

# ASPECTS CONCERNING LIABILITY FOR DAMAGES CAUSED BY MINORS IN THE CONTEXT OF THE PROTECTION AND PROMOTION OF CHILDREN'S RIGHTS

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## **Abstract**

*In this study the authors analyze to what extent the legislation on the protection and promotion of children's rights influences the way in which the tort liability for the prejudices caused by underage children occurs. On one hand, the legislator protects the rights of underage children by a broad legal regulation that harmonizes with the European legal provisions in the field/area. On the other hand, though, the same legislator establishes the liability of parents and of the persons obliged to supervise minors when the children, while exercising their rights, cause damages to third parties.*

**Keywords:** *tort liability, children's rights, prejudices; parents*

**JEL Classification:** *[K15; K 36].*

## **1. Introduction. The legal framework.**

The purpose of this article is to analyze the legal provisions concerning tort liability in the case of damages caused by minors as a result of committing illicit acts, as well as to analyze the legal provisions that protect children's rights to have social relationships, as under art. 494 of the Civil Code, and their freedom of speech. This occurs due to the fact that, on the one side, the lawmaker protects the abovementioned rights, while, on the other, it regulates the liability of the parents and other persons who are obligated to supervise their underage children in what concerns the damages caused by the latter to any third party.

This analysis covers the cases in which minors, while exercising their aforementioned legal rights and freedoms, cause damages to other persons, obligating the parents or legal guardians to compensate the victim, and we have chosen to do this in order to see to what extent the parents' liability is influenced by the legislation concerning the protection of children's rights and whether the two categories of legal provisions are correlated.

Art. 16 of the Convention on the Rights of the Child<sup>1</sup> provides that: „No child shall be subjected to arbitrary or unlawful interference with his or her

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privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation”, and according to art. 13: “,(1) The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice. (2) The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; or (b) For the protection of national security or of public order, or of public health or morals.”

In Romania, Law no. 272/2004, in its republished form, on the protection and promotion of children’s rights, establishes the same rights. Art. 27, par. (1) states the following: “the child has the right to the protection of their public image and their intimate, private and familial life,” while paragraph 2 provides that any action that affects the child’s public image or their right to an intimate, private and familial life is forbidden, and art. 28 guarantees the child’s inviolable right to free speech, as the parents cannot limit this right except for the cases specified in the law.

Art. 488 of the Civil Code pinpoints the specific duties of the parents, underlining that they are obligated to cooperate with their child and respect their intimate, private life and their dignity, to allow for the child to be informed on all of the documents and acts that can affect them and to take their opinion under consideration, to take all of the measures necessary for the protection and fulfillment of the child’s rights, and to cooperate with the natural and legal persons qualified in the domain of child care, education and vocational training of the child.

In addition, art. 494 of the Civil Code approaches the social relationships of the child, establishing the fact that the parents or legal guardians of a minor have no right, other than on the basis of well-grounded reasons, to interfere in the correspondence and personal ties of the child up to the age of 14.

Liability for the damages caused by minors or persons found under judicial interdiction is regulated under art. 1.372 of the Civil Code: “,(1) the person who, under the law, a contract or a court order must supervise a minor or person under judicial interdiction shall be liable for the damages caused to a third party by the latter person. (2) Liability shall subsist even in the case where the infringer, being mentally unfit, cannot be held responsible for their own deed. (3) The person who is tasked with the supervision shall be exonerated of their liability provided that they can prove the inability to have prevented the harmful event. In the case of parents or, by case, legal guardians, proof shall be deemed valid only if they are able to demonstrate that the child’s deed was not the effect of the manner in which the former have fulfilled their duties as parents.”

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<sup>1</sup> Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November (1989) entry into force 2 September (1990).

It has been stated in the literature that the importance of legal regulations that protect and promote the rights and freedoms of the child cannot be denied, as their vulnerability and lack of maturity call for them, and adequate protection against any external or even familial abuse cannot be achieved without the presence of legislation on the matter (Drăghici, 2013).

Law no. 272/2004 thoroughly regulates section 1 of chapter II concerning the rights and civil liberties of the child, specifically: the right to a personal identity, freedom of speech, thought, conscience and religion; the right of association, the right to petition, the right to inviolable personality and individuality, the right to an inviolable public image, private, intimate and familial life. By iterating these rights and civil freedoms as law, the lawmaker's intention was that of recognizing the child's growing autonomy, as well as their active participation in socio-judicial life (Drăghici, 2013).

However, considering that the minor under the age of 14 lacks legal and mental competence and the minor between the ages of 14 and 18 is attributed a limited legal and mental competence, the rights and liberties of the child must be regarded while also taking into account the parental authority which, in fact, represents the core of the protection of these rights (Avram, 2013).

## **2. Opinions on the analyzed legal provisions**

### **2.1. Children's rights to inviolable social relationships and the right to free speech**

Art. 494 of the Civil Code, mentioned above, recognizes the child's right to establish and maintain social relationships, respectively their right to correspondence and personal ties. In fact, the lawmaker thus reaffirms the child's right to a private life, a right which is otherwise recognised in the case of any individual, even if, according to some authors, the right to an inviolable private life is rarely respected from the child's perspective, due to the fact that they are under the supervision of their parents or the persons who act as their parents, yet the constraints attached to this right must seek both the best interests of the child and their evolving capacities (Drăghici, 2013).

This right must be corroborated with the right and, respectively, the duty of the parents of supervising their minor child, a concept underlined by the lawmaker in art. 493 of the Civil Code on the "supervision of the child." The supervision of the minor is an attribute of parental authority which cannot be separated from the general right and duty of the parents to raise their child and it evokes the fact that the parents have control over the activities and entourage of the child, even if it cannot be absolute and must be exercised in a discretionary manner (Florian, 2011).

The lawmaker states that the minor's right to establish social relationships cannot be censored by their parents or legal guardians except if the minor is under 14 and only if there are well-grounded reasons for doing so. These reasons that the lawmaker refers to can only center around situations

liable to endanger the harmonious evolution of the minor (Moloman & Ureche, 2016). The criterium that must take precedence is having the best interests of the child in mind, ignoring the interests of any other parties (Hageanu, 2012).

*Per a contrario*, this means that the parents of the minor who is at least 14 years of age have no right to limit the latter's social relationships or correspondence and interfere with their private life, although it is very possible for the minor to engage in social relationships that may harm them or even those with whom the minor has established these relationships. As such, a minor can become the victim of malevolent persons, but there is also the possibility for them to commit various illegal acts, for example, by infringing on the right to an image, dignity or the private life of other persons with whom they have established social relationships.

The notion of „personal ties” used by the lawmaker in this article has a wide meaning, including the social relationships of the child with any person, who may or may not be a parent or a relative or a person who does not have either of those qualities, as this person and the child have no common familial life (Hageanu, 2012).

We believe that, at this point in time, in this era of technology, most of the personal ties or social relationships of minors happen in the virtual realm on the various available social networks, and Internet surfing has become an integral part of the daily activities of a considerable number of people, as both adults and children have a regular, active life „online” (Radu, 2016). Both the Internet and the social networks have transformed the way in which people socialize, but, in spite of the numerous advantages, the multiple inherent traps cannot be glanced over, given that the usage of the Internet on an increasingly wide scale creates the opportunity of committing new offences (Radu, 2016).

Most of the victims of cybercrime are vulnerable persons, people found in special circumstances brought upon by poverty, disease, addiction, but also being underage. Without going into detail, we can give the example of sexual corruption of juveniles and / or recruitment of minors for sexual purposes (Radu, 2016) which can be committed via the Internet, e-mail, social networks, etc. In one case, the court decided that the act of a defendant, who during a Facebook chat with the injured party, a 12-year-old minor, sent the latter pornographic materials depicting male minors in explicit sexual poses, constitutes, on the one hand, the offence of „sexual corruption of juveniles,”<sup>2</sup> provided for and

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<sup>2</sup> Art. 221 of the Criminal Code states the following:

“(1) The commission of an act that is sexual in nature, other than the one set out in Art. 220, against a juvenile who has not turned 13 of age, as well as determining a juvenile to endure or carry out such an act shall be punishable by no less than 1 and no more than 5 years of imprisonment.

(2) The penalty shall be no less than 2 and no more than 7 years of imprisonment and a ban on the exercise of certain rights, when:

a) the juvenile is a direct-line relative, a brother or sister;

b) the juvenile is entrusted to the perpetrator for care, protection, education, guard or treatment;

punished under art. 221, par. (4) of the Criminal Code, and on the other hand, the offence of „child pornography through virtual systems,” both committed as formal concurrent infringements (Radu, 2016).

In reference to the offence of recruitment of minors for sexual purposes<sup>3</sup>, some texts have shown that the offence should be punished even when the proposal was transmitted through a text message, e-mail or a social network, where it could have been seen by one of the minor’s parents before the minor became aware of the content of the proposal, bearing in mind that many parents allow their minor children “controlled access” to these means of communication for the very reason of protecting them. Under these circumstances, the adult can take note of the proposal sent to the minor before it can reach its intended destination (Radu, 2015).

In what concerns the child’s free speech, this right must be understood, according to art. 28 of Law no. 272/2004, republished, but also art. 13 from the Convention on the Rights of Children, as their liberty to seek, receive and spread information of any nature that regards the promotion of their social, spiritual and moral well-being, and their physical and mental health in any form and through any means, whenever they decide to do so. It is to this end that art. 13, par. (2) from the Convention stipulates that: “the exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order, or of public health or morals,” while art. 28, par. (4) of Law no. 272/2004, republished, provides that the parents cannot limit this right except in the cases expressly set out by the law.

As a result, the autonomous exercise of this right by the minor may generate controversy. Taking into account that the minor currently has very many paths to access information, most used being the Internet, the problem

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c) The act was committed for the production of pornographic materials.

(3) The sexual act of any nature, committed by a person of age in the presence of a juvenile who has not turned 13 shall be punishable by no less than 6 months and no more than 2 years of imprisonment or by a fine.

(4) Determination of a juvenile who has not yet turned 13 years of age, by a person of age, to assist to the commission of acts that are exhibitionist in nature or to shows or performances in which sexual acts of any kind are committed, and making materials that are pornographic in nature available to the juvenile shall be punishable by no less than 3 months and no more than 1 year of imprisonment or by a fine.

(5) The acts set out in par. (1) shall not be punishable if the age difference does not exceed 3 years.”

<sup>3</sup> Art. 222 of the Criminal Code provides that: “The act of an individual of age to propose that a juvenile who has not yet turned 13 years of age to meet for the purposes of the commission of one of the acts set out in Art. 220 or Art. 221, including when such proposal has been made using remote communication means, shall be punishable by no less than 1 month and no more than 1 year of imprisonment or by a fine.”

that arises is whether this right of the child of being informed can be submitted to restrictions on the part of the parents, given that the minor can access, without great difficulty, information that can affect them or put them in danger. Some authors believe that the minor's right to be informed must reside somewhere between freedom and censorship on the part of their parents or legal guardians, who have the authority to select the useful information and eliminate the information that can harm the child (Drăghici, 2013).

## **2.2. Liability for the damages caused by minors and persons found under judicial interdiction – art. 1372 of the Civil Code in comparison to art. 1368 of the Civil Code – The subsidiary obligation to compensate the victim**

As we already know, a minor who has not exceeded 14 years of age lacks tort liability and, thus, cannot be obligated to repair the damages caused to third parties, unless it is proven that they acted with unimpaired judgment, while a minor between 14 and 18 years of age, presumed to be unimpaired in judgment, cannot be exonerated unless they can prove that their judgment was impaired when they committed the illegal act. On the other hand, we believe that, even in the case where the minor acted with unimpaired judgment, the third party who suffered the damage shall seek recompense from the parents or persons who, under the law, a contract or a court decision, are obligated to supervise the minor, due to their solvency, given that the minor will, in most cases, not have any financial resources of their own or they will be insufficient.

In German law, the basis for liability in the case of acts committed by persons found under supervision is the legally presumed fault of the person who had the obligation to supervise, meaning that what we have here is subjective liability (Pop, et al., 2012).

In the current legislation, as we have mentioned, art. 1372, para. (3) provides that “the person tasked to supervise shall be exonerated of liability provided that they can prove that they could not have stopped the harmful event.” Although, in appearance, it would seem that proof of a negative act needs to be provided, it is obvious that, in reality, what must be proven is a positive act, namely the presence of a foreign cause, which prevented the person responsible from fulfilling their obligation. Thus, it is considered that “the removal of liability appears as a possibility that operates exclusively in the realm of causality” (Pop, et al., 2012).

In the case of parents or, by case, legal guardians, proof shall be deemed to have been effected only if they can prove that the child's act was the effect of a different factor than the manner in which the parents or legal guardians have fulfilled the duties that stem from the exercise of their parental rights, a sentence added through Law no. 71/2011 for the implementation of the Civil Code. In their case, liability is not set in motion solely for deficiencies associated with the supervision of the minor, but for everything that parental

authority requires them to do. Art. 487 of the Civil Code covers the obligation to raise, educate, ensure schooling and professional training, and provide the guidance and advice necessary for the adequate exercise of the rights that the law guarantees to the minor. This provision is considered to be superfluous by some authors (Pop, et al., 2012).

In reference to the basis for the liability of parents / legal guardians for the illegal acts of minors, it has been said that it consists in the idea of insurance concerning the risk of parental authority (Mangu, 2012; Boilă, 2009). Because the parents accept to educate, control and guide the activity and life of the minor, given that the minor, having no legal competence, cannot pursue their own interests, the parents guarantee to society that, as long as the child is under their parental authority, they will not commit any harmful illegal acts, and the engagement of their liability represents the assumption of risks by the parental authority over the minors, resulting in the payment of the rightful civil damages to the victim (Mangu, 2012).

Another opinion found in the literature underlines that the basis of liability for the damages caused by a minor is the insufficient fulfillment of the obligation to supervise (*obligatio in vigilando*), regardless of the person responsible. „This obligation always plays two roles: one explicative, the other functional. The functional role of the obligation to supervise is, however, present in dosages of various judicial intensity in each of the hypotheses of indirect liability. Thus, the duty to supervise – the responsibility of the parent, has more of a metonymical role, its functional nature minuscule, because the parents and legal guardians cannot exonerate themselves by proving that they are innocent, meaning that they have properly supervised the child” (Vasilescu, 2012).

The parents or legal guardians of the minor can exonerate themselves from liability only if they can prove that the illegal act of the child is the effect of a different factor than the manner in which they have fulfilled the duties stemming from the exercise of their parental rights, which is, in fact, impossible to demonstrate. By analyzing the abovementioned legal provisions, we can see that the basis for the parents' liability is the causality between the minor's act and the manner in which the parents have fulfilled their parental duties, and the presumption that arises along with the minor's commission of an illegal act is absolute, of inadequate fulfillment or lack of fulfillment of the parental duties. The only hypothesis in which the parents can exonerate themselves from liability concerns whether there are other persons responsible for the minor's act, if they can indicate the person tasked with the supervision of the minor at the moment that the illegal act was committed and if that person fulfills all of the conditions necessary for liability for the minor's act (Mangu, 2012).

The person who had the duty to supervise the minor can, however, prove, according to art. 1372 of the Civil Code, that they adequately fulfilled their obligation, not being able to prevent the harmful event.

As a result, the parents' and legal guardians' liability is objective, and the liability of the other persons tasked with the duty of supervising the minors or persons found under judicial interdiction is subjective, their fault presumed relatively by the law.

Art. 1.368 of the Civil Code establishes the subsidiary obligation to compensate the injured party by the legally incompetent minor themselves, in a reasonable amount and according to the financial standing of the parties, whenever the liability of the parents or, by case, legal guardians or any miscellaneous persons who, according to the law, had the obligation to supervise the minor is void. Thus, when the civil tort liability of the persons who answer for the illegal act of the minor is absent, the injured party may resort to this „backup” option, directly acting against the author of the harmful event, the legally incompetent minor. It has been said that not engaging the liability of these persons covers the situations in which there either is no person assigned with the obligation to supervise the minor, or the most common case in the practice, in which the liable person is not solvent (Boilă, 2014; Gherdan, 2012).

### **3. The analysis of the legal provisions**

When reading these legal dispositions, it is obvious that, on the one hand, the lawmaker aims for the rights and liberties of minors to be promoted, respecting their personality, their desire to be informed and express themselves freely, and their need to maintain various social relationships. It is, otherwise, natural for it to be this way, because these rights are universally recognized, both in internal normative acts and international regulations, with no legal basis on which they should be denied to children. On the other hand, due to the insufficient life experience of minors, their lack of good judgment, in the case of minors up to 14 years of age, or a developing judgment, in the case of minors with a limited legal competence, it is equally legitimate for the adults who exercise their parental authority to have the right, but also the duty to supervise them. Thus, the parents have the obligation to cooperate with the minor, respecting their intimate, private life and their dignity, to present and allow information to reach their child, to guide them in what concerns all acts and documents that can affect them and take their opinion under consideration and, finally, to take all of the necessary measures to protect and fulfill their rights.<sup>4</sup> Furthermore, as we have pointed out before, the parents are liable for the coverage of the damages caused by the minors through illegal acts.

How would it be possible then to prevent the minor from committing illegal acts, while exercising parental authority without prejudice, however, to the abovementioned rights? This question must be asked because, from the point of view of the injured party, the illegal acts of the minors can be traced back to the

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<sup>4</sup> See art. 488 of the Civil Code.

faulty manner in which their parents fulfilled their parental duties, as well as inadequate supervision which facilitated the commission of the illegal acts.

From the point of view of the minors, the situation is different, as the lawmaker found it beneficial to offer them a very wide area of exercise for the aforementioned rights, only allowing parental control in expressly regulated cases. How should parental authority be exercised in this case so that the parent cannot be blamed for the deficiencies in the minor's education without, however, impinging on their rights? If the parent is excessive in their prerogative of supervising the minor, their social relationships, their correspondence, etc., the parent can much more successfully prevent the commission of illegal acts, but they disregard their children's rights by doing so. Thus, which of the social values that the lawmaker protects is more important? At the same time, continuing down this line of thought, we must underline that the lawmaker states the minor's right to establish social relationships cannot be censored by their parents or legal guardians except if they are under 14 years of age and only if there are well-grounded reasons to do so. We must reiterate that the well-grounded reasons regard all of those situations which can endanger the minor's development, their physical or mental health, their school performance, etc. It is, however, possible for the minor's development to be endangered by their relationships with the wrong people, and for the effects that this may have on the minor to become visible with time and not manifest in immediate signals alerting the parent that monitoring is necessary.

By definition, parental authority must be continuously exercised, even after the minor has reached the age of 14, up until they have reached the age of majority. We do not believe that it was the intent of the lawmaker to strip the parent of minors over 14 years of age of the prerogative to supervise them, more so given that this prerogative is, simultaneously, their obligation. By establishing this limit of 14 years of age, we believe that the lawmaker gives enough credit to the minor who has earned a limited legal competence to deem them sufficiently able and mature to independently select and exercise their social relationships and their private life in general in the best way possible, such that neither them, nor any third party suffers any kind of damages, without, however, transforming this assumption into an absolute truth. If we were to make this absolute, that would mean that the lawmaker has provided for a "double measure," meaning that when the minor with a limited legal competence enters into a legal act of disposition, they shall require the agreement of their legal guardian and the family court or, otherwise, the documents signed shall be voidable, but, in terms of social relationships and their private life, the minor is the sole sovereign figure, "eluding" the parental authority. This minor remains a minor with limited legal competence contractually, but also in what concerns their private life, as it is necessary, in our opinion, for parental guidance to be central to both spheres.

Somewhat connected to the analyzed issues is an opinion according to which the same person, a minor, can have legal competence when it comes to civil tort liability, but not in what concerns the failure to perform a contract due to the fact that the minor's mental state and level of development are sufficient for them to realize the illegal nature of their deed, however, although the person is sufficiently mentally developed to acknowledge the illegal nature of their offense, entering into a contract and performing it does require something more (Tamba, 2009).

If we analyze the two rights that we have made reference to, namely the child's right to social relationships and their right to free speech, respectively, we can remark that the lawmaker has expressly provided for the possibility of the parents to "censor," but only in the case of correspondence and social relationships of the minor up to 14 years of age, and not in the case of free speech. The act of not setting the "threshold" of 14 years in the case of free speech as well can be explained through the provisions of art. 28, par. (3) of Law no. 272/2004, republished, which states that: "The parents or, by case, the legal guardians of the child, foster parents, as well as persons who, by the nature of their function, promote and ensure the abidance of children's rights, have the obligation to provide them with information, explanations and advice, adequate for their age and degree of comprehension, as well as to allow them to express their point of view, their ideas and opinions." We believe that, by the lawmaker's wording in "adequate for their age and degree of understanding," the possibility for adults who exercise parental authority to "filter" the information and explanations given to the minor is regulated, partially placing this right of the child under the protection of the parents. Partially, because the lawmaker also guarantees, in the paragraph preceding the same article, the inviolability of the child's liberty to "seek, receive and spread information of any nature that regard the promotion of their social, spiritual and moral well-being, and their physical and mental health in any form and through any means, whenever they decide to do so..."

If we also consider the parents' liability for illegal acts committed by minors, we believe that the exercise of parental authority is not concretely possible, however, without interfering to a certain extent with the children's rights we have analyzed. Otherwise, the increased exigence stipulated under the second sentence of para. (3), art. 1372 of the Civil Code, mentioned above, could not be applied. We believe that, although the liability of the parents and legal guardians is objective, it is impossible to claim that it should be called upon in the case that, through the very legal provisions in effect, their mission is severely weighed down or even thwarted.

And, moreover, as we have previously shown, the minor, even if they acted with full mental competence, does not have in all situations enough income to cover the damages they have caused to others, while the parent is usually solvent. The lawmaker believed it to be best for mental competence to exist, as a

rule, starting from 14 years of age, but it has only awarded the minor who is 15 years of age the right to enter into a work contract, with the permission of their parents or legal guardians, and the minor who is 16 years of age the same right without the need for permission. According to art. 32, para. (1) of the Charter of Fundamental Rights of the European Union, the work of children is prohibited, and the minimum age of employment cannot be lower than that at which the compulsory schooling period ceases (Roş, 2017). Thus, the minor who is 14 years of age and with mental competence can cause damages to a third party, by violating their image or dignity, for example, by posting photographs or images of the injured party without permission or through offensive remarks on social media, and can then be sued by the victim, who exposes themselves to the risk of the author's insolvency however, because of the abovementioned reasons. In this case, a diligent person shall choose to sue the minor's parents, who have the established right of recourse against the minor.

In terms of the other persons who have the obligation to supervise, we believe that they will invoke the provisions under art. 1372, par. (3) in their defense whenever the act of the person found under supervision was illegal and caused damages that falls within the sphere of those for which legal provisions are in place that forbid the interference or censorship on the part of the adults. Under these conditions, the fact that it was impossible for them to prevent the harmful event is obvious, given that the law itself does not allow them to take measures to that end.

### **Conclusions**

We do not wish for this endeavor to be understood as a plea to restrict the rights of minors. We believe, however, that there needs to be a balance between rights and obligations, because the person who benefits from a right must exercise it responsibly and take responsibility for the harmful consequences that it may produce.

That is why we believe that it is not fair for the persons obligated to assume liability for the acts of minors or persons under judicial interdiction to be forced to repair the damages caused by the latter regardless of manner and under the very conditions that the lawmaker themselves has limited the parents' possibility to in order to take preventive measures for this purpose.

*De lege lata*, we conclude that the persons obligated to supervise can be exonerated from liability in the cases where the illegal harmful act was committed by the minor, for example, through electronic means, because it is impossible for the parents, due to the legal provisions, to fulfill their duty to supervise. In what concerns the parents and legal guardians, they shall be held accountable, as it cannot be considered that the interdiction to censor the correspondence of the minor under 14 years of age is, in itself, a cause for deviant behavior.

For the arguments shown above, we believe that it is not right, in our view, that the persons whom the legislature obliges to answer for the illicit acts of minors be called upon to repair all the damage caused by them, regardless of the specific modality and circumstances in which such damage was caused. *De lege ferenda*, we propose that, in all cases where the obligations of those liable for the acts of minors are in conflict with their rights, the solution is the adoption of the possibility to obligate the minor to pay fair damages in the case that they lack mental and legal competence, based on the text of art. 1368 of the Civil Code.

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