Available online at www.sciencedirect.com

ScienceDirect

Procedia Economics and Finance 23 (2015) 1567 – 1572

Procedia Economics and Finance

www.elsevier.com/locate/procedia

2nd GLOBAL CONFERENCE on BUSINESS, ECONOMICS, MANAGEMENT and TOURISM, 30-31 October 2014, Prague, Czech Republic

# The Role of Liability for Damages in Labour Law

Dr. György Nádas[a]*

[a]*Associate Professor PhD, University of Debrecen Faculty of Law, Kassai Út 26./Inkubátorház II./214., Debrecen, 4028, Hungary*

**Abstract**

The starting point of my paper is the question whether in labour law – regarding its specialities – it is justified to develop a liability system different from the system of the classical civil law liability for damages. In the system of labour law liability for damages the classical solutions of liability are mixed what is interpreted on the one hand by the specialities of the legal relationship, and on the other hand by the obligation parties' of different positions. It can be stated that the different regulation is justified and necessary regarding both the labour and civil law and the subjects of the employment relationship.



Selection and/ peer-review under responsibility of Academic World Research and Education Center

*Keywords:* civil law, compensation, labour law, liability for damages.

## 1. Introduction

The progression of employment relationships and its examination make clear the following: the first regulations considered the employment relationship as a relationship of subordinate legal relationship. In conclude the subjects of employment law are not co-ordinated contrary to the general private law relationships because they are subordinative **(**Arthurs, 2011).

This is important in connection with this topic because the liability system of labour law includes different approaches and purposes according to the employer's and employee's side. The most relevant element of this system is the liability for damages in private law relationships and its aims are very different within its structure. Three aims must be highlighted in connection with private law liability: reparation, prevention and repression. The legislator can give more stress for these fields with diverse regulation of the liability system. Within the frames of private law relationships there is no need to regulate liability in more ways because co-ordinated parties' legal

* Dr. György Nádas. Tel.: +36 70 459 56 84
*E-mail address*: nadas.gyorgy@upcmail.hu



Selection and/ peer-review under responsibility of Academic World Research and Education Center
doi:10.1016/S2212-5671(15)00413-X

relationships are settled. So according to the logic of private law and its regulation's primary purposes reparation is the most important and it is the same in most of the different legal systems with the detailed norms of liability. In contradiction in labour law aims of liability depends on the tortfeasor's personality that is, there are great differences between the employer's and the employee's liability for damages and the legislator emphasizes primary these principles according to the exact regulation (Hajdú, 2013).

## 2. Historical approach to liability in private law

The differences of the regulation let the legislator express this purpose in connection with the employee's liability for damages even if the principle of full compensation emerges in these rules. The main element of this is prevention and repression primary. The employee's liability can be – and is – limited from several aspects by the legal environment because of the priority of prevention and repression. On the one hand, contrary to the general private law liability (contractual liability) – which has a basically objective viewpoint – the employee's liability can differ since it is a quasi objective liability form based on chargeability. On the other hand, employer's liability is grounded on objective liability and it doesn't contain any elements of chargeability and it points to the direction of full reparation according to the legislator's ideas.

Within this connection the following must be examined: what kind of correspondence can be emphasized between liability for damages in labour law and general liability for damages in private law? Is there a relationship between them at all? And if there is, then to what extent can they be examined together? This question is interesting especially if we take into consideration that labour law can be regulated in an independent codex-like act (Eörsi, 1962). This is the legal situation in Hungary nowadays.

Regulation of general private law liability has always been considered in extreme domains since the period of Roman law. This phenomenon is still current nowadays. Just think about the rules of the "Leges Dudoecim Tabularum", which stated a totally objective liability for damages, namely the only fact to prove was the ok-causal relation between the tortfeasor's conduct and the loss. If it was proven then the tortfeasor was obliged to refund the loss. By this time it has become clear that the aims of liability in private law and liability of criminal law are different, so they must be regulated independently. The so-called "talio" principle proves that because this was the first general principle in legal history of liability and it stated the "eye for eye, tooth for tooth" liability, which put the aim of retribution in the foreground and it would have been difficult to conclude the main principle of liability, that is in integrum restitutio because restoring the original state was impossible. The "talio" principle was replaced by the "compensation" principle and the latter takes into consideration and marks the reparative purpose as well because the tortfeasor had to provide appropriate pecuniary countervalue for the injured party as penalty.

Contrary to this the clearly private law regulation of the "Leges Duodecim Tabularum" focuses on establishing the function of reparation within the frames of the legal regulation. The codification done by Iustinianus changed direction: form this objective liability it turned to subjective liability because the most important element of the examination of liability became the tortfeasor's will instead of the loss and the tortfeasor's circumstances. This affected the European legal progression for several centuries because even the great private law codexes created in the 18-19$^{th}$ centuries established the subjective system of liability in connection with both contractual liability and liability for torts which are actionable per se.

In the 20$^{th}$ century examination of the elements of conscience, generality of subjective liability in connection with contractual damages all became exploded; but earlier – in the 19$^{th}$ century – because of the technological development it was reasonable to return to objective liability in several cases. ROMÁN (1998) This resulted the so-called liability for hazardous operations, which ground is the operations of the increased-level danger activity. The primary aim of its regulation is to guarantee effective private law protection against the increased-level danger activity with the following: the operation itself sets liability for damages occurred in connection with this activity (Eörsi, 1960) Albeit with objective liability can't be a limitless form of liability either because there are or there can be such cases when the operator – in spite of the causal relation between the activity and the loss – isn't liable and for this the legislator defines causes for the operator's justification.

The aims and rules of liability for damages in labour law are not different from the general liability in private law in the following respect: for the statement of liability joint presence of more conditions is needed. Accent of these conditions depend on the legislator's ideas, namely what are the primary purposes of the regulation of these fields.

These conditions are obviously the following: loss, illegality, causal relation and lack or exclusion of justification (Marton, 1942) Another condition is in connection with contractual losses that the loss surfaced connected to the parties' contract, of course.

Another important development in the 20th century was the generality of objective liability related to the liability coming from contracts, which shadowed the aims of liability for damages. At the same time general application and regulation of objective liability result the recodification of causes for justification in private law contractual relationships, of course. It was reasoned because of the general objective liability's legal nature; that is it can be interpreted as a quasi non-justifiable form of liability in connection with actual losses and the so-called consequence-losses **(**Fuglinszky, 2013).

## 3. Legal concepts of liability systems

A good example of this phenomenon is the Convention on International Sale of Goods (Vienna, 1974) (in the following: Vienna Convention) because it regulates questions of objective liability in contractual relationships and it also introduces new rules of causes for justification (Sándor, 1990). This is a very important development related to the topic of this study because the liability systems standing on the ground of full reparation would like to secure the possibility of total refunding in connection with consequence-losses as well. So the problems and questions arising from all these are not evadable regarding my hypothesis.

Another important principle is the following: the injured party should not get in a more advantageous situation than she/he was before the tort. In conclude the Vienna Convention guarantees limited refunding of the consequence-losses taking into consideration the parties' co-operation during the contracting process and the actual content of the contract.

As mentioned above the rules of general private law contractual liability are not applicable unified for liability in labour law because of the subordination of the employment relationship. Most of the regulations divide the rules into employee's and employer's liability for damages regarding this main difference between the legal natures of the legal relationships.

There are several aims of legal policy behind these diversities; firstly, the legislator intends to effect the unequal positions of the parties by securing protection for the employee's loss or damages, secondly, the legislator has to choose which aim of compensation should be put into the foreground in the given liability system.

## 4. Are they really equal? Practical problems

In the following I survey theoretically one of the models of rules defining the employee's and employer's liability for damages, which can be used for achieving the goals mentioned above. In the circle of the employee's liability for damages besides prevention and repression partly reparation can be mentioned according to legislator's will; namely to limit the employee's liability not only in connection with the measure of the compensation but also in connection with the behaviour, by which she/he can cause loss (Nagy, 1964) So we can observe some kind of limitation connected to the condition of illegality with narrowing the scope of the conducts, which are suitable for stating the employee's liability for damages. Contrary to these general behavioural requirements we can find differences in connection with the employee's liability for deficiency because this form of liability is not a real form of liability for damages because one condition is missing from the above described; namely, no causal relation is required between the employee's conduct and the loss. The fact of deficiency itself settles the employee's liability in this case. In conclude the legislator's will is only to totally repair the employer's loss totally with this special form of employee's liability.

Albeit with protection of the workers' rights can be pointed out in this case as well because emergence of the liability for deficiency is bounded to strict rules and these rules are not flexible in practice. The regulation defines different obligations for the employer as well contrary to the general norms of liability according to the specialty of the liability for deficiency; that is, this kind of liability is not a real form of liability for damages but it can be emphasized as a rule of risk-settlement.

The forms of the employee's liability for damages can differ regarding their legal grounds. The first system stands on the ground of the tortfeasor's subjectivity because its main element is actually culpability. So the most

important questions of the lawsuit for refunding the losses are as follows: the court has to examine the employee's will; especially the following question: did the employee want the loss to occur? Did the employee cause the damage intentionally? Did his intention contain the occurrence of the loss and did he comprehend the consequences of her/his act? And if the employee didn't then did she/he attest due care?

This way the liability systems based on culpability define prevention and repression as the primary aims in this respect (Prugberger-Kenderes, 2013) Furthermore, the liability following the level of culpability sets a limit for the measure of compensation and insists on the principle of full refunding only if the tortfeasor's conduct was intentional. These systems apply the principle of direct pleading because this means another guaranty for the tortfeasor in spite of the subjective liability based on culpability. According to this all conjunctive conditions must be proven by the injured party, namely the employer. This rule supports also the viewpoint of the necessary protection of workers, which is reasonable regarding the parties' unequal legal positions in an employment relationship. This way, the clarification of the facts to prove can be easier for labour courts.

Another possible model can be a system of rules, which define the reparative function as the primary purpose of liability for damages. The ground of this system can be the classical private law codex's norm for torts which are actionable per se. In this case we can't talk anymore about subjective liability or liability based on culpability. The benchmark of liability becomes more objective and chargeability surfaces as the general behavioural requirement. This way the given tortfeasor employee's will is much less important and the examination focuses on the loss and the survey of the causal relation between the tortfeasor's conduct and the loss. This means that the benchmark of liability is stricter than mentioned in the systems of culpability but in employment relationships – which can be emphasized as permanent legal relationships – the possibility for justification remains, of course. Special rules are applied for pleading in the claims for compensation because theoretically liability based on chargeability is a form of liability where justification can be proved, so the tortfeasor has to prove – according to the main rule – that the tort wasn't chargeable because she/he acted according to that can be expected in the given situation.

The social function of the regulation of labour law and the subordination of the parties in the employment relationship can limit theoretically the possibility of exculpation pleading. The success of this kind of pleading eventually depends on the parties' compared positions and on the legal instruments for pleading with they have to prove chargeability. In conclude the legislator may keep the system of this kind of liability for damages of the employee but at the same time the legislator can settle the whole burden of proof differently locating all the burden and obligations of pleading on the employer (Prugberger, 2001). In connection with this a theoretical question concerning the facts to be proved can raise: if the legislator reverses the burden of proof in connection with exculpation pleading and obliges the injured party to prove all the conjunctive conditions of liability for damages then the injured party has to prove a non-existing fact. This way the injured party can only prove that the tortfeasor employee did not act according to the general behavioural requirements in the given situation.

The third model applies the rules of private law, namely the general rules of refunding the losses of contractual relationships undoubtedly. This legal solution puts only the primacy of reparative function but sets the liability objective at the same time and guarantees the possibility for employee's justification but only to a limited extent; that is within the scope, which is applied in civil law relationships and is possible for every party in a contractual legal relationship. The legislator must enable the employee like any other contracting party to exempt herself/himself or at least to decrease the measure of compensation somehow. This model doesn't take notice of the special fundamental principles of labour law at all because the general system of liability for damages has effect and – in correspondence with this – the rules for justification are defined the same way as in the classical private law relationships.

In this respect more concepts and ideas can be drafted, so one of the legal solutions can be the following: only the unavoidable outer cause can justify the employee's tort. Another method is possible according to the relation of cause and effect and its closure if we apply the rules of justification of the Vienna Convention in labour law (Sándor, 1990). This way the employee has to prove that the loss occurred because of an unforeseen circumstance is beyond her/his scope of supervision and it was unavoidable. This regulation makes the employee's exemption almost impossible. Emergence of the differences coming from the parties' different legal status is possible in connection with justification in this model if the legislator limits somehow the measure of compensation and indicates forcefully the clause of foreseeability, which can lead only to the limitation of the compensation sum.

Another different legal solution can be the following: the legislator can mix the rules of liability based on chargeability and the rules of contractual liability – namely objective liability – someway **(**Csöndes, 2013). This could mean that the ground of liability is chargeability and direct exculpation pleading is replaced by direct pleading and clause of foreseeability plays a key-role as well. This liability system can be completed with such legal solutions that lets labour courts to mitigate the measure of compensation in case of the employee's certified circumstances, which deserve extraordinary equity.

It is not excluded that a unique combination of the general models become a part of labour law so this way we can talk about the following form of employee's liability for damages: quasi objective or liability based on chargeability completed by foreseeability and direct pleading. Albeit with this kind of legal solution can lead to dogmatical contradictions and uncertainties in connection with interpretation because labour courts have to carry out pleading a very complex and difficult way and from the statement of facts – resulted from pleading – appropriate and well-reasoned legal conclusions can be drawn difficult (Sipka, 2013).

All these models emerge as – we can say that – general forms of liability for damages among the employee's liability norms. Besides that – as I mentioned it above – liability for deficiency also appears in this context but only as rules of risk-settlement but there is the possibility to define such a special scope of liability, which is expressly objective, so justification is possible only within a narrow circle and in conclude the principle of full refunding and reparation are dominant. In this case unambiguously exculpation pleading is needed and the behaviours in connection with this strict form of liability and the subject of tort must be defined precisely and emphasized in details.

After examining the employee's liability for damages the employer's side also needs to be observed with the same method and viewpoint. Employer's liability is regulated diverse because of the different approach and aims. Labour law codexes mostly define the employer's full compensation in connection with the obligations of liability for damages so the primary purpose of this form of liability is reparation. This way employer has to position the employee in such a situation like the loss never occurred. This aim can be fulfilled several different ways and these are the most important models of employer's liability for damages.

At first glance the employer's liability is subjective based on culpability as well but the pleading is not direct but exculpation. This means that according to the law employers are obliged to prove their lack of culpability in connection with the loss. This process raises dogmatical problems; namely on the one hand proving of non-existing facts encumbers the solution of the legal dispute and on the other hand if the employer is a legal person then her/his culpability can be interpreted difficult. Its reason is that this form of liability takes into consideration undoubtedly the tortfeasor's will and this way liability is based on this examination. In this case the principle of full compensation also injures because the employee doesn't have any kind of legal instruments to vindicate damages occurred beyond the employer's culpability.

The quasi-objective form of liability is possible on the employer's side as well; in this case the main principle of the liability is the full compensation but at the same time interpretation of chargeability can lead to difficulties in case an employer functions as an organization (Eörsi, 1960). Furthermore, the question of causal relation arises as well because of the following: how can be an employer as an organization justify that she/he acted like that can be expected in the given situation. In this construct only exculpation pleading is possible; of course, so in conclude the injured party has to prove the loss, the causal relation and illegality but the lack of chargeability must be proven by the tortfeasor. From the principle of full compensation the following can be concluded: the employer has to refund both pecuniary and non-material losses.

The third possible way is to regulate the employer's liability for damages the same as the liability of hazardous operations defined in civil law, which is a totally objective form of liability (Prugberger, 2000). The principle of full compensation emerges the most this way and this form takes into consideration the specialities of labour which divides labour law from other legal relationships of private law and from other contractual legal relationships. Objective liability doesn't mean limitless or absolute liability because it is excluded according to the key-concepts of liability in labour law. So causes for justification are guaranteed for the employer as well. Scope of justification and its narrow or broad definition has effect both on the principle for reparation and prevention, of course. But we must not forget that prevention is relevant only besides reparation.

If we choose a form of liability very similar to the liability for hazardous operations in civil law then exemption is possible only because of unavoidable cause beyond the employer's scope of supervision (Szalma, 2008).

Furthermore, we can state that the rules of justification stated in the above mentioned Vienna Convention in connection with sales contract sets objective liability. But in this case the scope of exemption is defined in a broader way, namely two new legal instruments appear: scope of supervision and foreseeability in connection with the mitigation of compensation.

It is important to highlight that clause of foreseeability can only be relevant in connection with the so-called consequence-losses because in connection with the refunding of actual loss, non-material damages and reasonable expenses foreseeability can be examined only to a limited extent or not at all. Scope of supervision can only be interpreted problematic in labour law because of the special subordination and permanency of the employment relationship. The next question is: what falls in and what is beyond the employer's scope of supervision? To answer these questions is more difficult because of foreseeability and all these are obstacles to fulfill the aim of reparation to the necessary extent (Kun, 2013) Furthermore, it limits also the emergence of the other aims; namely prevention and repression.

## 5. Conclusion

Summing up the above examined questions and problems the following conclusions can be drawn: it is practical to regulate the employee's and employer's liability for damages differently according to the diverse purposes and interests of the parties' in connection with liability for damages in the employment relationship.

## References


Arthurs, H. (2011): Labour Law After Labour, Osgoode Hall Law School Comarative Research in *Law and Political Economy, Research Paper Series, 15*., 18.

Csöndes M. (2013): Az ésszerű előreláthatóság és a munkajogi kárfelelősség, *HR&Munkajog, 10*, 21.

Eörsi Gy. (1960): A fokozott veszéllyel járó tevékenységért való felelősség alapkérdéseiről, *Akadémiai Nyomda*, Budapest, 382.

Eörsi: Gy. (1962): Elhatárolási problémák az anyagi felelősség körében, Közgazdasági és Jogi Könyvkiadó, Budapest, 33.

Fuglinszky Á. (2013): Felelősség a szerződésszegéssel okozott károkért, in: WELLMANN Gy.: Polgári jog, Kötelmi jog I-II., Budapest, HVG-ORAC Lap és Könyvkiadó Kft., 240.

Hajdú J. (2013): A munkavállalói általános kártérítési felelősség szabályozása az új Mt.-ben: tények és kihívások, Budapest, Károli Gáspár Református Egyetem Állam- és Jogtudományi Kar, 112.

Kun A. (2013): Gazdasági racionalitás és munkajog − az előreláthatósági klauzula esettanulmánya az új munka törvénykönyve tükrében, Publicationes Universitatis Miskolcinensis, Sectio Juridica et Politica XXXI/1-2, Miskolc

Marton G. (1942): Kártérítési kötelmek jogellenes magatartásból, in: SZLADITS Károly (ed.): Magyar magánjog, IV. kötet, Budapest, Grill Károly Könyvkiadóvállalalta, 584.

Nagy L. (1964): Anyagi felelősség a munkaviszony keretében okozott károkért, Közigazgatási és Jogi Könyvkiadó, Budapest, 1964, 10.

Prugberger T. (2000) : A munkajog és a polgári jog kapcsolata a jogdogmatika tükrében, Sectio Juridica et Politica, Miskolc, Tomus XVII, 220.

Prugberger T. (2001): Az új Ptk. és a munkajogi szabályozás, különös tekintettel az egyéni és a kollektív munkaszerződésekre, a munkajog és polgári jog kodifikációs és funkcionális összefüggései, Miskolc, 184.

Prugberger T. – KENDERES GY. (2013):A munkaviszony keretében fennálló kártérítési felelősség új szabályainak egyes problémáiról., Magyar Jog, 7., 394.

Román L. (1998): A munkajog alapintézményei, University Press, Pécs, 45.

Sándor T. (1990): A nemzetközi adásvétel (Az áruk nemzetközi adásvételéről szóló 1980. évi ENSZ Egyezmény magyarázata), Napraforgó Kiadó, Budapest, 1990., 277.

Sipka P. (2013): Az új Munka Törvénykönyve felelősségi rendszere, figyelemmel az új Polgári Törvénykönyvre, Magyar Jog, 12, 738.

Szalma, J. (2008): Szerződésen kívüli (deliktuális) felelősség az Európai es a magyar magánjogban, ELTE AJK – Bíbor Kiadó, Budapest – Miskolc, 217.