

## **Solidary and Concurrent Delictual Liability in the French and Argentinian Law: Which of the Legislators Found a Better Criterion of Their Delineation?**

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1. Unlike many other civil law jurisdictions, legal orders of France and Argentina establish two separate legal regimes for cases where several debtors are fully liable to the same creditor for the same damage: solidary obligations and obligations *in solidum* in France and solidary and concurrent obligations in Argentina. Since these regimes differ markedly from each other [6, p. 840-852, 858-863, 869-873; 7, p. 520-524], the legislator and law enforcer need to be able to clearly distinguish between the hypotheses of their application. However, cases of solidary and concurrent liability in France and Argentina do not coincide, and what is considered as *une obligation solidaire* in France can be qualified by Argentinian lawyers as *obligaciones concurrentes*. At the same time, justice requires that these criteria be ubiquitously uniform. Thus, it is worthy of an independent comparative investigation of the criteria formed both in French and Argentinian law in order to determine the one whose application leads to a greater number of fair decisions.

2.1. In France, a rather unimaginative criterion has developed to determine the nature of the common obligation of several delinquents: «the obligation of each to the whole which weighs on the tortious co-debtors is merely an obligation in solidum, except in the exceptional cases where a text adds to it the characteristics of solidarity» [5, p. 169-170].

2.2. In this manner, the French law expressly recognizes *inter alia* the following cases as solidary obligations:

- common liability for restitution and damages of the co-authors and accomplices convicted of the same crime, dilit or 5th class contravention (arts. 375-2, 480-1 and 543 of the Code of Penal Procedure) or convicted of several connected crimes and dilitis (broad interpretation of arts. 375-2 and 480-1 of the Code of Penal Procedure);
- common liability of parents for damages caused by their minor children living with them (par. 4 of art. 1242 of the Civil Code) [3, ns. 47, 51, 76].

2.3. In the following cases, French law does not establish solidarity among debtors, which is why these obligations are regarded as *in solidum*:

- common liability of the co-authors of the same damage;
- vicarious liability, e.g., liability for damage caused by individuals in one's custody;
- common liability of civilly liable persons and ones who were convicted of the criminal offense for the same damage [3, ns. 53, 172, 180-181].

3.1. In Argentina, the general principle that delimits the scope of application of solidary and concurrent obligations in the field of civil liability is established in art. 1751 of the Civil and Commercial Code, according to which: the rules of solidary obligations are applied if several persons participate in the production of the damage that has a single cause (as a generating cause [1, p. 3-4]), and the rules of concurrent obligations are applied if the plurality derives from different causes.

3.2. Following this criterion, the Civil and Commercial Code recognizes the solidary liability of several co-authors or accomplices for harm caused by joint actions (art. 1751), the solidary

liability for harm caused by an unknown person from a known group of persons (art. 1760-1761), and the solidary liability of members of a group carrying out activities dangerous to third parties for harm caused in the course of such activities by one or more of its members (art. 1762) [2].

3.3. At the same time, the scope of application of the rules on concurrent obligations *inter alia* includes cases of liability of:

- controlling persons and persons under their control for harm caused by the latter (art. 1753 of the Civil and Commercial Code);
- parents (delegates, guardians, curators, or institutions) and their children for harm caused by the latter (art. 1754, 1756 of the Civil and Commercial Code);
- the owner and the person exercising directly or through third parties the use, management, and control of the thing for the damage caused by the latter (art. 1758 of the Civil and Commercial Code) [4].

3.4. Meanwhile, one should not forget that if among several debtors liable to the creditor for various causes, there are two or more for which it coincides, there is a need for the cumulative application of the rules on solidary and concurrent obligations (e.g., in the case of the vicarious liability of parents, the latter are considered as solidary debtors (between themselves and the creditor), whereas their child and either parent - as concurrent ones).

4. Taking into account the above considerations, the French criterion for delineating the domains of solidary and concurrent obligations already at first glance appears to be inconsistent since its application causes some identical situations to be treated unjustifiably differently (cf. theses 2.2 and 2.3). The Argentinian approach, on the contrary, seems logical and justified, but only as long as we do not encounter cases of collective liability established in arts. 1760-1762 of the Civil and Commercial Code. One could say that these cases have nothing to do with solidarity since their hypotheses should give rise to ordinary obligations with a single debtor. However, a closer look reveals that these doubts are groundless because the Argentinian legislator therewith established a special mechanism of the collective guarantee that makes it easier for victims to receive full satisfaction without knowing or proving the identity of the true tortfeasor, which might be almost impossible in such cases.

## Источники и литература

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