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Civil liability for the damage of the Corona vaccine According to the decisions of the French Court of Cassation

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ABSTRACT. The responsibility arises based on liability for faulty products, and the companies that produce vaccines, just like any other company that produces a product that is sold to a consumer, are obligated by law to ensure the safety of that consumer. Article 1245 of the French Civil Code has shown that the result is responsible for the damage caused by the defect of his product, regardless of whether he is committed to a contract with the injured person. Then the company that produced the defective product is responsible for the However, what are the prerequisites that must be met to be held responsible as the manufacturer?

Keywords: Corporate Liability, State Liability, Court of Cassation, Vaccine, Damage, Corporate responsibility, state responsibility, the court of cassation, vaccine

Introduction

Vaccinating against the Corona epidemic is not free from damage like any medical work. This vaccine causes many accidents, which results in fulfilling the responsibility of the manufacturer or distributor of the vaccine and even the state. However, this responsibility raises many difficulties, especially concerning the existence of the error and the causal relationship between the vaccine and the damage caused to the harmed, and most importantly, determining the main culprit for the error. Therefore our research aims to reach who can bear responsibility for the defect in the vaccine under the decisions of the French Court of Cassation. Like any medical work, vaccination against the Corona epidemic is not without harm. This vaccine causes many accidents, and these accidents result in the responsibility of the manufacturer or distributor and even the state. The purpose of vaccines is to give the person a modified and harmless vaccination against viruses, To stimulate their immune system. Although French civil law took strict responsibility for the company to the producer for the commodity he produces, this responsibility raises many difficulties, especially concerning the existence of error and the causal relationship between the vaccine and the harm done to the victim. Most importantly, This includes identifying the main cause of the error. Then our research aims to reach who can take responsibility for the defect in the vaccine according to French laws.

1. First section

1.1. Manufacturer's responsibility

This responsibility arises based on liability for defective products, the companies producing the vaccine, like any other company that produces a product given to the consumer, are committed under the law to ensure the safety of the consumer, as Article 1245 of the French Civil Code has shown that the result is responsible for the damage caused by the defect of his product and whether he is committed to a contract with the injured or not, and then the company producing the health product, which is the vaccine in question, is responsible for damage. But what are the conditions for achieving the responsibility of the manufacturer

2. Conditions for Verification of Corporate Responsibility

2.1. First, prove the defect and damage and the causal relationship between them

Article 1245-8 of the French Civil Code showed that the injured person must prove the damage, defect, and causal relationship between the first and the second; that is, the injured party is the one who bears the burden of proof, but the conditions related to proving the defect and the causal relationship between the defect and the damage raise many difficulties, especially in a modern vaccine such as the Corona vaccine, according to Article 1245-3-1 of the French Civil Code, the product is considered defective when it does not provide sufficient safety that the person expects in a projective manner. That is, the vaccine must be free of any defect that represents a danger to the lives of consumers, but in practice, the potential danger of the vaccine does not necessarily make it defective. This is what the French Court of Cassation went to, as it showed in a lawsuit related to health products (that health product leave effects that are difficult to predict, and the manufacturer cannot be blamed for the defects of the health product every time, The French Court of Cassation, therefore, went in a commendable opinion, establishing two principles related to the defect of health products.

The first principle: by making a comparison between the benefits obtained from the vaccine, with a comparison with the negative effects of it, if the expected benefits of the vaccine are more than the negative effects of it, in this case, the vaccine is not counted with YPA, and in this regard, the French Court of Cassation ruled to reject the plaintiff's claim for compensation, on the grounds that the positive nature of the health product far outweighs the side effects that accompanied its intake¹. As for the **second principle** of achieving the defect in the vaccine, it is to compare the time when the vaccine was taken and its side effects, the French Court of Cassation went in one of its decisions that the ²period of time between the side effects mentioned in the product leaflet and taking the vaccine is an unacceptable reason for achieving the defect in the vaccine, and then it will not bear. The manufacturer is responsible for the defect unless the warnings regarding the danger of the product listed in the leaflet are insufficient at the time of its use³. Especially if we know that Article 1245 of the French Civil Code allowed the producer to get rid of liability if the knowledge and technical situation at the time of putting the product into circulation does not allow the discovery of the defect, or that the product conforms to all rules of a mandatory nature, whether issued by the legislative or

¹ Cass. First Civic Chamber, 29 May 2013, No. 12-20.903.

² Cup. sword. 1/9/2009 n°08-11.073.

³ Cass. sword. July 1, 4, 2019, number 18-16,809.

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executive authorities, and this is what the producing companies are keen to adhere to often, Especially in developed countries, and then they can often get rid of responsibility if they achieve their pillar, and from my point of view, I think that the direction of the French Court of Cassation is referred to as Lebanon, it has established general consumer rules through which he can prove the defect that hit him whenever the negative effects of the vaccine are more than the positive This first, and secondly is the time between getting the vaccine and its side effects, the closer it is, the more the consumer can prove the defect In the vaccine and vice versa. Also, the consumer's responsibility does not depend on proving the defect of the vaccine only but must prove that the damage suffered by him is due to the defect, that is, proving the causal relationship between the defect and the vaccine and proving the latter is very difficult due to scientific uncertainty about the negative effects of the Corona vaccine. To show how to prove this, we will show the direction of the French Court of Cassation about proving the causal relationship between the damage caused to the consumer and the viral liver vaccine. There is a lot of case law of the French Court of Cassation in this regard. The French Court of Cassation has eased the burden of proving causation through five decisions issued on May 22, 2008, even in the case of conclusive scientific uncertainty on the realization of the causal relationship between the defect and the damage,⁴ it went in one of its decisions (if the work for liability for the defective product requires proof of damage, and the defect is the existence of a causal relationship between the defect and the damage, such evidence may be proven by marriage provided that it is serious, accurate, consistent and consistent with reality)⁵The researcher believes that the direction of the French Court of Cassation falls within the broad concept of the text of Article 1382 of the French Civil Code, which granted the judiciary wide discretion in estimating the Qur'an that was not stipulated by law, such as the temporal convergence between the vaccine and the onset of the disease or the absence of a personal or family history of the disease, and the most important thing is the number of those affected by the vaccine after vaccination. The Court of Cassation rejected the decisions of the Court of First Instance because of the latter's claim from the victims to prove an accurate scientific relationship between the defect and the damage⁶ for the injured party to obtain fair compensation for the damage he suffered. However, the French Court of Cassation usually passed again to retreat and limited the broad interpretation of the judges, which was granted to them under the text of Article 1382 of the French Civil Code and then limited the possibility of compensation for those affected, it went in one of its rulings (The broad interpretation of the Court of First Instance is true that it falls within its jurisdiction, but the Koran on which the court relied to request the litigants is not serious and accurate or consistent with reality enough to justify the award of compensation⁷. This is mainly reflected in the decisions of other courts, as the Court of Appeal in Paris went in the process of estimating the Qur'an submitted to it by the victim (the compatibility between the vaccine and the appearance of side effects, such as the absence of family history, is not a presumption that allows the assumption of a causal relationship between the vaccine and the damage). It follows from the preceding that the discretionary power granted to the courts under the text of Article 1338 of the Civil Code oven, Whether related to the defective nature of the vaccine or the causal relationship between defect and damage, has

⁴ Civil. 1, 23 September 2003, number 01-13.063.

⁵ Cass. First civic chamber. 22 May 2008 n° 05-20317, n° 06-10967, n° 06-14952, n° 06-18848 and n° 05-10593.

⁶ Civilian. 1, 25 June 2009, appeal no. 08-12781.

⁷ Civil. 1, 18 October 2017, appeal n° 14-18118.

facilitated the victims' access to compensation, but at the same time made that compensation seem complicated by legal uncertainty, as a result of constant changes in case law⁸. Article 1245-6 of the same French Civil Code also provides that "if the product cannot be identified, the seller or lessor, except the lessor or lessor merged with the lessor, or any other professional supplier, shall be liable for the defect in the safety of the product, in the same conditions as the product." Then when the manufacturer cannot be identified, the injured party can sue the distributor. However, since the liability of the distributor is only a precautionary liability, i.e., it is dealt with when the identity of the manufacturer is not known, the distributor has the right of recourse as provided for in article 1245-6 (unless he appoints his supplier or producer, within three months from the date of notification of the request of the injured person.

3. Responsibility of French health institutions

When the vaccine was compulsory, a specific system of strict state liability was established by the Kushner Act of March 4, 2002. So only when the vaccine is not mandatory can the responsibility of health professionals and facilities be dealt with. Medical liability is subject to a specific regime in Articles L1142-1 following the Public Health Code. In case of adverse effects associated with the vaccine, the personal civil liability of the doctor can only be held in the case of an error, but ⁹ what is wrong? An error can be defined as a breach of good professional practices. Doctors are obliged to provide "conscientious, vigilant, and subject to exceptional circumstances," according to data gained from science. The evaluation of these standards falls within the domain of the trial judges, who will usually compare the conduct of the doctor in question with that of the specialist. The burden of proving this fault lies with the plaintiff, who must also provide evidence of his damage and the causal link between the fault committed and the damage ¹⁰suffered by the injured person. Regarding the vaccine, there are a lot of mistakes to expect. It can be an error of a technical nature, or an error resulting from negligence, as the French Court of Cassation has ruled that the failure of the specialist doctor to respect the treatment protocols represents an error that is achieved with the responsibility of health institutions¹¹.

Or not considering the patient's health condition after taking the vaccine¹². It should be noted that when the plaintiff claims that the doctor did not provide the necessary information about the damage of the vaccine, the burden of proof is transferred to the doctor, who must prove that he provided sufficient information to the recipient of the vaccine. It can be said that the doctor cannot be ¹³held responsible for the damage of the vaccine unless significant harm has been

⁸ case. sword. 1, 26 February 2020, n° 18-26.256.

⁹ Article L1142-1 of the Public Health Act.

¹⁰ Civic Chamber, May 20, 1936, Mercier

¹¹ Cup. First Civic Chamber, February 23. 1983

¹² Cup. First Civic Chamber, October 27, 1969

¹³ Article L1111-2 of the Public Health Code

caused to the patient, and in the latter case ¹⁴, the compensation will not be complete. In part, according to the amount determined by the judge. The full responsibility of the State for the compulsory vaccine is realized without conditions for the damage caused by the vaccine to those who receive it under Law No. 2-2-6-80 of 2004 on public health policy if the French National Office for Compensation for Medical Accidents and Health Effects (ONIAM) provides compensation within the framework of what is known as national solidarity¹⁵ if this system is provided for in Article L3111-9 of the Public Health Code. If it provides (without prejudice to the procedures that can be exercised under public law, the National Office for Compensation for Medical

Accidents, Therapeutic Infections, and Nosocomial Infections shall provide full compensation for damage directly attributable to the compulsory vaccine carried out under the conditions mentioned in this title provided for in Article L1142-22, within the framework of national solidarity) But a question arises regarding what the injured person must meet conditions to receive compensation. The Public Policy Law of Health is answered by listing many conditions regarding the injured party's access to compensation, which are as follows¹⁶

- 1 The vaccine must be compulsory within the meaning of the Public Health Law, not only compulsory.
2. This compensation system exempts health institutions and their employees from assuming responsibility, regardless of their functions.
3. Compensation must be complete, and full compensation includes even variable or unfixed damage, and compensation must include even medical expertise.
4. The injured party must prove the causal link between the vaccine and the damage suffered.

If the above conditions are met, the French National Office for Compensation for Medical Accidents and Health Effects (ONIAM) sends an amount of compensation for damages. If the amount of compensation is rejected, the injured party must challenge this within 60 days from the date of estimating the compensation. Otherwise, the amount of compensation will be binding on him, and he will not be able to claim compensation again according to Article 2044 of the Civil Code.¹⁷

Conclusion

Judicial decisions play an important role in formulating legal principles and filling the gap in legal texts, and this is what the French Court of Cassation followed when it set two important principles related to the damage caused by harmful health products by balancing the damage caused by the vaccine on the one hand and the number of benefits obtained by the vaccine recipients on the other hand. If vaccination is compulsory, the state is the one who bears the

¹⁴ Cup. First civic chamber, 23 January 2014, No. 12-22123, C. Cass, civil. Premiere: 14 November 2018: n° 17-27.980 n° 17-28.529.

¹⁵ Law No. 2004-806 of 9 August 2004 on public health policy.

¹⁶ Council of State, 1 June 2011, No. 339453.

¹⁷ Article 49 of Law No. 2017-1836 of 30 December 2017

result of the damage caused by these vaccines on the basis that it obliges those affected to take the vaccine. Then it is the one who bears the result of the resulting damages. The French legislator has defined a set of principles to obtain compensation for the injured party due to the damage he suffered, especially those that the vaccine is compulsory and that the injured party proves the causal relationship between the vaccine defect and the damage suffered.

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