in accordance with the Constitution, the Universal Declaration of Human Rights, the covenants and other treaties to which Romania is a party. (2) Should any inconsistencies arise between the covenants and treaties on the fundamental human rights, to which Romania is a party, and this Code, the international regulations shall take precedence, except in the cases where this code provides more favorable provisions". Article 5 - The implementation of the European Union legislation "In matters covered by this Code, the legal rules of the European Union shall apply with precedence, irrespective of the quality or status of the parties".

finally, in accordance with the provisions of the law, when a certain liability is established”[20] - therefore, we shall have the support of proposals for *lex ferenda,* and last but not least, actual attempts to harmonize Romanian Sport Law with its own peculiarities with the European legal structures and the Euro-Atlantic structures which we have joined.

On professionals and undertakings in the field of physical education and sport

The new Civil Code marked a major legal change in the Romanian legislative system. It has modernized not only the provisions of the Civil Code of 1864, but it brought about the inclusion into the body of the Civil Code of rules regarding the family, and it unified civil law with commercial law. Thus, upon the entry into force of this new Civil Code, the Commercial Code has ceased to be applied. The new Civil Code has, however, a series of provisions relating to ***professionals*** and the ***undertaking.***[21]. We believe that it is not yet opportune to make critical considerations on the concept of undertaking as described by the contents of the New Civil Code, the existing meaning being sufficient to discuss the theme chosen by us in this study.[22]

In the current stage of reconfiguration of the Romanian society, in which the occupations have become professionalized - in which the managers of all organizations, including those in the field of sport: specialized public administration, specialized sport structures of public law and / or private law for-profit or not-for-profit - understand to govern their undertaking as their own businesses - the utility of such an approach to the institution of legal liability is unquestionable, as it can pave the path towards knowledge concerning professional liability. The imperatives of *efficiency* and *ef-*

[20] Ibidem, p. 18

[21] Uliescu Marilena, *Noul Cod Civil. Studii şi comentarii* [*The New Civil Code. Studies and Comments*], Vol. I, Book I and Book II (Article 1-534), Academia Română [the Romanian Academy], The Legal Research Institute, “Traian Ionaşcu” Department of Private Law, Publishing House: Universul Juridic, Bucharest, 2012, p. 5 (Foreword).

[22] See Ioan Schiau, *Întreprinderea – un concept distonant* [*The Undertaking - A Distonant Concept*], Articol UJ Premium, 05 June 2018.

ficacy of the professional activities of those involved in sports must be supplemented by the imperative of *legality* (also in accordance with the principles of the Legal Ethics of Sports, and implicitly of the professions related to sports).

We mentioned the concept of "Legal Ethics" [23] – an imperative which must be observed by all professionals involved in sports activities. Thus, "the concept of *Ethics*, and especially the concept of *legal ethics*, is multifaceted. This situation is favoured by the interpenetration between moral (ethics), law and professional practices. Studying legal ethics, as part of applied ethics, becomes an imperative not only for the science of law, but also for moral philosophy. For these reasons, "moral philosophy has been marked, in recent years, by the singular development of its sub-branch known as «Applied Ethics»".[24]

The study of legal ethics, as part of professional ethics, is now just beginning in Romania. This explains the very low interest, perhaps also due to reasons of immorality or amorality, of the professionals, of the press, and of the politicians - for this field[25]. It is true that we are in the presence of possible interpretations which would not hold liable the acts of malpractice of professionals, because they invoke, in the interest of delaying the enforcement of the institution of legal liability, the existence of codes of ethics of certain occupations.

Thus, while ethics is a product of cohabiting in a community, including rules of conduct which are not the product of state bodies and, consequently, their infringement cannot be sanctioned by the state, Law, as an assembly of legal rules, is the direct product of the

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[23] Alexandra Sibana, Despre etica juridică a practicienilor din domeniul dreptului [On the Legal Ethics of Practitioners in the Field of Sports] in Ion Copoeru, Nicoleta Szabo, Coordonatori, Etică şi cultură profesională [Professional Ethics and Culture], Publishing House: Casa Cărţii de Ştiinţă, Cluj-Napoca, 2008, p. 192-197.

[24] Alexandra Sibana, op. cit., p. 192, with reference to Ion Copoeru, Nicoleta Szabo, *Dileme morale şi autonomie în contextul democratizării şi al integrării europene [Moral Dilemmas and Autonomy in the Context of Democratization and European Integration]*, Casa Cărţii de Ştiinţă, 2004, p. 8.

[25] Idem, with reference to Ion Copoeru, Nicoleta Szabo, op. cit., p. 8.

state's will, and whose infringement shall attract the enforcement of sanctions by the state. Starting from the status quo, in which the two concepts are separated completely, it is very difficult to define a *joint* concept, a hybrid, which we shall call *legal ethics*, since ethical and legal matters are, in essence, different. The fact that legal rules must be *just*, fair and, therefore, filled with ethical and moral values, does not mean that they shall not also be ethical rules, as ethical standards, through the important values which they protect and whose breach shall also attract a penalty (moral, this time), are not within the scope of the law[26]. In the analysis of the concept of legal ethics, we shall also have to take into account the notion of "*professional ethics*" (Bentham called the science of morality "professional ethics") and the fact that, as a general rule, by "code of professional ethics" the moral rules of conduct within the framework of an occupation are described[27].

Since law operates with the criteria of just and unjust, i.e. legal and illegal, and ethics operates with the notions of good and evil, i.e. moral and immoral (or non-ethical), we can give a new meaning to the concept of "legal ethics".[28] Although in daily life, the individual action of applying or obeying the law cannot be separated from the abstract, state-wide, and generally binding rule of law, in theory we have the right and the ability to attempt an interpretation of this phenomenon. *Under these circumstances, we shall be able to "define" (theoretically) the* ***legal ethics*** *by the effort of understanding and interpreting legal rules, followed by their implementation with complete good faith.*[29]

The ethical-legal principle which forms the basis of civil liability has been entered into the Civil Code, in Article 1,349 as

[26] Idem, p. 193.

[27] Alexandra Sibana, op. cit., p. 193, with reference to Gh. Mateuţ., A. Mihailă, *Logica juridică* [*Legal Logic*], Publishing House: Lumina Lex, 1998, p. 209; Marcu, V., Maroti Şt., Voicu, A. V., *Introducere în deontologia profesiunii didactice [Introduction to the Professional Ethics of Teaching],* Publishing House Inter-Tonic, Cluj-Napoca, 1995.

[28] Idem Alexandra Sibana, p. 197.

[29] Idem.

follows: the breach of the general obligation to ensure compliance with the legal provisions or rules established by custom, if it resulted in trespassing upon the subjective rights and legitimate interests of other persons, binds the guilty party to integral repairs. In contractual matters, this principle is rendered by the provisions of Article 1,350 of the Civil Code. The universality of this rule makes it applicable in all cases, laying down the legal framework in which the victim may make claims and obtain payment of damages. This principle has deep moral connotations, being fair to restore the social balance, destroyed by an illicit deed, which provides for the repairs of the damage suffered by the victim, by the one who is guilty. This facet of civil liability, arising from the fact that, in the exercise of their freedom, man builds his or her own personality, but, at the same time, they must bear the responsibility for their actions. Thus, one who acts consciously is responsible for one's own acts and their consequences, being obliged to restore the social balance should it be distorted. The real responsibility is always associated with the order commutative justice, which tends towards the establishment of a legal reaction designed to eliminate the consequences of the damaging fact. ***The relationship between Ethics, Morality and Law*** is focused on the guilt of the author of the illegal deed. Freedom and responsibility constitute two complementary and indispensable concepts which characterize the human dignity. Civil liability involves conscience and freedom. Only a person who is aware is free, and therefore responsible. On the other hand, freedom without responsibility tends toward anarchy, or, in other words, freedom is conditioned by individual responsibility. So, as soon as one exceeds the limits laid down by the rules of the positive law, injuring by default the rights of third parties, one shall enter in the field of illegal deeds, of offences, and must be held responsible for the consequences of the acts which one commits. The vision of the free and responsible person also involves an objective view of Law which has as finality the idea of justice and safeguarding of essential principles, among which "do not injure or cause damage to another" figures as a priority. Such an approach to Law is normative and dissuasive, because it imposes choices, proposes purposes, and dictates attitude and behaviour.

The ethical and legal meanings of civil liability for professional malpractice[30]

One of the defining components of the ample process of reconstruction of the institution of civil liability is represented by the ***recognition of a new liability, of third type***[31], which groups together the autonomous rules of professional liability. We are talking about the liability of a professional towards the inherent risks of the exercise of their activity, a special liability, aggravated in relation to other hypotheses of legal liability, which mostly affects the special quality of the liable person. Doctrine-related debates[32] on this issue have revealed that we are in a moment of crisis of civil liability, characterized by the distortion of the concept of "civil guilt", as a result of the significant extension of its contents to objective elements. Paradoxically, moral guilt refers to the abnormal behaviour of the perpetrator, who is in breach of the rules of conduct imposed in a civilized society with regard to the pursuit of a profession - and of course that we also relate to sports professions. The need emerges for the recognition of a guilt rendered objective, which has lost its normative role, its moral meaning, being subordinated to the major imperative of repairing the damage suffered by the victim, even in the absence of the consciousness of the perpetrator. Thus, under the pretext of simplification and increasing the efficiency of the process of triggering civil liability, an entire offensive against civil guilt has been launched, at the price of ignoring moral and ethical values imposed by the substantiation of subjective civil liability. However, guilt continues to exercise a dominant influence, but it acquires new meaning, characteristic to this particular form of liability, which always relates to the quality of the perpetrator. The tendency is towards the development and implementation of

[30] Lacrima Bianca Luntraru, *Răspunderea civilă pentru malpraxisul profesional* [*Civil Liability for Professional Negligence*], Publishing House Universul Juridic, Bucharest, 2018.

[31] Idem, p.15, with reference to L.R. Boilă, *Răspunderea civilă delictuală obiectivă [Objective Civil Tort Liability]*, Publishing House C.H. Beck, Bucureşti, 2009, p. 201-204, p. 458-463.

[32] Idem, with reference to P. Jourdain, *Les principes de Ia responsabilite civile*, 3e ed., Dalloz, Paris, 1996, pp. 17-20.

the idea according to which in this field it is required to rethink the contents of civil guilt, within the meaning of renouncing the traditional psychological attitude of the perpetrator, and leaning towards an objective element, the abnormality of the harmful behaviour[33].

The legal relationship between the professional (sports professional) and the recipient of the performance (client, student, professional athlete, spectator, etc.) cannot be wholly subordinated to the rules established by a civil contract, on the one hand, nor to those of an essentially tort liability, on the other hand, that would require a severe interpretation of its operating coordinates. This is the reason why the debates on the conditions and substantiation of the professional's liability propose to reveal its specific elements, which can constitute arguments for the need to harmonize the legal standard with the realities of contemporary society, in front of the increase of the threat of occurrence of damage, and here we are referring to damages produced in physical education and sport activities.

Given the diversity and complexity of the hypotheses of professional civil liability, regarding the legal aspect, it is necessary to establish abstract rules, applicable to all cases of malpractice, such as to ensure more effective protection of the victim, by helping them obtain compensation. Through a manifest concern to show compassion towards those who have suffered injury unjustly caused by a professional in the exercise of his duties, the practice and literature have supported the idea of triggering civil liability even outside of its traditional role, so that the balance of the legal mechanisms specific to this hypothesis could ensure its full legal efficiency[34].

Settlement of civil tort liability and contractual liability in the current Civil Code of Romania[35] aims to establish the rules which,

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[33] Idem, p. 16 with reference to 1J. Ghestin (coordonator), G. Viney, P. Jourdain, *Traite de droit civil. Les conditions de la responsabilite*, LGDJ, Paris, 2006, pp. 400-413

[34] Ph. Le Tourneau, *Responsabilite (en general)* - May 2009 (actualite: avril 2015), Rec. Dalloz, 74-78, 2015.

[35] The Civil Code was adopted by Law no. 287/2009, published in the Official Journal no. 511 of 24 July 2009, republished in the Official Journal no. 505 of 15 July 2011, and it entered into force on 1 October 2011, on the basis of the provisions of Law no. 71/2011, published in the Official Journal no. 409 of 10

in the matter of professional malpractice, are designed to govern the conditions for initiation and success of the action in triggering liability, and respectively to lead to restoring the social balance destroyed by committing a deed which has resulted in damage to another person. In order to ensure full protection of the victim from the deed of malpractice, there is a tendency towards the objectifying of the civil liability of the professional, it being engaged in most cases independently of any guilt. Thus, the analysis shall be transposed into causal plane, the simple occurrence of damage triggering the mechanism of civil liability. ***As special hypothesis of legal liability, civil liability for professional malpractice means the legal relationship which arises by the breach made by certain categories of persons, hereinafter generically referred to as professionals, of the rules of conduct laid down by law or by the professional body to which they belong, causing injury to other persons, with regard to which the obligation to repair this injury arises***[36].

Analysed as legal institution, *malpractice meets the rules governing this obligation of compensating the victim, related to the contractual or extra-contractual deed of the professional, of the person involved, in our case, in sporting activities and / or activities related to these.*[37]

As is clear from the definitions set out above, the structure of the legal relation of liability for the professional malpractice includes the four classic elements of civil liability in general: *the injury, the illicit deed of malpractice, the causal link between these, and the guilt of the perpetrator.*

The analysis of civil liability for professional malpractice brings into discussion the quality of the responsible person, a spe-

June 2011. Among the sources of inspiration envisaged by the writers of the code, we mention: The French Civil Code, as amended on 23 June 2006, the Civil Code of Quebec, the Italian Civil Code, the Swiss Civil Code and the Swiss Code of Obligations. At the same time, a series of provisions from the UNIDROIT principles and the European Contract Law were added.

[36] Cimpoeru D, *Malpraxisul [Malpractice]*, Publishing House C.H. Beck, București, 2013, p. 5.

[37] Lacrima Bianca Luntraru, op. cit., p. 17.

cial condition which justifies regulating aggravated liability with the overarching objective of ensuring a more efficient protection of the rights and legitimate interests of the recipient of the performance. We take note that the operation of an undertaking, as specific activity carried out by a professional, involves assuming the risk of occurrence of injury either to contracting parties, or to third persons. This aspect is important from the point of view of substantiating the civil liability of the professional, considered to be an essentially objective liability, having as a basis the risk. The business may involve the pursuit of socially harmful or dangerous, injurious activities, and this constitutes a reason for which the professional is obliged to answer for the occurred consequences, taking into account the fact that he is the one who initiated, organised, supervised and monitored this activity.

As we have shown, sports structures, if operating an enterprise, belong to the category of professionals. We take note that the operation of an undertaking, as specific activity carried out by a professional, involves assuming the risk of occurrence of injury either to contracting parties, or to third persons. This aspect is important from the point of view of substantiating the civil liability of the professional, considered to be an essentially objective liability, having as a basis the risk. The business may involve the pursuit of socially harmful or dangerous, injurious activities, and this constitutes a reason for which the professional is obliged to answer for the occurred consequences, taking into account the fact that he is the one who initiated, organised, supervised and monitored this activity.

In another study which shall follow this one, we shall refer in detail to certain hypotheses on causing injury through professional malpractice in sports activities - in situations of infringements of the rights to life, health, physical and mental integrity. And, last but not least, we shall argue the following: the perception of society with regard to the values of sport should not affect legal security, understood in terms of European Law, of all participants to sports activities.