PhD THESIS

Milica Ilić

MISKOLC

2026

UNIVERSITY OF MISKOLC
FACULTY OF LAW
FERENC DEÁK DOCTORAL SCHOOL OF LAW

Milica Ilić

EMPLOYER'S LIABILITY FOR DAMAGE CAUSED BY AN EMPLOYEE TO A THIRD PARTY AT WORK AND IN WORK-RELATED SITUATIONS IN SELECTED CEE COUNTRIES

Ferenc Deák Doctoral School of Law
Head of the Doctoral School:
Prof. Dr. Erika Róth

Title of the Doctoral Programme:
Further Development of the Hungarian State and Legal System and Legal Scholarship, with Special Regard to European Legal Trends

Supervisor:
Prof. Dr Attila Dudás

MISKOLC

2026

1 Table of Contents

Recommendation from the Supervisor

It is my privilege to provide this recommendation in support of the doctoral dissertation submitted by Milica Ilić, a doctoral candidate at the Deák Ferenc Doctoral School in Law and Political Sciences in Miskolc, Hungary, whose research was conducted under my supervision in the field of Obligations Law. Although prior to commencing this doctoral program, she had already established herself as an attorney at law in Serbia, she continuously demonstrated a profound commitment to academic advancement and scholarly inquiry. Her decision to undertake doctoral research in this particular field was motivated not only by curiosity but also by a genuine aspiration to bridge the gap between legal theory and legal practice. In this sense, by writing the dissertation, she was in position to synthesise extensive professional experience with rigorous academic analysis, thereby approaching the subject matter with both practical insight and scientific precision.

A particular distinction of this research endeavour lies in the exceptionally broad comparative analysis undertaken by the candidate, encompassing the legal regulation of the subject matter across as many as nineteen jurisdictions. Such an extensive comparative approach required not only dedication and methodological discipline, but also a deep engagement with diverse legal systems.

An especially demanding aspect of the research consisted of the examination and analysis of legal literature, legislation, and case law written in several less commonly accessible languages, including Estonian, Lithuanian, Latvian, Bulgarian, and Hungarian. The successful integration of these sources into the dissertation reflects the candidate's perseverance in producing it.

Each jurisdiction is examined within a separate chapter, systematically structured through corresponding subchapters that follow an identical analytical framework throughout the dissertation. Such methodological consistency significantly contributes to the clarity, coherence, and comparative value of the research.

The first subsection of each chapter, entitled General Considerations, addresses the general issues relevant to the respective legal system. In particular, it identifies and analyses the principal legal sources governing the subject matter, provides the relevant definitions of the concepts of employer and employee, and examines one of the central legal questions in this field — whether an employer's liability is based on the principle of strict liability or fault-based

liability. The second subchapter addresses the issue of liability of a legal person for damage caused by its organ. This part of the analysis further illustrates the well-established interpretation that a legal person, as such, constitutes a legal fiction, whereas its organs are actually natural persons acting on its behalf and expressing its legally relevant will through their conduct.

The subsequent subchapter concerns state liability for damage caused by its public officials. Due to its exceptional breadth and complexity, particularly having regard to the fact that it lies between the administrative and civil law, the subject matter has been examined with focus on state liability for unlawful acts committed by public officials.

The last subchapter pertains to the employer's liability for damage caused by the employee to a third party using a dangerous thing or performing a dangerous activity. The peculiarities of the topic are that from the very outset, it is firmly situated within a regime of statutory strict liability, where questions of fault, whether on the part of the employer or the employee, are legally irrelevant.

A further distinguishing feature lies in the fact that each jurisdiction has its own lex specialis. Accordingly, it was particularly challenging to link these special laws with the subject of the dissertation.

Budapest, 10 May 2026

Prof. Dr Attila Dudás

Professor

Supervisor

Summary

The objective of this dissertation is to provide a thorough analysis of the *ratio legis* underlying the adopted legislative solutions, as well as of their interpretation in legal literature on the issue of the employer's liability for damage caused by an employee to a third party at work and in work-related situations.

The author selected nineteen countries in Central and Eastern European (alternative: Central and South-Eastern European) countries. Due to language barriers and a lack of English literature, some of them were not analysed in separate chapters. Namely, fourteen jurisdictions are divided into separate chapters, with four main subchapters for each of them. Furthermore, at the beginning of this PhD thesis, an overview is provided for a historical perspective of this subject matter that is founded on Roman legacy. That is why this is a legal institution of vicarious liability that is rooted in Roman law. In addition, modern legal systems are generally presented. The Baltic states are analysed, although they are located in Northern Europe. Moreover, the successor states of the former Yugoslavia are discussed twice in this dissertation: first at the beginning, and subsequently in separate chapters, taking into account that the author is from the Republic of Serbia. A brief overview is provided on the issue of the non-contractual liability of member states and EU institutions for damage.

At the end of the introductory part, a crucial issue regarding the Draft Common Frame of Reference (DCFR) is addressed. Although from a contemporary perspective this act appears utopian, the author deeply believes that in the future it will become a new European General Civil Code (with small modifications).

The main text pertains to the previously mentioned separate chapters for each country, with four main subchapters: *General considerations, Liability of a legal person for damage caused by its organ, State liability for damage caused by public officials,* and *Employer's Liability for Damage Caused by the Employee to a Third Party using a dangerous thing or performing a dangerous activity.*

2 INTRODUCTORY REMARKS

“Anyone who works, makes mistakes“ is a common phrase, but someone must compensate for the damage caused and assume liability. It opens the question of who will do that. This dissertation deals with an employer’s liability for damage caused by an employee to a third party at work and related to work. The primary reason for the choice of this topic is the importance of the legal institute of liability for damage, especially when the damage is caused at work or in work-related situations. Secondly, through the comparative method (analysis) which involves a comparison of the various legal regimes of Central and Eastern European (alternative: Central and South-Eastern European) countries, an attempt shall be made to overcome the language barriers and make this topic accessible to interested readers in the English language. An additional challenge in the research is that although the employer’s liability for damage is a tortious liability and part of the law of obligations, in some legal orders, labour law could also contain some rules pertaining to this issue (especially in Polish legal jurisdiction, where case law created a new form of tort, the so-called “labour tort”). Therefore, the question emerges, which act regulates this legal institute? (This will be a normative method used in this work). The answer depends on whether the state (its legal order as mentioned), as a subject matter of the research, has its civil code or not, as well as whether it has a labour code, employment act, or obligations act. Usually, the employment act defines terms such as employer and employee, based on which definitions of the employment relationship between the employer and the employee are characterized by a defined hierarchy where the employer gives instructions to employees and organizes the working environment. Thus, a reasonable conclusion seems to be that the employer should be liable for their employees because the employer assumes the risks of conducting business. It sounds simple, so it poses the question, is it like that every time? This sort of employer’s liability is a form of liability for others or so-called vicarious liability, in literary interpretations of most legal orders, considered strict, but is the employee’s fault legally relevant? Is it a condition for establishing the employer’s liability, or would it be justified that the employee should be held liable if they are at fault? Or does the employer’s vicarious liability replace the employee’s liability? Is it a deviation from the general principle that everyone should bear the consequences of their own actions? These questions will be explored in detail, starting with vicarious liability. In addition, including the state as an employer, alongside private legal persons and entrepreneurs, significantly enhances the

complexity and relevance of this topic. Moreover, this research includes the employer's liability for damage caused by an employee to a third party using a dangerous thing or performing a dangerous activity which always leads to the application of the general rules of strict liability, wherein the employer cannot exempt themselves from liability even if they prove that the employee exercised due diligence and care in their actions. While in other situations, according to the literature, there is a lot of space for different legal interpretations as to whether the employer's liability is strict or fault-based. Therefore, one may assume that two topics shaped this thesis: the employer's liability for damage caused according to the general rules of fault-based liability and the employer's liability for damage caused by dangerous things or performing dangerous activities.

Both are forms of non-contractual liability (ex delicto, tort law), which will be explored later. The employer may be a legal or a natural person. What is specific is that a legal person is an artificial entity, a legal fiction, whereas a natural person is an active participant in the employment relationship. The employer may also be the state, while, when it comes to an entrepreneur, it is considered a natural person. In addition, the injured party is always a third person. In some legal orders, the liability emerging due to causing damage to another employee of the same employer is considered contractual. A comparative overview of all these similarities and differences shall be performed for selected countries, divided into two groups: the legislation of European countries with more developed legal tradition in this field, such as Germany, France, Austria and Italy; the legislation of CEE countries, such as Bulgaria, Czech Republic, Estonia, Hungary, Lithuania, Latvia, Poland, Romania, Slovenia, Slovakia, Serbia, Croatia, North Macedonia, Montenegro, and Bosnia and Hercegovina.

Thus, the main hypothesis is that the liability of the employer should be strict, regardless of their fault, because the employer must assume the risk for damage caused. Through the comparative method, in selected countries, it will be explored whether this hypothesis can be confirmed. In addition, it will answer the question of what role the employee's fault plays in establishing the employer's liability, especially in cases when the damage is caused with intent, ordinary negligence or gross negligence. Depending on these facts, the question then arises whether the injured party has the right to demand compensation directly from the employee if they caused damage intentionally. In most jurisdictions, this possibility exists; however, in practice, it is usually the employer who first compensates the injured party and then gains the right of recourse against the employee who, with intent, caused the damage. Another important question is whether there is any possibility for the employer to release themself from liability,

especially in cases when the damage is caused by a dangerous thing or dangerous activity, for which the liability is always strict, prescribed by statute. In addition, there are also legal regimes where the labour code regulates this issue, for example, in Polish law, but in the end, it is the Civil Code that takes priority in application. Then what is the role of the Labour Code in this subject matter? This shall also be examined. As for the state's liability for damage caused to third parties, this is a very broad topic; thus, the focus in this thesis will be on the liability of the state for damage caused by its officials. Usually, the constitution stipulates, in the form of a principle, the state's liability; administrative law shapes it, but compensation for damage is carried out following the general rules of law of obligation.

3 EMPLOYER'S VICARIOUS LIABILITY IN CHOSEN JURISDICTIONS

3.1 Historical overview- Roman legacy

As a legal institution, vicarious liability originates in classical Roman law.[1] In that period, the liability of *paterfamilias* was strict for torts committed by the wrongful act of his slaves and children under his power, based on the principle of noxality.[2] In addition, all descendants who were legitimate (and the wife *in manu)* were under the power of the *paterfamilias*.[3] However, in post-classical Roman law, the principle of noxality was abandoned following the abandonment of the institution of slavery.[4] Scholars were divided on whether the master was liable for his servants. Many thought that he was liable under the general principle of liability if he was at fault in the selecting his servants, in the sense that he did not show due care. Nevertheless, some authors argued he was liable but the damage would be paid proportionately to the wages limited in the amount that he did not pay to the servant (in the 17th and 18th centuries, the concept of employer's wage liability evolved, marking an important shift in labour relations). Others stated that this applies only if servants acted outside of employment

[1] Reinhard Zimerman, *The Law of Obligations, Roman Foundations of the Civilian Tradition*, Juta & Co, Ltd PO, Kenwyn, 1992., p. 1118.
[2] Ibid. p. 1118.
[3] Paul J. du Plessis (2020): Borkowski's Textbook on Roman Law, Oxford University Press, p. 114.
[4] Reinhard Zimerman (1992): 1118-1119

duties. Otherwise, the master is fully liable for compensation in cases of delicts committed during the course of employment.[5]

This distinction between the damage caused within or outside of employment duties is the reason why modern codes use the term „liability for others“ rather than „vicarious liability“.[6] Namely, vicarious liability has its application also to the situations when the damage is caused not only at the workplace, whereby the fault is not a condition for establishing the employer's liability. On the other hand, liability for others gives the possibility to opt between an employer's fault-based liability or strict. Thus, during the nineteenth and twentieth centuries, there was a competition between strict vicarious liability vs. fault-based liability, but former prevailed. However, although vicarious liability was considered strict in the literature, in reality, it was not. Strict liability is associated with dangerous activities, whereas the hiring of servants could not be considered dangerous. Vicarious liability served as a tool to make the principal liable for the wrongdoing of their servant[7], where one person is liable without their own fault for the wrongful act of another person. In addition, it should highlight that although English law belongs to the common-law legal system and is not the subject matter of this research, the following conclusion will complete the picture of the theoretical interpretation of whether the ground of the employer liability is fault-based or strict. That interpretation of strict liability is embodied in the English and Romanic legal system. In Serbia, as in the former Yugoslavia, the situation is the same. In Germany, fault-based liability is prescribed by statute, which provides a weaker protection of the injured party. Thus, legal institutes of contract law have to be applied in order for the employer's liability to be stricter.[8] Moreover, strict liability has its boundaries; for example, in Serbian law, it is the criterion that the damage caused at work or related to work situations.[9] Another example could be French law, where the condition for establishing strict liability is that the employee caused the damage in the performance of work functions.[10]

[5] Ibid. p.119 .
[6] Gerhard Wagner in *Towards a European Civil Code*, eds. (Arthur S. Hartkamp, Martijn W. Hesselink, Ewoud H. Hondius, Chantal Mak, C. Edgar du Perron), Kluwer Law International, Alphen aan den Rijn, 2011, pp. 903-904.
[7] Ibid., pp. 903-904.
[8] Marija Karanikić Mirić: 2020, 161-182, cited in Marija Karanikić Mirić: Obligaciono pravo, Službeni glasnik, 2024, p. 564.
[9] Marija Karanikić Mirić: 2024, p. 564.
[10] Ibid., p. 564.

The reparation or restitution is not the only purpose of the civil liability.[11] It also has a function to remove the harmful consequences of wrong behaviour and bring the injured party back to their prior state, in addition to general and special prevention.[12]

In addition, considering the institute of compensation for damage, a short overview of the historical development should be provided. Namely, its peculiarities are that it originates from criminal law, as liability was defined by the Roman *Lex Aquilia* as a private delict for which the tortfeasor must be punished, in addition to their obligation to compensate for damage.[13] In the Code of Justinian (*Corpus Juris Civilis*), changes emerged as it differentiated situations in which the damage was caused negligently, and from then on, it was no longer considered a delict. Moreover, Roman law introduced a distinction to so-called quasi-delicts, when fault was not required. Based on the Code of Justinian, the basis of liability under the fault-based liability system was the principle of fault, but its character was strict. That is why *culpa levis* was sufficient for establishing the liability. The tortfeasor had to prove that they were not at fault in order to be relieved from liability, as fault was presumed.[14]

3.2 Modern legal systems

In modern times, fault-based and strict liability represent two models of master's liability for damage caused by their servants.[15] The former is accepted in German law, the latter in French, which are the two most prominent jurisdictions in continental (Romano-Germanic) legal systems.

Modern times imply modern terms; thus, instead of the old-fashioned terms master and servants[16], the term „employer" is more appropriate for organisations such as companies or corporations.[17] However, this term is not exclusive because the term „principal" is also used in some legal sources, such as §831 of the German Civil Code (Bürgerliches Gesetzbuch, BGB).[18]

[11] Sava D. Vojnović: 2025, Legal liability and free will, University of Belgrade Faculty of Law, Belgrade, p. 86.
[12] Karanikić Mirić 2024, 500 cited in Sava D. Vojnović: 2025, p. 86.
[13] Bányai Gábor (2010): A veszélyes üzemi felelősség és a munkáltatói objektiv kárfelelősség kialakulásának egyes állomásai, aktuális kérdései (Some stages in the development of strict liability for dangerous activities and employer's strict liability for damage, current issues), Magyar Jog, p. 65.
[14] Ibid., p. 65.
[15] Gerhard Wagner: p. 907.
[16] Ibid., p. 903.
[17] Ibid., p. 905.
[18] Section 831 of BGB, Liability for Vicarious Agents.

Namely, based on this article, a person relying on another to perform a certain task is liable for any damage the other unlawfully causes to a third party while performing the task. However, this liability does not apply if the principal (employer) exercised reasonable care in selecting the person, managing the activity, and supervising them, or if the damage would have occurred regardless of this care. Hence, two defences are available to them.[19] The reason for this is in the context of the employer-employee relationship even though it is prescribed in a general way.[20] The principal's (employer's) liability is fundamentally based on the concept of fault, accompanied by a reversed burden of proof.[21] In this context, the employer has to provide evidence that they exercised care in the appointment, supervision, or management of their employees or in any way the damage would have occurred.[22] Therefore, the rule of the employer's personal fault in the Germanic legal family has a foundation in the post-classical Roman *Gemeines Recht*[23] (which means "common law" developed from customary law) where „the principle of fault was the moral basis of the law of delict".[24]

The other, the French model relies on Article 1242, Sec. 5 of Code Civile *(„Les maıˆtres et les commettants, du dommage cause´par leurs domestiques etpre´pose´s dans les fonctions auxquelles ils les ont employe´s")*.[25] This article imposes the master's liability for damage caused by their servants to a third party.[26] In literature, it is considered strict, because the master cannot release themselves of liability if they prove that they could not prevent the act leading to that liability.[27] Although it is not prescribed by statute, in case law and literature the general conclusion is that the fault of the employee is a condition for establishing the employer's liability which must be proved by the injured party.[28] Bearing in mind that the injured party does not know the identity of the tortfeasor, proving a negligent act by the company is sufficient to establish liability.[29]

[19] Ibid., Cited in Paula Giliker, „Vicarious Liability or Liability for the Acts of Others in Tort: A Comparative Perspective", 2011, 2(1) Journal of European Tort Law, p. 33; Cees van Dam: *European Tort Law*, Oxford University Press, 2013., p. 502.
[20] Gerald Spindler, Oliver Rieckers: *Tort Law in Germany,* Kluwer Law International B.V., Alphen aan den Rijn, 2019., p. 67.
[21] Paula Giliker: p. 33.
[22] Ibid., p. 33.
[23] https://www.britannica.com/topic/gemeines-Recht
[24] Konrad Zweigert, Hein Kötz: *Introduction to comparative law*, Clarendon Press, Oxford, 1998., p. 630.
[25] Gerhard Wagner: p. 909.
[26] Ibid., p. 909.
[27] „Tourneau (supranote 6), para. 7495". Cited in Gerhard Wagner, p. 909.
[28] Gerhard Wagner: p. 909.
[29] „Cass. civ. 2e, 27.4.1977, Bull. civ. II, no. 108" cited in Gerhard Wagner: p. 909.

Albeit the German model is opposite to the French, they also share some similarities: both require „a relationship by which one person may be held liable for the harmful acts of others; the act of wrongdoing by the employee or subordinate; and that the liability is confined to a specific set of circumstances, be it 'within the course of employment', *dans les fonctions auxquelles ils les ont employes* or in *Ausführung der Verrichtung*."[30]

Looking only at the statutory provisions, the German BGB imposes fault-based liability on the employer, contrary to the French strict liability, but case law offers a much nuanced interpretation.[31]

The German and French models of employer's vicarious liability rely on the rules of the civil code, but there are jurisdictions where this institute is regulated in the labor law legislation. Such is the case with Poland, for instance, where the Labour Code, in Article 120. sec. 1 1974 (*Kodeks Pracy*) prescribes direct liability of the employer for damage caused by their employee to a third party during the working process.[32] Under Austrian law, vicarious liability is found in the following articles of the General Civil Code - ABGB[33] (Allgemeines Bürgerliches Gesetzbuch): 1313a (liability for 'Erfüllungsgehilfen'), 1315 (liability for 'Besorgungsgehilfen'), and 1319a ('Leutehaftung').[34] In addition, legal persons are also liable for their organs and their liability is strict.[35]

Under Romanian law, this issue is broadly defined. Principals are liable for the actions of their auxiliaries, and this term includes the employer's liability, as well. Article 1373, sec. 1 of the Civil Code mandates that principals must compensate for any damage caused by their auxiliaries when such wrongful actions are tied to their duties or the goals of their assigned tasks.[36]

[30] Paula Giliker: p. 33.
[31] Ibid., p. 38.
[32] Ewa Bagin´ska, Magdalena Tulibacka: *Tort Law in Poland*, eds. (Roger Blanpain, Frank Hendrickx, Britt Weyts), Kluwer Law International B.V., Alphen aan den Rijn, 2022, p. 92.
[33] General Civil Code for all German hereditary lands of the Austrian Monarchy StF: JGS No. 946/1811, with all amendments up to today: last update: BGBl. I Nr. 33/2024 (NR: GP XXVII RV 2462 AB 2481 S. 257. BR: AB 11461 S. 965.).
[34] Ferdinand Kerschner & Erika Wagner (2015): in Christoph Grabenwarter, Martin Schauer (eds.) Introduction to the Law of Austria, Kluwer Law International BV, The Netherlands, p. 112.
[35] Ibid., p. 112.
[36] Laura Toma-Da˘uceanu, Ioan Ilies¸ Neamt in Roger Blanpain, Frank Hendrickx, Britt Weyts (eds.) *Tort law in Romania,* Kluwer Law International B.V., Alphen aan den Rijn, 2022., p. 68.

Regarding the successor states of former Czechoslovakia, in the Czech Republic, the Civil Code does not contain a specific provision on employer's vicarious liability.[37] Article 2914 of the Civil Code regulates this issue as a liability for the assistant who causes damage to a third party, in a general way.[38]

Under Slovakian Law, Art. 420 Sec. 2 is considered a general provision that regulates the issue of attributing liability to the principal for damage caused by their assistant to a third party.[39] It prescribes that damage could occur while a natural or legal person are performing their activities on behalf of the person who engaged them for these activities. In addition, they will not be liable according to this provision, but according to the labour law, they will.[40] For establishing the employers' liability under civil law, it is required to fulfil two conditions: the employer's assistant should cause damage during the performance of work duties that stems from the contract, or other acts and decisions. The second condition is that the subject of these activities is the employee or representative who acts on behalf of the employer.[41] If any of these conditions is missing, the employee will be directly liable in theory. If Sec 1 and 3 of this provision are added in interpretation, in case law, it will be difficult to apply it in an appropriate way.[42] Sec 1 stipulates the liability of everyone who causes damage, while Sec 3 provides that they will be released from liability if they prove that they did not do that.[43] However, regarding the formulation of Art 420 Sec 2, the employer is liable as a principal („že zodpovedným je zamestnávateľ v právnom postavení principála v zmysle občianskeho práva") while the employee cannot be directly liable according to case law.[44] Furthermore, in Slovakian literature, there is also an interpretation following the model of Czech law and enacting the new Civil Code, that the question of establishing the direct liability of the employee remains open. Namely, the idea is to establish the direct liability of the employee for damage caused if they

[37] Lenka Dobešová and Jan Hurdík (2020): Tort Law in the Czech Republic, Kluwer Law International B.V., Alphen aan den Rijn, p. 67.
[38] Law No. 89/2012 Coll. as amended up to Act No. 163/2020 Coll, Civil Code of the Czech Republic, Art. 2914.
[39] Trojčáková, V: Zodpovednosť za škodu voči tretím osobám spôsobenú pomocníkom a poistenie zodpovednosti za škodu, Súkromné právo 6/2019. https://www.legalis.sk/archiv-casopisov/sukromne-pravo/6-2019, p. 244.
[40] „Škoda je spôsobená právnickou osobou alebo fyzickou osobou, keď bola spôsobená pri ich činnosti tými, ktorých na túto činnosť použili. Tieto osoby samy za škodu takto spôsobenú podľa tohto zákona nezodpovedajú; ich zodpovednosť podľa pracovnoprávnych predpisov nie je tým dotknutá". Act No 40/1964 Coll., Civil Code, Federal Assembly of the Czech and Slovak Federative Republic, effective from 01.07.2016, § 420, Sec. 2.
[41] Trojčáková, V: 2019, p. 245.
[42] Ibid., p. 244.
[43] Civil Code, § 420, Sec. 1 and 3.
[44] Barancová, H: Zodpovednosť zamestnanca v pracovnom práve Slovenskej republiky a príprava nového Občianskeho zákonníka. (Employee's liability within the scope of labour law of the Slovak Republic and drafting efforts of the new Civil Code). Právny obzor 4/2022, pp. 271 – 284, p. 280.

act beyond their work duties or the acts are not related to work.[45] In Hungarian law, §6:540 of the Civil Code prescribes both the liability of the employer and the legal person for damage caused by the employee and a member of a legal person to a third party in the course of the employment or membership relationship.[46] §6:542 stipulates joint and several liability of the agent and the principal to the injured party.[47] However, §6:542 pertains to contractual liability and regulates the liability of the obligee of another contract for damage caused by the obligor to a third party. Namely, the obligor is in a contractual relationship with the obligee in order to perform the contract.[48]

Under the Italian Civil Code, this issue is somewhat challenging for examination because liability for auxiliaries is addressed by two separate articles: Article 1228, pertaining to contractual liability, and Article 2049, pertaining to extra-contractual liability. Recent scholarly analysis has highlighted the contrasting foundations underlying these forms of liability.[49] Article 1228 establishes a debtor's liability for the actions of an agent based on fault, characterising this as a direct liability. In contrast, Article 2049 imposes strict liability on employers for the actions of their employees, making this an indirect form of liability. Notably, Article 1228 does not necessitate the existence of a master-servant relationship, which is a requirement in Article 2049. Consequently, a debtor can be held liable under Article 1228 for contractual breaches resulting from an independent contractor's actions, a scenario that falls outside the purview of Article 2049.[50]

3.3 The Baltic states

Although the Baltic countries that once belonged to USSR[51] — Estonia, Latvia, and Lithuania are located in Northern Europe, it is necessary to provide a general overview of the employer's

[45] R NS ČR 25 Cdo 1855/12 cited in Barancová, H: 2022, p. 280.
[46] Act V of 2013 on the Civil Code, promulgated on 26 February 2013, Art. 6:540, Sec. 1 and 2.
[47] Civil Code, Art. 6:542.
[48] Civil Code, Art. 6:543.
[49] „G Ceccherini , Responsabilit à per fatto degli ausiliari. Clausole di esonero dalla responsabilità , in: P Schlesinger / FD Busnelli (eds), Commentario al codice civile (2nd edn 2016)" cited in Cristina Amato and Giovanni Comandé: 2019, Miquel Martin-Casals (ed.) The Borderlines of Tort Law: Interactions with Contract Law, Intersentia,, p. 302.
[50] Cristina Amato and Giovanni Comandé: 2019, p, 302.
[51] In the Baltic Revolution of 1991, they regained independence. Slakoper Zvonimir and Tot Ivan (2022): The Law of Obligations in Central and Southeast Europe, Recodification and Recent Developments, Routledge, Taylor & Francis Group, London and New York, p. 2.

liability for damage caused by an employee to a third party in these legal systems. That is why there are some similar statutory solutions with some countries investigated in this thesis (for example, Germany, when it comes to the fault-based liability of the employer). Namely, in Lithuania, the fault of the employer is of legal relevance in the event of determining the causal link between the employer's control over the employee and the employee's act that caused the damage, and this is one of the reasons why the employer is liable for their employee.[52] However, the literature does not support this standpoint because, in that event, the employer's liability could not be vicarious, but rather the employer's own.[53] Another reason of the justification of the employer's liability for others relies on the English syntactic phrase "deep pocket", which means that the employer is the economically stronger party than the employee and gains profit from their work.[54] It is further interpreted that, business losses in this case, losses is the damage incurred, are compensated by the employer through the prices of its products and services.[55] This way, the resulting loss is distributed among customers, who usually do not even notice it. Ultimately, the employee does not bear the consequences of the damage caused, as a result of such pricing policy.[56] However, literature also does not support this view because the focus of vicarious liability here is on the social benefit and rough justice rather than on legal logic.[57] Thus, the following text will lessen the geographical remoteness of Northern countries from Central and Eastern ones, at least on paper.

Under Estonian law, the legal ground for attributing liability for damage caused by an employee to the employer is laid down in §1054 of the Law of Obligations Act of 2002.[58] This provision is titled "Liability for another person", and the first paragraph prescribes that a person who regularly engages another person in their business activity will be liable for damage caused by another person, as if they had caused the damage themselves, provided that it is connected with their activities (economic or professional).[59] The provision implies that one person uses another

[52] „50: Autodesk Incorporated ir Microsoft Korporacija v. UAB „Technoverslas". Cited in Martynas Antanaitis: Ar lietuvoje galima tiesioginė darbuotojo deliktinė atsakomybė?, Vytauto didžiojo universitetas, Kaunas, (Is direct tort liability of an employee possible in Lithuania?, Vytautas Magnus University), 2016, p. 15.
[53] Martynas Antanaitis., p. 15.
[54] V. H. Rogers, p. 622. Cited in Martynas Antanaitis., p. 15.
[55] Gintarė Jakuntavičiūtė, 31, Kraakman, R. R., 1998, 583. Cited in Martynas Antanaitis., p. 15.
[56] Martynas Antanaitis., p. 15.
[57] Imperial Chemical Industries Ltd. v. Shatwell [1965] 656, 685. Cited in Martynas Antanaitis., p. 15.
[58] Kärt Meri: 2024, Tööandja deliktiõiguslik vastutus töötaja põhjustatud kahju eest, Tartu ülikool õigusteaduskond, Eraõiguse osakond. p. 3.
[59] § 1054. „Vastutus teise isiku eest" (1) „Kui isik kasutab teist isikut pidevalt oma majandus- või kutsetegevuses, vastutab ta selle isiku poolt õigusvastaselt tekitatud kahju eest nagu enda tekitatud kahju eest, kui kahju tekitamine oli seotud selle majandus- või kutsetegevusega". Võlaõigusseadus (VÕS) (Obligations Act) – RT I 2001, 81, 487; with amendments, last RT I, 11.11.2025, 1 (in Estonian). English text available at https://www.riigiteataja.ee/akt/111112025016 (Accessed on 12.02.2026).

continuously in the course of their business activities.[60] The second paragraph stipulates that a person who uses another person to fulfil their obligation will be held liable for any damage caused by that person as if they had done it themselves, provided that the damage was caused or made possible by the performance of that obligation.[61]

The application of this provision in case law can be very wide.[62] For example, the person can use the assistance of another person who is an independent contractor to fulfil their obligation.[63] The case was about a person who ordered assistance from another person for snow-clearing service. However, a subcontractor was assigned by that another person to conduct this service. Their employee (the subcontractor's employee) caused the damage to the person who ordered the service. The Supreme Court delivered the decision in 2009 stating another person, from whom the snow-clearing service was ordered, is liable for damage caused by a subcontractor's employee in line with § 1054 paragraph 2 of the Law of Obligations Act of 2002.[64]

Last, the third paragraph concerns the principal's liability for damage caused by a person acting on their instructions (mandate, mandatum). They shall be liable as if they had caused the damage themselves. In addition, it is required that the damage occurred in the course of performing the mandate and that the principal exercised control over the conduct of the tortfeasor.[65] This last provision applies in cases of one-time execution of a mandate or agreement.[66] Thus, an independent contractor can also be liable under § 1054 paragraph 3 of the Law of Obligations Act provision, as previously paragraph 2 of the same section.[67] The difference is that the supervision of the principal over the agent is a condition for the last provision to apply.[68]

[60] Annika Kask: 2024, p. 4.
[61] § 1054. (2) „Kui isik kasutab teist isikut oma kohustuse täitmisel, vastutab ta selle isiku poolt õigusvastaselt tekitatud kahju eest nagu enda tekitatud kahju eest, kui kahju tekitati või kahju tekitamine sai võimalikuks seoses selle kohustuse täitmisega." the Law of Obligations Act of 2002.
[62] Janno Lahe: The Concept of Fault of the Tortfeasor in Estonian Tort Law: A Comparative Perspective, Review of Central and East European Law 38 (2013) 141-170. p. 166.
[63] According to Morétea, drawing between them (dependent and independent work), the dividing line is hard. Morétea, 117. Cited in Janno Lahe: 2013, p. 166.
[64] Janno Lahe: 2013, p. 166.
[65] § 1054. (3) „Kui isik teeb teise isiku ülesandel teatud toimingu, vastutab ülesande andja ülesande täitmise käigus õigusvastaselt tekitatud kahju eest nagu enda poolt tekitatud kahju eest, kui kahju tekitati või kahju tekitamine sai võimalikuks seoses ülesande täitmisega ja ülesande andjal oli vastavalt tema ja kahju tekitanu vahelisele suhtele kontroll kahju tekitanu käitumise üle." the Law of Obligations Act of 2002.
[66] Annika Kask: 2024, p. 4.
[67] Janno Lahe: 2013, p. 166.
[68] Ibid., p. 166.

The person who relies on another in this regard for the performance of their duties is any natural or legal person, as well as a public authority.[69] In literature, for example, Annika Kask uses the terms „ülesande andja“ for the English translation of the principal, and „toimingu tegija“, which means mandatory (or agent) for the person acting on their instructions based on commentary of §1054. paragraph 3 of the Obligations Act (these terms are used in the Commentary).[70] Jano Lahe uses the colloquial term "service user" for a person who engages another in all three paragraphs of § 1054 of the Law of Obligations Act and „service provider“ for the engaged person.[71] Kärt Meri writes about an employer's liability that is provided in § 1054 Paragraph 1 of the Law of Obligations Act of 2002. The term employer is found in the case law examined in her study.[72] This is a more appropriate term for this research, as far as it is the subject matter. Furthermore, she supports the standpoint of the previously mentioned legal scholar Jano Lahe, that a special legal relationship exists between the employer and the employee. It means that the employee committed a tort during the conducted their work duties, which are related to their legal relationship with the employer. Furthermore, this relationship is one of the two reasons that justify why the employer is liable for the other. The second reason, which Meri K. also supports, is the standpoint of another civil law professor, T. Tampuu. He has approached the economic aspect as the reason for justification of the employer's vicarious liability.[73]

In the case law, all three paragraphs of § 1054 (1, 2, 3) of the Law of Obligations Act (LOA) of 2002 apply to this subject matter, although the literature and the Supreme Court (Riigikohus) acknowledge that § 1054 paragraph 1 should be the legal ground for the issue of the employer's liability for damage caused by the employee to a third party.[74]

In addition, § 1054. Paragraphs 1 and 2 present particular provisions compared to § 132 of the General Civil Code (Tsiviilseadustiku üldosa seadus, TsÜS).[75] Furthermore, VÕS § 1054 is a supplement to § 1043 of the Obligations Act[76] which is a general norm on damage compensation.[77] The conditions for establishing the liability are the tortfeasor's act, damage

[69] Kärt Meri: 2024, p. 15.
[70] Käerdi, M., Tampuu, Kommenteeritud väljaanne. Tallinn: Juura 2020. Cited in Annika Kask: Ülesande andja vastutus toimingu tegija delikti eest, Tartu ülikool õigusteaduskond, Eraõiguse osakond, Tallinn, 2024. p. 4.
[71] Jano Lahe: Meaning of Fault with regard to Liability for Damage Caused by the Unlawful Action of Another Person, Juridica International XI/2006, p. 142.
[72] Kärt Meri: 2024, pp. 10, 15-16.
[73] Ibid: 2024, p. 10.
[74] Ibid: 2024, p. 15.
[75] Annika Kask: 2024, p. 4.
[76] Ibid. p. 5.
[77] § 1043. „Teisele isikule (kannatanu) õigusvastaselt kahju tekitanud isik (kahju tekitaja) peab kahju hüvitama, kui ta on kahju tekitamises süüdi või vastutab kahju tekitamise eest vastavalt seadusele.“. Obligations Act.

sustained by the injured person, a causal relation between them, unlawfulness and the tortfeasor's fault.[78] In this event, the injured party may opt against who to bring an action (whether the principal or the person performing the activities).[79] On the other hand, § 1054. Paragraph 3 is modelled on § 831 of the German Civil Code (Bürgerliches Gesetzbuch, BGB).[80]

It should be highlighted that the Estonian legislation is codified, but in a modular way, through several separate statutes that were enacted during different periods, but operating as one codification together and form the system of civil law, instead of a single, unified civil code.[81] These single acts are the Property Law Act (1993)[82], General Part of Civil Code Act (1994)[83], Family Law Act (1995)[84], Succession Law Act (1997)[85] and the Law of Obligations Act (2002), which is the main subject matter of this topic.

Thus, as mentioned, § 132 Paragraphs of the General Civil Code also prescribe vicarious liability, as does § 1054. of the Obligations Act, one should note that these articles do not overlap because the former pertains to non-contractual liability while the latter pertains to contractual.[86]

Although §1054 does not foresee the fault of the agent as a precondition for the principal's liability, a standpoint is taken in the literature by Jano Lahe that the service provider should be at fault (it can be at least negligent).[87] The principal's fault is not relevant.[88]

In Latvian law, Article 1782 of the Civil Law[89] requires employers to choose their employees with due care and assess their capacity to perform their work duties. If the employer fails to perform this obligation properly, they can be held liable for their choice of assistants and other

[78] Dina Sõritsa and Janno Lahe: The Possibility of Compensation for Damages in Cases of Wrongful Conception, Wrongful Birth and Wrongful Life. An Estonian Perspective, European Journal of Health Law, 2014, Vol. 21, No. 2, Brill, p. 144.
[79] Annika Kask: 2024, p. 5.
[80] Käerdi, M., Tampuu, Kommenteeritud. Tallinn: Juura 2020. Cited in Annika Kask: 2024, p. 4.
[81] Irene Kull in Julio César Rivera: The Scope and Structure of Civil Codes, Ius Gentium: Comparative Perspectives on Law and Justice, Vol. 32, Springer, 2013, p. 133.
[82] Property Law Act (Asjaõigusseadus), entered into force in RT I 1993, 39, 590, with amendments.
[83] General Part of Civil Code Act (Tsiviilseadustiku üldosa seadus), entered into force in 1994, revised version RT 2002, 35, 216, 2002, with amendments.
[84] Family Law Act (Perekonnaseadus), entered into force in 1995; the Act RT I 2009, 60, 395 entered into force in 2010, with amendments.
[85] Law of Succession Act (Pärimisseadus), entered into force in 1997, a new law Act RT I 2008, 7, 52 entered into force in 2009, with amendments.
[86] Jano Lahe: 2006, p. 144.
[87] Ibid., p. 144.
[88] Käerdi, M., Tampuu, T. Võlaõigusseadus IV, § 1054/3.1. 2020. Cited in Kärt Meri: 2024, p. 15.
[89] Ja kåds nepiegrieΩ vajadzîgo uzmanîbu izvéloties kalpotâjus un citus darbiniekus un nepârliecinâs papriekß par viñu spéjâm un noderîbu izpildît viñiem uzliekamos pienâkumus, tad viñß atbild par zaudéjumiem, ko viñi ar to nodarîjußi treßai personai." Latvian Civil Code, Art. 1782. Valdības Vēstnesis, 41, 20.02.1937. with amendments.

employees.[90] Originally, this provision was not intended to hold legal persons liable for the acts of their employees. However, it now applies to employers as well. This rule includes legal persons because they also must select the employees with due care, considering that they assume risks related to their employees in order to achieve a financial goal.[91] The employer is not automatically liable when an employee has committed a faulty action. It is required to determine that the employer selected the employee at least with negligence.[92] It should be underlined that this provision applies towards the third party who sustained damage caused by the employee.[93]

In addition, Art. 1638 of the Civil Code applies in a situation when a subordinate commits a delict based on the orders of a supervisor. In that case, a subordinate will not be liable if the act is not criminal.[94] Therefore, in the continuation of this issue, it should define the party in the labour relationship. In Latvia, there is no division between blue-collar and white-collar employees.[95]

Employee is defined as a natural person who performs paid work based on an employment agreement under the employer's order.[96] While the employer can be either a natural or a legal person, or a partnership with legal capacity that hires at least one employee, based on an employment agreement.[97]

The Civil Code of the Republic of Lithuania guarantees the injured party's right to file a claim for compensation for damage with the court.[98] In cases where the damage is caused by an employee during the performance of work duties, the claim should be addressed against the employer.[99] Verbatim as prescribed by statute, that is, the person who employs the employee.[100]

[90] Ja¯nis Ka¯rklin ̧s, ˇVadim Mantrov and Lauris Rasnacˇs (2022): Tort Law in Latvia, Kluwer Law International B.V., Alphen aan den Rijn, p. 65.
[91] Ibid., pp. 65-66.
[92] Jānis Kārkliņš, Vadim Mantrov, Lauris Raņačs: p. 66.
[93] Ibid. p. 66.
[94] „Par tiesîbu aizskårumu, ko izdarîjis apakßnieks péc priekßnieka pavéles, pirmais nav vainojams, ja darbîba nav pati par sevi noziedzîga.“ Civil Code, Art. 1638.
[95] Ineta Tare: Labour Law in Latvia, Kluwer Law International, Alphen aan den Rijn, the Netherlands, 2020, p. 93.
[96] „Darbinieks ir fiziskā persona, kas uz darba līguma pamata par nolīgto darba samaksu veic noteiktu darbu darba devēja vadībā.“ Labor Code, Art. 3. (Darba likums, Latvijas Vēstnesis, 105, 06.07.2001.; Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs, 15, 09.08.2001.)
[97] Labour Code, Art. 4.
[98] Mindaugas Belickas: Ar įstatyminis reikalavimas darbdaviui atlyginti žalą, atsiradusią döl darbuotojo kaltös, nepažeidžia nukentöjusiojo ir darbuotojo teisių?, Vytauto didžiojo universitetas, Kaunas, 2009, p. 6.
[99] Ibid. p. 6.
[100] Ibid., p. 6.

In Lithuanian law, the peculiarities of an employer's vicarious liability are that, in addition to the general conditions of liability under civil law, two additional requirements must also be fulfilled.[101]

The general conditions are well known: the existence of an unlawful act, its causal link to damage, and the existence of fault. Additional conditions pertain to the existence of the employment agreement between the contracting parties, which states that the employee acts under the instructions and control of the employer.[102] The second prerequisite requires that the damage was caused in the course of performing work duties.[103]

Namely, Art. 6.264. of the Lithuanian Civil Code of 2000 stipulates the liability of the employer for damage caused by their employees with fault.[104] Sec 1 provides the employer's liability for compensation for damage caused by the fault of their employees in the performance of their work duties.[105] According to Sec 2 of the same article, the definition is provided for the notion of an employee as a person who exercises their functions based on an employment or civil contract. In addition, they act under the supervision or in line with the orders of either a legal or natural person.[106]

Sec 3 foresees that the employee will be liable towards the employer if they cause damage with intent or negligence in cases when the statute prescribes their joint and several liability.[107]

The employer is liable for ensuring that employees perform their work with due diligence and in accordance with the statute, in a way that does not cause damage to others. The statute prescribes the employee's fault when damage is caused as a condition for establishing the employer's vicarious liability to apply. In such a case, the employer's fault is equated with the employee's fault.[108]

---

[101] Martynas Antanaitis: 2016, p. 13.
[102] Ibid., p. 13.
[103] Autodesk, LR Aukščiausiasis Teismas, Civilinių bylų skyrius (2013, Nr. 3K-3-385). Cited in Martynas Antanaitis: 2016, p. 13.
[104] Lietuvos Respublikos Civilinis Kodeksas, Official Gazzette of RL 2000, No. 74-2262; OG. 2000, No. 77-0; OG. 2000, No. 80-0; OG. 2000, No. 82-0, i. k. 1001010ISTAIII-1864.
[105] „Samdantis darbuotojus asmuo privalo atlyginti žalą, atsiradusią dėl jo darbuotojų, einančių savo darbines (tarnybines) pareigas, kaltės." Civil Code, 6.264 Sec. 1.
[106] „Pagal šį straipsnį darbuotojais laikomi asmenys, atliekantys darbą darbo sutarties arba civilinės sutarties pagrindu, jeigu jie veikia atitinkamo juridinio ar fizinio asmens nurodymu ir jo kontroliuojami." Civil Code, 6.264 Sec. 2.
[107] „Jeigu įstatymų numatytais atvejais samdantis darbuotojus asmuo ir darbuotojas už žalą atsako kartu, tai darbuotojas atsako jį nusamdžiusiam asmeniui tik tuo atveju, kai yra darbuotojo tyčia ar neatsargumas." Civil Code, 6.264 Sec. 3.
[108] Martynas Antanaitis: 2016, p. 13.

It is easier for the injured party to identify the employer than the direct tortfeasor.[109] The employer is often a legal person, thus the liability rests on the company in cases where the direct tortfeasor may escape the liability.[110]

Like in Germany, under Latvian law, the employer will not be liable if they selected the employee properly, gave them the tools for work and supervised them.[111]

After paying damages, the employer has a right of recourse against the employee.[112] It should be emphasised that the statute does not foresee the direct liability of the employee. Such a solution raises the question of what will happen if the employer is insolvent.[113] This issue affects both parties, the employee and the injured party.[114]

3.4 The Successor States of the Former Yugoslavia

Regarding the successor states of the former Yugoslavia, what they have in common is that the Obligations Act of 1978 lives in their legal system today; in Serbia, still in force (with amendments) while in Croatia new act was adopted in 2005, in Slovenia, in 2002,[115] in North Macedonian in 2001,[116] in Montenegro in 2008,[117] while in Republika Srpska and Federation of Bosnia and Herzegovina the Obligations Act of 1978 is still in force like in Sebia, with minor modifications.[118] Thus, all of them rely on this act as the common historical background. However, it should be emphasised that these countries still do not have their own Civil Code,

[109] Mindaugas Belickas: 2009, p. 10.
[110] Ibid.
[111] Martynas Antanaitis: 2016, p. 13.
[112] Mindaugas Belickas: 2009, p. 6.
[113] Ibid., p. 6.
[114] Ibid., p. 7.
[115] Damjan Množina (2021): Fault, Presumption of Fault, and Wrongfulness in the Yugoslav Obligations Act, De Gruyter, p. 221.
[116] Закон за облигационите односи [Obligations Act] (Official Gazette of NM, Nos. 18/2001, 4/2002, 5/2003, 84/2008, 85/2008, 81/2009, 161/2009, 148/2011, 123/2013, 10/2015, 150/2015, 58/2016, 89/2020, 156/2020, 215/2021, 42/2023 and 154/2023.
[117] Zakon o obligacionim odnosima [Obligations Act], Official Gazette Nos. 47/08, 4/11 and 22/17.
[118] Zakon o obligacionim odnosima FBiH [Obligations Act of FBiH], Official Gazette of SFRJ", Nos. 29/1978, 39/1985, 45/1989 - decision of the Constitutional Court and 57/1989, Official Gazette of RBiH, Nos. 2/1992, 13/1993 and 13/1994 and Official Gazette of FBiH, Nos 29/2003 and 42/2011. and Zakon o obligacionim odnosima [Obligations Act of RS], Official Gazette of SFRJ, Nos. 29/1978, 39/1985, 45/1989 - decision of constitutional court USJ and 57/1989 and Official Gazette of RS, Nos. 17/1993, 3/1996, 37/2001 - other statute, 39/2003 and 74/2004. The Obligations Act applies on the entities, but a small number of articles were changed after integration into the legal system of BiH. In Meškić, Z, Čolaković, M. (2014): "Odgovornost države za štetu uzrokovanu pogrešnom presudom – praksa Vrhovnog suda Federacije Bosne i Hercegovine u svjetlu Suda Evropske unije", *Sveske za javno pravo* 16, p. 97.

although in all of them except Croatia and Bosnia and Herzegovina, expert commitees were established to prepare drafts.[119] It is expected to replace the Obligations Act and integrate its provisions into a unified codified system in the future. In Serbia, the Obligations Act in Articles 170 and 171 prescribes the employer's vicarious liability for damage caused by the employee to a third party at work or in work-related situations unless the employer proves that the employee acted as they should have, under the given circumstances.[120] The prevailing opinion in the literature is that the employer's vicarious liability is strict, their fault is not legally relevant, while the employee's fault is a condition for establishing the employer's liability.[121] The main reason for this statutory solution is to limit the employer's liability.[122] Usually, the employer is economically stronger than the employee, but that is not a reason for employer's liability. It is a mitigating circumstance for the injured party, to secure better compensation for damage.[123] However, if the employee acted with intent the injured party may claim damages directly from the employee.[124]

Under the law of Slovenia, the employer's liability is stipulated in Article 147 of the Obligations Act.[125] It prescribes in section 1 that if an employee causes damage to a third party at work or related to work, the legal or natural person for whom the employee was working at the time of the damage caused will be held liable, unless it can be demonstrated that the employee acted as required under the circumstances.[126]

In the Croatian legal system, the employer shall be held liable for damage caused by an employee to a third party at work or related to work according to Article 1061 of the Obligations Act, unless they prove grounds for excluding the employee's liability.[127] This rule has been interpreted as imposing fault-based liability of the employer, whereby their fault is compared

[119] Perović Slobodan (2012): Novi razvoj u oblasti građanskog prava u zemljama Jugoistočne Evrope, Forum za građansko pravo za jugoistočnu Evropu, Knjiga II, Skoplje, p. 38.
[120] Zakon o obligacionim odnosima [Obligations Act], Službeni list SFRJ [Official Gazette of the Socialist Federative Republic of Yugoslavia], Nos. 29/78, 39/85, 45/89 – the decision of the Constitutional Court of Yugoslavia and 57/89, Službeni list SRJ [Official Gazette of the Federative Republic of Yugoslavia], No. 31/93, Službeni list SCG [Official Gazette of the State Union of Serbia and Montenegro], No. 1/2003 – Constitutional Charter and Službeni glasnik RS [Official Gazette of the Republic of Serbia], No. 18/2020).
[121] Marija Karanikić Mirić: *Tort law in Serbia,* Kluwer Law International B.V., Alphen aan den Rijn, 2023., p.79.
[122] Miloš Vukotić: „Social Policy in Serbian Tort Law: The case of vicarious liability for Employees", Pomniki prawa na przestrzeni wieków, Księgarnia Akademicka, Kraków 2017, p. 257.
[123] Ibid., p. 256.
[124] Obligations Act, Art. 170, Sec. 2.
[125] Obligacijski zakonik [Obligations Act], Official Gazette of the RS, Nos. 83/01, 32/04, 28/06, 40/07, 97/07– official consolidated text, 64/16 and 20/18, Art. 147.
[126] Obligations Act, Art. 147, Sec. 1.
[127] Zakon o obveznim odnosima [Obligations Act], Official Gazette of RC Nos. 35/05, 41/08, 125/11, 78/15, 29/18, 126/21, 114/22, 156/22 and 155/23.

and evaluated to the employee's fault, who is the perpetrator of the damage.[128] The injured party is entitled to seek compensation directly from the employee if they caused the damage with intent.[129] Furthermore, if an employer compensated an injured party for damage, gains a right to recourse against the employee, if the damage was caused intentionally or with gross negligence.[130]

Bosnia and Herzegovina is a complex state consisting of two entities: the Federation of Bosnia and Herzegovina and Republika Srpska, and the District of Brčko. Such a state system emerged by signing of the General Framework Agreement for Peace in Bosnia and Herzegovina, which was signed on December 14, 1995, in Paris. This agreement was confirmed by the Act on ratification of the General Framework Agreement for Peace in Bosnia and Herzegovina.[131]

In this legal system, after Bosnia and Herzegovina gained independence, both entities amended the former federal Obligations Act of 1978 and have their own Obligations Act, within their own competence.[132] When it comes to the very concept of liability, a professor of civil law in Banja Luka, Branko Morait, in his second book, Law of Obligations, explains that this notion derives from the verb 'to be liable', in the sense of sanctioning human errors.[133] These errors may arise through acts or omissions. The broadest definition of the verb 'to be liable' means that one must bear the consequences of one's own acts.[134] When it comes to the employer's vicarious liability, it is prescribed in Art. 170-172 of the Obligations Act of the Federation of Bosnia and Herzegovina. Namely, Art. 170 Sec. 1 uses the term "enterprise" („business entity") for the employer and stipulates that they will be liable for damage caused by the employee at work or in work-related situations, unless they can prove that their conduct was as required.[135] Sec 2 stipulates that the injured party can claim damages directly from the employee in case if

[128] Josipović, T. (ed.) (2014) *Introduction to the Law of Croatia, Kluwer Law International*, Alphen aan den Rijn, The Netherlands, p. 173.
[129] Obligations Act, Art. 1061, Sec. 2.
[130] Obligations Act, Art. 1061, Sec. 3.
[131] Zakon o potvrđivanju opšteg okvirnog sporazuma za mir u Bosni i Hercegovini, *"Sl. list SRJ - Međunarodni ugovori", br. 12/2002,* Art. 1.
[132] Zakon o obligacionim odnosima FBiH [Obligations Act of FBiH], Official Gazette of SFRJ", Nos. 29/1978, 39/1985, 45/1989 - decision of the Constitutional Court and 57/1989, Official Gazette of RBiH, Nos. 2/1992, 13/1993 and 13/1994 and Official Gazette of FBiH, Nos 29/2003 and 42/2011. and Zakon o obligacionim odnosima [Obligations Act of RS], Official Gazette of SFRJ, Nos. 29/1978, 39/1985, 45/1989 - decision of the Constitutional court USJ and 57/1989 and Official Gazette of RS, Nos. 17/1993, 3/1996, 37/2001 - other statute, 39/2003 and 74/2004. "The versions of the Obligations Act applicable to the entities were amended in a small number of articles after their integration into the legal system of BiH, but Art. 172 of the Obligations Act remained the same in both versions". In Meškić, Čolaković 2014, 96.
[133] Branko Morait 1999, Obligaciono pravo, Banja Luka, Second Volume, p. 9.
[134] Ibid., p. 9.
[135] Obligations Act of FbiH, Art. 170, Sec. 1.

they cause it with intent.[136] Next Art. 171 Sec 1 stipulates that Art 170 will be applied to other legal persons and entrepreneurs for the damage caused by their employees.[137] If the employee caused the damage with intent or gross negligence, the person who indemnified the damage has a recourse claim against the tortfeasor within six months.[138] While the liability of the legal person for damage caused to the third party by their organ is stipulated under Art 172.[139] The Obligations Act of the Republic of Srpska contains verbatim the same rules.[140]

3.5 The non-contractual liability of Member States and EU Institutions for damage

Upon accession to the European Union, every Member State is required to implement EU regulations and directives. If they do not fulfil those obligations, they may find themselves in a position of being a debtor. The Court of Justice emphasises that the liability of Member States for breaching EU law is a measure in ensuring the effective implementation of law.[141] It hasn't always been that way. The integration process was long, and Member States have often delayed the implementation of European Union law. In addition, they were breaching the EU law, which gave the reason to EU institutions to investigate that issue, and this mechanism is known as direct action.[142] However, this mechanism did not give the right to compensation to the injured persons through the possibility of filing a claim against the Member States or the European Union institutions for sustained damage.

Especially, during the 1988s and even until 1993, with the Maastricht Treaty, legal and natural persons did not have the right to seek compensation. It is changed by Article 260, Section 2 of the Treaty on the Functioning of the European Union (TFEU), which established the system of fining Member States for breaches of European Union law.

[136] Obligations Act of FbiH, Art. 170, Sec. 2.
[137] Obligations Act of FbiH, Art. 171. Sec. 1.
[138] Obligations Act of FbiH, Art. 171. Sec 2 and 3.
[139] Obligations Act of FbiH, Art. 172, Sec 1.
[140] Obligations Act of RS, Art. 170-172.
[141] Hedley Christ (2016): in Rainer Arnold (ed.) Europenization through private law instruments, Universitatsverlag Regensburg, p. 201.
[142] Ibid., p. 201.

Namely, the EU is obliged to compensate the damage caused to member states and private persons, on behalf of the institution that caused it. There is contractual and non-contractual liability of the EU, but the focus is on the non-contractual.[143]

Article 340 Section 2 of the Treaty on the Functioning of the European Union (TFEU) stipulates that in situations of non-contractual liability, the European Union will compensate any damage caused by its institutions or by its employees while carrying out their duties, in line with the general principles common to the Member States' laws.[144]

Another relevant provision is Article 235 of the Treaty on the Functioning of the European Union, which relies on previously Article 340, and prescribes that the Court of Justice of the European Union has jurisdiction in these cases of compensation for damage.[145]

However, the Treaty does not prescribe the conditions of establishing the liability, thus the Court of Justice of the European Union (CJEU) has a wide margin to define them in the case law.[146]

In addition, member states and natural and legal persons have active standing (*locus standi)* to bring an action. Regarding the passive standing in the procedure, it falls on the European Union, particularly the institution liable for the conduct that caused the damage and holds the EU liable. If a joint act involves both (for example, the Council of the European Union and the Parliament), then it is their joint liability.[147]

The European Commission represents the European Union before the EU courts, but in cases when the European Central Bank (ECB) causes the damage, the action is brought against it directly.[148] This rule is prescribed based on Article 340, Section 3 of the Treaty on the Functioning of the European Union (TFEU).[149]

The Treaty does not specify time limits for bringing actions; therefore, the relevant provision is Article 46 of the Statute of the Court of Justice of the European Union (CJEU). This article prescribes that the right to take legal action expires five years after the occurrence of the adverse events that led to the action.[150] The action may be directed against a specific institution of the

[143] Tunjica Petrašević, Mato Krmek (2017): The non-contractual liability of the EU – Case study of Šumelj case*, EU and Comparative Law Issues andChallenges*, University Josip Juraj Strossmayer of Osijek, Faculty of Law Osijek, p. 256.
[144] Treaty on the Functioning of the European Union, Official Journal of the European Union, Art. 340, Sec. 2.
[145] Treaty on the Functioning of the European Union, Art. 235.
[146] Tunjica Petrašević, Mato Krmek (2017): p. 257.
[147] Petrašević, p. 55, Hartley, p. 451. Cited in Tunjica Petrašević, Mato Krmek (2017): p. 258.
[148] Tunjica Petrašević, Mato Krmek (2017): p. 258.
[149] Treaty on the Functioning of the European Union, Art. 340, Sec. 3.
[150] Petrašević, T., p. 54.. Hartley, p. 451. Cited in Tunjica Petrašević, Mato Krmek (2017): p. 259.

European Union, seeking compensation for damage. In this context, it is the damage caused by unlawful conduct or the failure to act.[151]

According to Article 256 of the Treaty on the Functioning of the European Union (TFEU), the General Court has jurisdiction for actions filed by natural and legal persons, while the Court of Justice of the European Union (CJEU) has jurisdiction for actions filed by member states.[152]

3.6 The Draft Common Frame of Reference (DCFR)

Although it is not a binding legal act, the Draft Common Frame of Reference (DCFR) reflects a contemporary trend towards the European harmonisation of the law of obligations. Led by Professor Christian von Bar, legal scholars drafted this Act as a unified set of principles aimed to be a universal Civil Code.[153] It „contains principles, definitions and model rules".[154] Furthermore, the idea of the definitions is to develop a standard legal terminology in Europe.[155] Regarding this subject matter, it is regulated in Art. 3:201 titled „Accountability for damage caused by employees and representatives".[156] Namely, the term „accountability" is used in this Act, while in this text, the term „liability" is used.[157] These provisions reads as follows: „(1) A person who employs or similarly engages another is accountable for the causation o relevant damage suffered by a third person when the person employed or engaged: (a) caused the damage in the course of the employment or engagement; and (b) caused the damage intentionally or negligently, or is otherwise accountable for the causation of the damage. (2) Paragraph (1) applies correspondingly to a legal person in relation to a representative causing damage in the course of acting as such a representative. For the purposes of this paragraph, a representative is a person who is authorised to effect juridical acts on behalf of the legal person by its constitution."[158] This is a strict liability of the liable person for damage caused by employees

[151] Cited in Tunjica Petrašević, Mato Krmek (2017): p. 259.
[152] Treaty on the Functioning of the European Union, Art. 256, Petrašević, p. 55. Cited in Tunjica Petrašević, Mato Krmek (2017): p. 259.
[153] John Bell, Book Review, JETL 1/2011, p. 121,
[154] Christian von Bar, Eric Clive and Hans Schulte-Nölke et al. Principles, Definitions and Model Rules of European Private Law, Draft Common Frame of Reference (DCFR), [Interim Edition, to be completed], p. 3.
[155] Ibid., p. 4.
[156] Christian von Bar et al. Principles, Definitions and Model Rules of European Private Law, Draft Common Frame of Reference (DCFR), 2009, Sellier. European Law Publishers GmbH, Munich. p. 632.
[157] Milica Ilić (2025): Employer's Liability for Damage Caused by the Employee to a Third Party under German, French, and Romanian law, *Zbornik radova Pravnog fakulteta u Bihaću*, p. 258.
[158] Ibid., p. 632.

or auxiliaries (the first paragraph) and legal persons for representatives (the second paragraph). According to the legal theory of the majority of Member States, this is the employer's independent liability, separate from their own fault. Furthermore, it does not matter whether the damage was caused intentionally or negligently. According to the theory, liability of an employer's failure to supervise could be exempted; however, in judicial practice, it is almost impossible. In addition, this rule could not be applied to legal persons due to "technical" grounds because they act through board members.[159]

4 THE LEGISLATION OF WESTERN EUROPEAN COUNTRIES:

5 Employer's Liability for Damage Caused by the Employee to a Third Party under German Law

5.1 General considerations

The German Civil Code (*Bürgerliches Gesetzbuch, BGB*) does not envisage explicitly the employer's liability for damage inflicted by an employee to a third party.[160] §831 Section 1 of BGB establishes a general principle whereby one person who designates another to perform a task is obligated to indemnify for any damage unlawfully inflicted by the latter upon a third party during the conduct of that task unless the master (principal) has exercised due diligence in the selection and oversight of another (servant).[161]

Under this rule, the employer is referred to as a principal (Geschäftsherr) who engages another person; in the literature, the term "master" can also be used for the employer. In any case, it is

[159] Ibid., p. 632.
[160] Gerald Spindler, Oliver Rieckers: *Tort Law in Germany,* Kluwer Law International B.V., Alphen aan den Rijn, 2019., p. 67.
[161] Ibid., p. 67.

clear that this rule regulates the relationship between the employer and employee. Thus, §831 refers to the employer as the principal (*Geschäftsherr*) while „the employee (*Verrichtungsgehilfe*) is a subordinate or servant (usually an employee) who is dependent on the instructions of the principal".[162] Namely, the Civil Code defined an employee in April 2017, in §611a. Before that period, and still today, there has been a definition of a self-employed person, but in §84, Section 1, sentence 2 of the Commercial Code (*Handelsgesetzbuch–HGB*), according to which a self-employed person is considered to be anyone who has the freedom to organise their own working hours and job and it was introduced to make a distinction from the notion of the employee.[163] In opposite, personal subordination is the main characteristic of the employee, related to the employer/employee relationship, where the employee works for the employer, according to an employment contract as the legal basis.[164] In addition, a private contract is an essential element due to its voluntary nature, since the employee is not forced to work for somebody and the employment relationship is not established in the public sphere, for example, the employee is not a civil servant.[165] In order to determine the degree of direction and control of the employer over the employee, the test is applied.[166] The court interprets this control test in a way that the person is considered a servant if performs a function within the employer's sphere of influence. Furthermore, there is an employee's social and economic dependency[167] in addition to the orders given by the employer.[168] The employee is put in a position by the employer to perform work duties, based on which the employer could gain profit from it. Thus, it is justified that the employer's liability is vicarious. In addition, the injured party is in a better position because they can claim damages from the financially stronger party, in the place of the weaker (employee), and the employer is usually economically stronger than their employee.[169]

[162] Cees van Dam: European tort law, Oxford University Press, 2013., p. 503.
[163] B. Waas, 203–216, 2005. Cited in Manfred Weiss, Marlene Schmidt, and Daniel Hlava (2019): Labour Law and Industrial Relations in Germany, Kluwer Law International B.V., p. 45.
[164] Brox et al., 20. Cited in Manfred Weiss et al., p. 45.
[165] Manfred Weiss, Marlene Schmidt et al., p. 45.
[166] Markesinis, Bell and Janssen, 2019. Cited in Oliver Rieckers, Simon Gerdemann, and Andreas Seidel 2023, Tort Law in Germany, Kluwer Law International BV, The Netherlands, p. 69.
[167] „BGH,VersR1998, 862 et seq.; BGHZ 45, 311, 313; BGHZ 103, 298, 303; and BGH,NJW2009,1740, 1741". Cited in Oliver Rieckers, Simon Gerdemann Andreas Seidel 2023, p. 69.
[168] Köln,Transp 1995, Steffen, in: RGRK, BGB, § 831 1989; and Bernau, in: Staudinger, (2022). Cited in Oliver Rieckers Simon Gerdemann Andreas Seidel 2023, p. 69.
[169] Basil S Markesinis, John Bell, André Janssen 2019, Markesinis's German Law of Torts A Comparative Treatise, Hart, p. 117.

However, the employer could be liable even for independent contractors and traders if they rely on the employer's instructions.[170] In addition, fellow workers are liable under tort law.[171]

The main indicators of the employee status include whether the employee is always required to be prepared to take on new assignments and cannot decline tasks presented by the employer; whether the employee is integrated within the workplace; and, as previously mentioned, an indicator that the employee is required to adhere to specific instructions at the same time gives the employee freedom to assume initiative.[172]

The employer's liability is based on fault (or culpa) and originates from the Pandectist School of Law[173], which posits that the superior must be at fault for the improper selection of an employee to establish their liability.[174] Namely, the contribution of personal fault of the superior to the occurrence of the damage is the key element in determining whether they will be liable in the Germanic legal family.[175] That is the standpoint of the *Gemeines Recht*, legal scholars according to whom the principle of no liability without fault applies to vicarious liability. This principle was a moral basis in tort law. According to Jhering: "It is not the occurrence of harm which obliges one to make compensation, but fault. This is as simple as the chemical fact that what burns is not the light but the oxygen in the air."[176]

This approach is accepted by the BGB, although, in literature, there was an interpretation that the employer's liability is strict, which did not require their fault but that of the employee. Most European legal systems also accept this approach, while in Germany, it did not remain because the general legal principle that the employer is liable for the unlawful acts of their employees only if personal fault can be attributed to the employer for the wrong choice of the employee and faulty supervision.[177] The explanation stems from a historical perspective that the 19th-century Pandectists were of the opinion that the aforementioned doctrine of *culpa in eligendo* was the only one known in Roman law and that it should be incorporated into §831 of the BGB.

---

[170] Wagner, 2009, 8. Cited in Cees van Dam, p. 503.
[171] Raimund Waltermann in Ken Oliphant and Gerhard Wagner (eds.) 2012: Employers' Liability and Workers' Compensation, Tort and Insurance Law, Walter de Gruyter GmbH, Berlin/Boston, p. 284.
[172] Karsini Vanessa Soerjaman: Employers' liability for damage caused by his employee, A comparative study: Germany and the Netherlands, International European Labour Law, University of Tilburg, 2013., pp. 9-10.
[173] Konrad Zweigert, Hein Kötz: Introduction to comparative law, Clarendon Press, Oxford, 1998., p. 630.
[174] Bell, John, André Janssen, and Basil S Markesinis, With a Foreword by Professor Sir, ed. Markesinis's German Law of Torts: A Comparative Treatise. Oxford: Hart Publishing, 2019. Bloomsbury Collections. Web. 21 Nov. 2024. <http:// dx.doi.org/10.5040/9781509933228>., p. 118.
[175] Konrad Zweigert, Hein Kötz: 1998., p. 630.
[176] „(Das Schuldmoment im römischen Privat-recht (1867) 40)." Cited in Konrad Zweigert, Hein Kötz: 1998., p. 630.
[177] Bell, at all, 2019, p. 630.

But the development of this doctrine that an employer is liable only if they are personally at fault from the casuistic Roman doctrine proved to be less persuasive. Particularly, according to the Imperial Liability Act of 1871, strict liability was imposed on railway companies and completely supressed fault. Therefore, the Civil Code allows some space when it comes to special matters (cases) to specific statutes to regulate such issues, because the BGB does not regulate special matters in general terms.[178]

Thus, *culpa in eligendo* remains as one of the conditions of the employer's liability, which means selecting the inappropriate employee for a specific work task, in addition to *culpa in instruendo,* meaning failing to give that employee clear instructions and *culpa in vigilando,* in situations when the employee's performance is not properly supervised.[179]

There are other (general) conditions as well, such as the existence of a relationship whereby one person is liable for the acts of another, wrongful conduct committed by the employee or subordinate, and liability is to be limited to a particular set of circumstances arising during the employment relationship.[180] This means that the damage is caused during the performance of assigned duties by the employee.[181]

Furthermore, this is the most contested issue of vicarious liability. With some simplification, there are two possibilities: the employee acts within the 'course of employment' and another, that they act outside it. This is a question of fact.[182] It is not sufficient that the harmful act happened simply during the course of employment if it wasn't closely related to the employee's assigned duties. Instead, the wrongful conduct must be meaningfully linked to the type of actions that are part of carrying out the employee's job duties.[183]

The employer can be exempt from liability in two ways. First, they cannot be held liable if demonstrated that employer exercised reasonable care in the selection process of the employee, providing the necessary tools, and supervised the employee. Secondly, the employer is not liable if the damage would have been caused even if such reasonable care has been demonstrated. It can be concluded that the focus is on the liability based on negligence with reversed burden of proof. According to the case law, courts generally require the employer to observe a high

[178] Ibid.
[179] Paula Giliker, „Vicarious Liability or Liability for the Acts of Others in Tort: A Comparative Perspective", 2011, 2(1) Journal of European Tort Law, p. 33.
[180] Ibid.
[181] Cees van Dam: 2013., p. 503.
[182] Bell et al., 2019., p. 122.
[183] Joachim Zekoll and Gerhard Wagner (eds.) (2019): Introduction to German Law, Kluwer Law International B.V. p. 281.

standard of care, which effectively makes the application of this Article similar to strict liability.[184] Furthermore, the employer bears no liability for any damage the employee caused while travelling to and from work.[185] Thus, even a superficial reading of the first sentence of § 831(1) BGB reveals that the employer is the liable person for their employee. However, the second sentence gives them the possibility to rebut that rule by proving either the lack of fault or causation.[186] The Civil Code does not define fault ('Verschulden'). It makes clear that fault contains two categories: Vorsatz (intent), which further involves (dolus directus and dolus eventualis) and Fahrlässigkeit (negligence).[187] When it comes to the notion of causation, it is not defined by statute (as the aforementioned fault either).[188] In the literature, there is an assumption that one condition derives from another. In addition, it is a legal concept which is not strictly formulated, as it is, for example, in the natural sciences.[189] Liability arises if causal relationship is established between the tortious act and the infringement of the injured person's right (`haftungsbegründende Kausalität'). In addition, the infringed rights have to be causally linked to each other (`haftungsausfüllende Kausalität').[190] Further precondition for establishing the employer's liability under §831 BGB is that the employee must be a person appointed by the employer to perform a function.[191] According to German courts, a servant (*Verrichtungsgehilfe*) is a person under the supervision and control of their superior, typically a salaried employee. For instance, if a doctor assigns a task to a nurse for using radiological equipment, she is a servant under his control; however, if the hospital provides both the nurse and the equipment, and the doctor has no control over how to the devices are used by the nurse, the doctor is not liable. The category of independent contractors is not considered as servants unless they depend on those who employed them. Legally challenging issues can arise when one employer lends employees to another, depending on whether the first employer retains supervision rights over the borrowed servants.[192]

Another condition defined in §823 Section 1 and 2 BGB is the existence of an unlawful (*rechtswidrig*) act committed by the employee that is[193]. (This Article also represents the gist of

[184] Cees van Dam: 2013., p. 503.
[185] Kwame Opoku: 1972, p. 239.
[186] Walter van Gerven et al (2000), p. 480.
[187] Ulrich Magnus and Gerhard Seher in P. Widmer: 2005, Unification of Tort Law: Fault, Kluwer Law International, p. 104.
[188] Ulrich Magnus and Gerhard Seher 2005, p. 63.
[189] E. Deutsch, J. Esser/E. Schmidt; H. Kötz;H. Lange. Cited in Ulrich Magnus and Gerhard Seher 2005, p. 63.
[190] Versicherungsrecht, H. Lange; Palandt/Heinrichs. Cited in Ulrich Magnus and Gerhard Seher 2005, p. 63.
[191] Konrad Zweigert, Hein Kötz: 1998., p. 630.
[192] Ibid, 632.
[193] Article 823 of BGB, Sec. 1 and 2.

the tort law regime in Germany).[194] A sufficient cause of the damage generally involves the employee's conduct; thus, if they acted with due care, it is not the employer's liability, and further examination of defences is unnecessary (there is no requirement of proof of the employee's fault (*Verschulden*), for the employer's liability to be established).[195] However, if the employee acted intentionally or negligently, §840 BGB applies, which prescribes that they will be jointly and severally liable (the employer and the employee together).[196]

However, having compensated the injured party for the damage caused, the employer has a recourse claim against the employee, if they acted intentionally or with gross negligence. Conversely, if the employee has paid damages and did not act intentionally, they have the right to seek reimbursement from the employer.[197]

For example, if the injured party sustained bodily injury, they can claim compensation for pain suffered and must prove in civil proceedings a violation of one of the rights listed in the provision as „life, person, health, liberty, and property."[198] Those rights prescribed in §823 Sec. 1 BGB are „protected rights" which do not involve pure economic losses.[199]

They involve "other rights" as well, a term refering to absolute rights, which must be respected by all and are enforceable against any third party. Conversely, contractual rights are not protected under §823 Şec. 1 BGB, as they pertain only to the parties in privity of the contract and are therefore considered relative rights, enforceable solely through contractual claims.[200] „Protective rights" are mentioned in §823 Sec. 2. Their goal is to protect individual interests, and, at the same time, they are wider and narrower than those in §823 Sec. 1 because more interests are protected, but some conducts, such as fraud, false information, unfair competition (those are economic interests) which should be sanctioned, are not included.[201] They are included in different sources of law such as statutes, decrees, ordinances or even they can be derived from customary law.[202]

---

[194] Soares, E. (2012). Tort Law Systems in Selected Countries: Brazil, China, England & Wales, France, Germany, India, Italy, Japan, Russia. Washington, D.C., Law Library of Congress, p. 23.
[195] Cees van Dam: 2013., p. 503.
[196] Article 840 BGB,
[197] „Kötz-Wagner (2010), N 319; BAG 27 September 1994, ZIP 1994, 1712" cited in Cees van Dam: 2013., p. 504.
[198] Harald Koch in Joachim Zekoll and Gerhard Wagner (eds.) Introduction to German Law, Kluwer Law International B.V, Alphen aan den Rijn The Netherlands, 2019, p. 274.
[199] Leonhard Hubner and Luca Kaller in Ekaterina Aristova and Uglješa Grušić eds. Civil remedies and human rights in flux, Key Legal Developments in Selected Jurisdictions, Hart publishing, 2022, p. 190.
[200] Harald Koch 2019., p. 275.
[201] Leonhard Hubner and Luca Kaller, 2022, pp. 190-191; Kwame Opoku: 1972, p. 234.
[202] Kwame Opoku: 1972, p. 234.

The claim is to be addressed against the principal due to their failure to choose a qualified employee or to supervise them properly. In this context, the liability is not vicarious in *stricto sensu*; rather, it stems from the principal's presumed fault.[203] However, this presumption of fault is rebuttable. There are certain cases, particularly those concerning product liability, where this presumption is so pronounced that the distinction between fault-based and strict liability becomes significantly blurred.[204] In theory, it can be found that the basis of this liability can be contractual, quasi-contractual or delictual. Based on the rules of tort law regime, the employer can be exempt from liability if they prove that they conducted due diligence in selecting and overseeing the manager or a person liable for conducting the work assignment. In addition, the employer is required to demonstrate that appropriate planning and equipment were implemented within the organisation. Subsequently, it falls to the manager or supervisor to establish that they exercised due care in the selection, training, and oversight of their subordinates. In essence, the supervisor assumes the role and liabilities of the owner, thereby required to satisfy the stipulations outlined in §831.

Considering that the German law of torts includes three general clauses, five specifically regulated torts, rules for vicarious liability, and cases of statutory strict liability, this issue is placed under the rules for vicarious liability.[205]

Another precondition for the employer's vicarious liability is that the employee acted in the course of their employment at the moment when the damage was caused by them. It means that the employer will not be liable if the employee commits theft because they do that intentionally, when the employer is not obliged to pay damages,[206] because it is no way related to the designated function. However, things might be different if the criminal offence and the assigned duties overlap, for example, if a baggage handler steals the luggage of a passenger.[207] The Federal Supreme Court holds an employer liable for a theft committed by those employees, if theft was predictable because there is a combination of the employer's lack of supervision and the tasks assigned to the employee by the employer.[208]

It should be emphasised that in German civil law related to the employer's vicarious liability, under § 831 BGB, there is a theoretical debate between two theories that influence practice.

[203] Harald Koch 2019., p. 280.
[204] Kwame Opoku: 1972, p. 231., p. 239.
[205] Ibid., p. 231.
[206] Ibid., p. 239.
[207] Gerald Spindler, Oliver Rieckers: 2019., p. 70.
[208] Ibid.

Those are Result Theory (*Erfolgstheori*e) and the Conduct Theory (*Handlungstheorie*).[209] According to the former, as the name of the theory itself suggests, the result is a consequence of unlawfulness (Rechtswidrigkeit). For example, the result is a violation of a protected right under § 823(1) BGB. To trigger liability the plaintiff must prove *Tatbestand*, which means facts leading to the employer's liability. Related to § 831 BGB, that is a presumption of fault (*Verschulden*) of the employer. To release themselves from liability, the employer should rebut that presumption.[210] However, according to the conduct theory, an act is considered unlawful (rechtswidrig) only if it can be demonstrated that a norm of conduct has been violated.[211] Thus, for the existence of unlawfulness, the violation of a Rechtsgut incorporated in 823 (1) was not sufficient, like in the result theory.[212] In addition, there are various other theories that support the unlimited liability of the employer. For example, the theory of risk (because the employer bears a risk of causing damage) or the principle of *respondeat superior.*[213] According to them, the employer can exempt itself from liability if they prove exculpatory grounds such as a simple casus (lesser accident), acts of a third party or the injured party, and force majeure. They have the right of recourse against the employee who caused damage with intent.[214] However, the contemporary lifestyle imposed strict liability in addition and left the principle of *culpae in eligendo vel in vigilando* as remnants of the past.[215]

Furthermore, regarding this Art. 823 Sec 1, it needs to be emphasised that the employee can be directly liable according to this article. In case law, it can be found that, for example, the claim was addressed against the employee in the event of the employer's insolvency.[216] The facts were that the plaintiff was a leasing company that, based on the leasing agreement, provided a vehicle for use to the defendant's employer. The employer made the vehicle available to the employee, who was a sales representative, and they were allowed to use it for private purposes as well, with the manager's approval. However, the damage was caused by them during a business trip when the defendant, due to slippery road conditions, caused an accident by hitting a guardrail. The plaintiff sustained damage to the vehicle in the amount of 7,893.50 German Marks (DM), which could not be recovered from the employer, as the employer had become insolvent in the

[209] Walter van Gerven et al: 2000, p 483.
[210] Ibid., p. 483.
[211] Ibid., pp. 483-484.
[212] Ibid., p. 483.
[213] Laleta, Sandra (2003): p. 48.
[214] Ibid., p. 48.
[215] Ibid., p. 49.
[216] Judgement of the Federal Court of Justice, No. 349/88 of 29.11.1988, in German - 10. Zivilsenat des Oberlandesgerichts Stuttgart vom 29. November 1988 (BGH, Urteil v. 19. September 1989 - VI ZR 349/88 - OLG Stuttgart, LG Heilbronn), pp. WIV-2.

meantime. The first-instance court dismissed the plaintiff's lawsuit against the employee, as it considered that they were not liable because the damage was caused by their slight negligence.[217] (There is no distinction in BGB between gross negligence and slight negligence or between *culpa lata* and *culpa levis*).[218] However, the second-instance court upheld the lawsuit and obliged the defendant to compensate for the damage, holding that the damage to the vehicle was caused by their carelessness while driving, within the meaning of § 823 Sec. 1 of the BGB.[219] This standpoint was also upheld by the Supreme Court, which stated that the defendant had sufficient life experience to be held liable for a driving error that they could have avoided if they had exercised due care.[220] In addition, it should be highlighted that in this case, driving a car for work purposes was assessed as a dangerous activity[221], which will be analysed in detail separately. However, in theory, driving a car for work purposes is not assessed as a dangerous activity if it is driven along a dry road under conditions with good visibility.[222]

Moreover, in theory, the employee is directly liable for damage caused by all types of negligence.[223] This interpretation is also based on the general rule of tort liability under § 823 BGB, and according to the theory, it applies to so-called "damage-prone labour" (“schadensgeneigte or gefahrengeneigte Arbeit”), which means potentially dangerous work that leads to causing the damage, and the example with a traffic accident is given above. That is why, due to human frailty, such errors during the performance of work duties can occur “as typical results of such work”.[224] Thus, there are also statutory solution in § 840 Sec. 2[225] of the Civil Code, which prescribes that if the employee is liable for damage caused, they will pay damages alone, although another person is obliged to compensate for the damage according to §§ 831 and 832. However, in practice, it is common that the employer is sued by a third party based on § 278 BGB (*ex contractu*, “from a contract”) in addition to § 831 BGB (*ex delicto*, "from a wrong" or "from a transgression").[226] But if the third party decides to sue the employee

[217] Ibid., p. 3.
[218] Wacke, Andreas (1992): "The Employee's Limited Liability in German Law and Its Development Compared with Roman Law." Journal of South African Law, p. 369.
[219] Judgement of the Federal Court of Justice, No. 349/88 of 29.11.1988, pp. 2-3.
[220] See the Judgement 19. November 1985 - VI ZR 176/84 - NJW-RR 1986, 383, 384. Cited in Judgement of the Federal Court of Justice, No. 349/88 of 29.11.1988, pp. 4-5.
[221] Judgement of the Federal Court of Justice, No. 349/88 of 29.11.1988, p. 6.
[222] Wacke, Andreas (1992): p. 370.
[223] Ibid., p. 371.
[224] Ibid., p. 370.
[225] „Ist neben der Person, die nach den Abschnitten 831 und 832 zur Entschädigung für einen von einer anderen Person verursachten Schaden verpflichtet ist, auch die andere Person für den Schaden verantwortlich, so ist in ihrem internen Verhältnis nur die andere Person verpflichtet; im in Abschnitt 829 genannten Fall ist nur die Person mit einer Aufsichtspflicht verpflichtet.“ Civil Code, § 840, Sec 2.
[226] Wacke, Andreas (1992): p. 371.

directly, the employee will then have the right to seek exemption from liability by the employer. This opportunity for the employee can reverse the aforementioned § 840 Sec, 2 BGB, but in literature, it grants recourse right to the employer against the employee.[227] Furthermore, the employee can be directly liable if they cause damage with intent (for example, to their colleague), the legal basis only for intent can be § 826 BGB[228] in addition to the aforementioned § 823 BGB, which refers to both negligence and intention.[229] There are also situations when both the employer and the employee are jointly and severally liable.[230] The injured party may opt who to claim damages from. If the claim is addressed against the employee, they have right of recourse against the employee, but that right is limited to the extent of liability. The same applies to the employer if the claim is addressed against them, and their right of recourse is limited to the extent of the employee's liability. The principle of internal damage settlement ("Institut des innerbetrieblichen Schadensausgleichs") applies to mutual claims between the employer and the employee.[231]

5.2 Liability of a legal person for damage caused by its organ

This type of liability is not within the scope of vicarious liability of §831 BGB.[232] Namely, if the employer is a legal person, § 31 applies.[233] It envisages the legal person's liability for the acts of its organs and representatives (persons who are given the authority to act without being an organ). Since they are unable to act independently, legal persons rely on their organs to act on their behalf in compliance with their articles of incorporation; thus, legal persons' liability for the actions of their organs is a necessary and reasonable consequence in this event.[234] This rule formally establishes liability for the legal person's own actions, rather than for the conduct

[227] Ibid., p. 371.
[228] Giesen (2001), p. 125-127. Cited in Karsini Vanessa Soerjaman (2013): Employers' liability for damage caused by his employee, A comparative study: Germany and the Netherlands, University of Tilburg, pp. 42-43; § 826 BGB reads as follows: „Wer in einer gegen die guten Sitten verstoßenden Weise einem anderen Menschen vorsätzlich Schaden zufügt, ist diesem gegenüber zur Zahlung von Schadensersatz verpflichtet."
[229] Karsini Vanessa Soerjaman (2013): p. 42.
[230] von Ira Schelp (2003): Die Haftungsbelastung des Arbeitnehmers bei Schädigung Dritter, eine rechtsvergleichende Untersuchung, mit dem Regelungsentwurf für ein europäisches Modellgesetz (Employee Liability for Damage to Third Parties: A Comparative Legal Analysis with the Draft of a European Model Law), Juristische Fakultät der Humboldt-Universität zu Berlin, p. 18.
[231] Blomeyer in Richardi/Wlotzke (Hrsg), Münchner Handbuch Arbeitsrecht Bd. 1, Individualarbeitsrecht, § 59, Rn. 40, 44, 50 ff. Cited in von Ira Schelp (2003): p. 18.
[232] Gerald Spindler, Oliver Rieckers: 2019, p. 74.
[233] Cees van Dam: 2013, p. 503.
[234] Gerald Spindler, Oliver Rieckers: 2019, p. 74.

of others; however, the outcome remains the same. The case law has further expanded the scope of this provision to include persons in managerial roles, for example, branch directors and heads of departments.[235]

However, §31 is not a legal source for filing a claim for compensation for damage.[236]

It stipulates that actions attributable to a legal person must be carried out by its organ or a duly appointed authorised representative. While the law defines who the organs of a legal person are, the concept of a "duly appointed representative" requires further explanation. They include representatives whose roles are outlined in the organs' governing documents, such as the articles of association. However, the Federal Supreme Court has adopted a broader interpretation. It considers that this rule includes persons who, based on internal rules, act with personal liability and perform key functions on behalf of the legal person and represent it.[237]

In addition, there are some tasks that cannot be performed by the organs of a legal person; thus, according to the standpoint of the case law, legal persons are held liable if they fail to appoint a special representative to carry out those tasks.[238] They do not need legal authorisation to represent the legal person.[239]

This interpretation relies on §31, which prescribes the liability for the appointed representative, in order to avoid the application of §831, Sec. 1, which could otherwise be used to avoid strict liability. This is done by prohibiting an exemption from liability based on §831, Sec 1.[240]

Based on §31 (similarly to §831), the precondition for the liability is that the organ or another duly appointed representative must act in the performance of the assigned functions. It means that a material link must exist between the conduct and the function performed by the organ or the representative.[241]

[235] Cees van Dam: 2013, p. 504.
[236] For more details, see The Decisions of the Federal Court of Justice in Civil Matters (BGHZ) 99, 298, 302. Cited in Gerald Spindler, Oliver Rieckers, 2019: pp. 74-75.
[237] Oliver Rieckers, 2019: p. 75.
[238] Ibid.
[239] BGHZ 49, 19, 21. Cited in Oliver Rieckers, 2019: p. 75.
[240] RGZ 157, 228, 235; BGHZ 24, 200, 213; BGH,NJW1980, 2810, 2811; Part II, Ch. 1, §§ 1, 2. Cited in Oliver Rieckers, 2019: p. 75.
[241] BGHZ 49, 19, 23; BGHZ 98, 148, 151. Cited in Oliver Rieckers, 2019: p. 75.

5.3 State liability for damage caused by public officials

Under German law, although there is a two-track system for public bodies' liability, or authority liability (Staatshaftung – state liability), which is regulated in a complicated way, it is regarded as a matter of tort law, not public law.[242] At the beginning, the distinction has to be made between the civil servant's personal liability and the liability of public authority or the state for their servants and „between lawful and unlawful acts of state servants or public authorities".[243] The state can be held liable for both lawful and unlawful acts under different conditions (liability for lawful actions is however an the exception).[244]

Regarding unlawful acts, the liability may stem from a variety of sources. Based on to §839 BGB, it is founded on personal liability of the civil servants (Beamtenhaftung). It applies in both situations, when civil servants act in the public (*acta iure imperii*) or private (*acta iure gestionis*) domain of state activities.[245] For the latter case (domain of state private activities), the general provisions of § 31, 278, 831 BGB are also applied, concerning liability for employees' acts.[246]

Lastly, when the State is liable for unlawful acts of its servants in the public field, of state activities Article 34 the German Constitution/Basic Law (Grundgesetz) regulates this situation and substitutes the servant's personal liability with the state liability.[247]

Namely, the German Constitution in Article 34 stipulates as follows: „If any person, in the exercise of a public office entrusted to him, violates his official duty to a third party, liability shall rest principally with the state or public body that employs him. In the event of intentional wrongdoing or gross negligence, the right of recourse against the individual officer shall be preserved. The ordinary courts shall not be closed to claims for compensation or indemnity".[248]

---

[242] Cees van Dam: 2013., p. 532; Ulrich Magnus in Ken Oliphant (ed): 2017, „The Liability of Public Authorities in Comparative Perspective", Intersentia, p. 177.
[243] Ulrich Magnus: 2017, p. 177-178.
[244] Ibid., 178.
[245] Ibid.
[246] Ibid.
[247] Ibid.
[248] Article 34 [titled: „Liability for violation of official duty"], Basic Law for the Federal Republic of Germany [Grundgesetz; GG] "in the revised version published in the Federal Law Gazette Part III, classification number 100-1, as last amended by the Act of 22 March 2025 (Federal Law Gazette 2025 I, No. 94)." englisch_gg/englisch_gg.html, accesed 24.04.2025.

Intent and gross negligence were general limits of the employee's liability according to the legal scholar Denecke, and his standpoint explained and justified the application of this general norm (Art. 34 of the Constitution) also to the employees of the private sector, although verbatim its rules apply to the public sector.[249]

This provision contains different models of liability for wrongful acts by the state (liability for wrongful state acts falls into four categories): 1) the personal liability of a public official acting on behalf of the state, 2) the state's direct liability for wrongful acts by its public officials (*Staatshaftung*), 3) derived liability, where the official's liability is shifted to the state (*Amtshaftung*), and 4) shared liability between the state and the public official.[250]

As mentioned at the beginning, this issue falls under tort law, specifically §839 BGB. This law came into effect on January 1, 1900, before the Basic Law, and sets out the conditions under which a public official may be held liable for breaching official duties.[251]

Actually, the liability of public authorities is based on a combination of §839 BGB and Article 34 of the Basic Law (Grundgesetz). Under §839, a public official (civil servant) can be held personally liable for damage caused by breaching official duties. However, Article 34 transfers that liability to the state as long as the civil servant used their sovereign authority. Essentially, this means the state is generally liable to the injured party.[252]

Namely, in line with §839 Sec. 1 BGB, a public official who intentionally or negligently breaches an official duty incumbent upon him/her against a third party is obliged to compensate the third party for damage caused. However, if the public official acted only negligently, liability arises only if the injured party cannot obtain compensation from other sources, such as social security or private insurance.[253]

Furthermore, §839 Sec. 2 stipulates that a public official is not liable for damage caused by a breach of duty committed while delivering a judgment in court, unless the breach is subject to criminal penalties.[254]

---

[249] Dieter Gaul (1964): „Die Haftung des Arbeitnehmers bei schadengeneigter Arbeit in Literatur und Rechtsprechung", Arbeit und Recht, Vol. 12, No. 9, p. 261.
[250] H Maurer and C Waldhoff, Allgemeines Verwaltungsrecht (19th edn, CH Beck 2017) § 26 para 1, cited in Ferdinand Wollenschläger and Johannes Stapf „Tort liability of public authorities in European laws", Giacinto Della Cananea and Roberto Caranta (Eds), Oxford University Press, 2020, p. 50.
[251] Ferdinand Wollenschläger and Johannes Stapf: 2020, p. 50.
[252] Cees van Dam: 2013., p. 540.
[253] Article 839 Section 1 of BGB.
[254] Article 839 Section 2 of BGB.

In addition, Sec. 3 adds that the right to compensation does not arise if the injured party intentionally or negligently failed to prevent the damage by using an available legal remedy.[255]

This means that the injured party is required to file an administrative appeal or a complaint with another public agency before bringing an action for damages against the public authorities.[256]

Damage compensation is excluded if the injured party does not appeal the administrative decision itself.[257]

While §839 BGB limits liability in some respects, it also extends beyond general tort law, for instance, by allowing compensation for pure economic loss, falling outside the scope of §826 BGB. However, the injured party can only claim material compensation; compensation for non-material damage is generally not available.[258]

In addition to proving that there was a breach of an official duty and the public official's fault, the injured party must also demonstrate that „the duty was owed to him as an individual and that the damage falls within the protective ambit of the violated duty".[259] For example, the courts have rejected individual claims based on legislative injustice, as such duties are typically meant to serve the public order as a whole rather than specific individuals.[260]

However, §839 BGB was old-fashioned because there were limitations regarding the possibility of the injured party claiming damages as aforementioned. Thus, the lawmaker found the solution in a new law (*lex specialis*) - the Act on Governmental Liability (Staatshaftungsgesetz) of 1981.[261] But the opinion of the Federal Constitutional Court was that the federal legislator lacks the competence to regulate this liability of the state, declaring the law unconstitutional.[262] Although jurisdiction in this field of law has explicitly shifted from the states to the federal legislator, no new legislation has yet been enacted.[263]

After 1990, when Germany was reunited, the State Liability Code or Act (*Gesetz zur Regelung der Staatshaftung in der Deutschen Demokratischen Republik* - East German Public Authority

[255] Article 839 Section 3 of BGB.
[256] Ferdinand Wollenschläger and Johannes Stapf: 2020, p. 53.
[257] „Morlok (n 22) para 116", cited in Ferdinand Wollenschläger and Johannes Stapf: 2020, p. 53.
[258] Gerald Spindler, Oliver Rieckers: 2019., p. 61.
[259] „BGH,NJW2013, 604, 605; and BGH,VersR2010, 532 et seq.;see alsoMarkesinis, Bell and Janssen,Markesinis's German Law of Torts179 et seq. (5th ed., 2019); and Kümper,DVBl2013, 1022,1024" cited in Gerald Spindler, Oliver Rieckers: 2019., p. 62.
[260] Gerald Spindler, Oliver Rieckers: 2019., p. 62.
[261] Ibid., p. 62.
[262] „Cf. BVerfGE 61, 149." Cited in Gerald Spindler, Oliver Rieckers: 2019, p. 62.
[263] Gerald Spindler, Oliver Rieckers: 2019, p. 62.

Liability Act of 12 May 1969, GBl I 34), as well as amendments by the Act of 14 December 1988 (*Gesetzblatt 1988 I 329*) existed in the former East Germany (in the former German Democratic Republic, GDR), were incorporated „into the law of the new eastern *Länder*“.[264] It stipulates that, regardless of the civil servant's fault, the State is directly liable for damage caused by its unlawful acts.[265] Today, the law of Brandenburg, Saxony-Anhalt, and Thuringia contains in traces the rules of this code. However, its overall significance is limited. In Saxony-Anhalt, the provisions have been confined to claims regarding property rights infringements, permitting only "appropriate compensation."[266] Moreover, in Brandenburg and Thuringia, both procedural and substantive modifications have been implemented, resulting that the courts began to interpret the otherwise broad provisions in a narrow sense.[267]

In addition, from a historical perspective, the state was not held liable for damage caused by its civil servants to third parties until the 19th century.[268] At that time, prevailing was the mandate contract theory (*Mandatsvertragstheorie*) according to which only the civil servant (*Beamter*) was liable for a wrongdoing, but not the state which hired him, while female civil servants were not hired at that time.[269] However, in 1794, when the Common Prussian Land Law, ALR (Allgemeines Preussisches Landrecht), was enacted, according to which the State had a duty to compensate the injured party whose rights were sacrificed for the public interest.[270] Thus, from this period originates the standpoint in the literature that the state can be held liable under rules of strict liability because the injured person is considered "special victim" (*Sonderopfer*) and is entitled to compensation if suffers a disproportionate burden as a result of a public law measure implemented in the public interest, violating the principle of equality.[271] This „rule only applies to infringements of life, health, bodily integrity, and personal freedom“.[272]

[264] „Anlage II (chapter III, topic B: Bürgerliches Recht, section III) of the unification treaty; see Gesetz zu dem Vertrag vom 31. August 1990 zwischen der Bundesrepublik Deutschland und der Deutschen Demokratischen Republik über die Herstellung der Einheit Deutschlands—Einigungsvertragsgesetz—und der Vereinbarung vom 18. September 1990 of 23 September 1990, BGBl II 885, 1168.“ Cited in Ferdinand Wollenschläger and Johannes Stapf 2020, p. 52; Ulrich Magnus: 2017, p. 178.
[265] Ulrich Magnus: 2017, p. 178.
[266] „See § 1 para 1 of the Gesetz zur Regelung von Entschädigungsansprüchen im Lande Sachsen-Anhalt in der Fassung der Bekanntmachung vom 1. Januar 1997, GVBl II 17; cf Ossenbühl and Cornils (n 14) 572. The provisions can, therefore, be regarded as more restrictive than the conditions of an ‘enteignungsgleicher Eingriff ’, cf von Danwitz (n 16) para 137.“ Cited in Ferdinand Wollenschläger and Johannes Stapf 2020, p. 52.
[267] Ferdinand Wollenschläger and Johannes Stapf 2020, p. 52.
[268] Ulrich Magnus: 2017, p. 179.
[269] „§§88, 89, II. Teil, 10. Titel ALR“ Cited in Ulrich Magnus: 2017, p. 179.
[270] Ibid.
[271] „Münchener Kommentar-Papier (2009), § 839 N 57.“ Cited in Cees van Dam: 2013., p. 540.
[272] Cees van Dam: 2013., p. 540.

In addition, in situations of unlawfully impaired property rights of citizens by the State, the case law developed a right to compensation (*Haftung aus enteignungsgleichem Eingriff* – „liability for an expropriation-like intervention“).[273] *Haftung aus Aufopferung or aufopferungsgleichem Eingriff* – „liability for sacrifice or sacrifice-like intervention“ applies regarding the unlawfully impaired immaterial rights of citizens by the state.[274] The case law has also developed, „a special, so-called Folgenbeseitigungsanspruch (claim for removal of consequences) where otherwise consequences of an unlawful State act would still remain“.[275] „Finally, the courts established a so-called *sozialrechtlichen Herstellungsanspruch* (claim for restoration of social rights) where wrong advice given by State authorities impaired the claimant's position concerning social security rights.“[276]

Regarding state liability for damage caused by lawful acts, those are expropriation based on Article 14 of the Basic Law (Constitution) when citizens have the right to compensation and „in certain cases where the claimant was obliged to bear a special burden or sacrifice in the public interest that others did not have to bear (*Aufopferung and aufopferungsgleicher Eingriff* – sacrifice and sacrifice-like intervention)“.[277]

5.4 Employer's Liability for Damage Caused by the Employee to a Third Party using a dangerous thing or performing a dangerous activity

In German law, this topic is regulated in many special laws, which envisage strict liability in case of “operation of railways, road traffic, air traffic, the operation of energy-producing works as far as accidents are caused by the effects of electricity, gases, steam and other liquids used or produced in the process (e.g., in power generators or electricity cables), the operation of mines, the operation of nuclear power plants and the possession of radioactive substances, genetic engineering, the protection of water resources against pollution, the protection of real estate against intromission, the operation of certain factories as far as the pollution of the environment in general is concerned, products put in circulation (so-called ‘Produkthaftung’),

[273] Ulrich Magnus: 2017, p. 178.
[274] Ibid.
[275] Ibid.
[276] Ibid.
[277] Ibid., 179.

medical preparations, the possession of luxury animals, the protection of real estate from damage caused by certain wild animals (so-called 'Wildschadensersatz') and wildlife hunting."[278] All of the above-listed things and activities potentially represent danger and risk of causing damage. For this reason is strict liability imposed.[279] Its purpose is to compensate ("gerechter Ausgleich für das Erlaubtsein eines gefährlichen Tuns").[280] In addition, there is a social benefit of the dangerous activity, and despite a high degree of care by a person conducting these activities, some damage cannot be completely avoided. In legal scholarship, causation ('Gefahrveranlassung') and control ('Gefahrbeherrschung') of dangerous things and dangerous activities justify such liability.[281] Furthermore, the next German term that follows the previous two is „Gefährdungshaftung" ('liability for endangerment', or 'liability based on dangerousness')[282] also gives the justification for strict liability. According to Gerhard Wagner: 'the concept of Gefährdungshaftung [...] makes the element of attribution explicit in its name: the defendant is liable because he created or controlled a source of danger that poses an increased risk of harm to others.'[283] Moreover, Wagner justifies strict liability as a 'correlate for the approval of technical risks'.[284] According to the standpoint of Helmut Koziol, 'that those who derive the benefit should bear the harm'.[285] The author emphasises that the same applies to Austrian law, which is the reason why the standpoint of Koziol as an Austrian law professor (retired professor at the University of Vienna) is in this German chapter. Thus, the doctrinal foundations of strict liability (Gefährdungshaftung) are the same in both countries, Germany and Austria,[286] and the principle of 'dangerousness' (Gefährlichkeit).[287] This principle was the political reason why the legislator prescribed strict liability by statute. In Austria, the courts developed new case law based on the principle of 'dangerousness'. While in literature, drafting a blanket clause in the German and Austrian Code served as an idea that was not implemented.[288] After these theoretical interpretations, the following part is dedicated to the law in force.

[278] Jörg Fedtke and Ulrich Magnus in B.A. Koch and H. Koziol (Eds.): 2002, p. 152.
[279] Ibid., pp. 154-155.
[280] W. Fikentscher, 1992, 1319. Cited in Jörg Fedtke and Ulrich Magnus 2002, p. 156.
[281] K. Larenz/C.-W. Canaris, 604. Cited in Jörg Fedtke and Ulrich Magnus 2002, p. 156.
[282] Johannes W Flume, Strict Liability in Austrian and German Law, JETL 2021; 12(3): 205–220, p. 207.
[283] H Koziol, 2012, 6/139 cited in Johannes W Flume, 2021, p. 207.
[284] G Wagner, 2021, 8/8 cited in Johannes W Flume, 2021, pp. 207-208.
[285] Koziol (fn 9) 6/139 cited in Johannes W Flume, 2021, p. 208.
[286] Johannes W Flume, 2021, p. 207.
[287] W Rother, in: Festschrift für Karl Michaelis (1972), BC Steininger, (2007), cited in Johannes W Flume, 2021, p. 208.
[288] Johannes W Flume, 2021, p. 208.

Concerning the operation of railways, from the beginning of this chapter, according to §1 of the Liability Act (Haftpflichtgesetz-HPflG), the operator of the railway or cableway will be liable for damage sustained by the injured party during the operation of a railway or a cableway.[289] The subsequent §2 of the Liability Act stipulates the liability of the owner of the power line or pipeline system or a system for the delivery of energy, such as electricity, gases, vapours, or liquids, for damage caused to the third party.[290]

When it comes to road traffic related to damage caused by the employees employed by the employer, the Road Traffic Act in § 7 Sec. 1 (Straßenverkehrsgesetz-StVG) prescribes general liability of the owner of a motor vehicle for damage sustained by the injured party during the operation of a motor vehicle. However, Sec. 3 clarifies the rule in Sec 1, in such a way that, even when the vehicle has been entrusted to an employee, the employer remains liable.[291] Similarly, as far as air traffic related to damage caused by the employees employed by the employer, too, the Aviation Act (Luftverkehrsgesetz – LuftVG) in § 33 prescribes in general liability of the operator of the aircraft for damage sustained by the injured party during the operation of an aircraft. The operator still remains liable if they employ the user to operate the aircraft.[292] In addition, § 33 Sec. 1 envisages the applications of § 44 to 54 regarding the liability of an operator of military aircraft for training persons to become pilots to a passenger that stems from the contract of carriage.[293]

Another example of strict liability is related to the operation of mines. Federal Mining Act § 114, 115 and 116 (Bundesberggesetz-BbergG) regulates the liability of the entrepreneur operating the mining operation or the mining permit holder.[294]

Furthermore, the Act on the peaceful use of nuclear energy and protection against its dangers (Atomic Law) in §25 prescribes strict liability of the operator of the nuclear installation. In addition, there is a statutory solution for a carrier who assumed liability for the operator by concluding the contract for the operation to be liable instead of them.[295]

---

[289] Liability Act of 1978 (Federal Law Gazette I p. 145), last amended 2017 (Federal Law Gazette I p. 2421).
[290] Liability Act, § 2.
[291] Road Traffic Act of 2003 (Federal Law Gazette I, pp. 310, 919), last amended by Article 1 of the Act of 12 July 2021 (Federal Law Gazette I, p. 3108), Art. 7 Sec. 1 and 3.
[292] Aviation Act of 2007 (Federal Law Gazette I, p. 698), last amended in 2023 (Federal Law Gazette 2023 I No. 409), § 33, Sec 1 and 2.
[293] Aviation Act, § 33, Sec 1.
[294] Federal Mining Act of 1980 (Federal Law Gazette I p. 1310), last amended 2021 (Federal Law Gazette I, p. 1760), §§§ 114, 115 and 116.
[295] Atomic Act of 1985 (Federal Law Gazette I p. 1565), last amended in 2025 (Federal Law Gazette 2025 I No. 301).

Act on the Regulation of Genetic Engineering (Genetic Engineering Act - GenTG) §32 regulates the liability for damage of the operator of a genetic engineering facility.[296] In addition, there are a lot of special laws in the German legal order prescribing strict liability, but the mentioned are sufficient examples for the purpose of this research.

Finally, the most important question for these liable persons is whether they can release themselves from liability. The answer lies in traditional defences such as (höhere Gewalt) vis major, unavoidable events, fault of the injured or third party, or consent.[297] But it should highlight that not all defences are available in strict liability scenarios, and they are dependant from case to case.[298]

6 Employer's Liability for Damage Caused by the Employee to a Third Party under French Law

6.1 General considerations

In French civil law, until 2016, Art. 1384, alinea 5 prescribed the employer's liability for damage caused by the employee to a third party, which relied on the same article 1384 alinea 1. This alinea envisaged general regime of delictual liability for the activities of other persons, or just keeping the things that caused the damage.[299] Unlike the aforementioned German legal regime, which does not provide for the general liability of another.[300] Nowadays, that is Article 1242 alinéa 5 of the Civil Code concerning employers or masters (referred to as *maîtres or commettants)* who are liable for the damage caused by their employees or servants (referred to

[296] Gesetz zur Regelung der Gentechnik (Gentechnikgesetz - GenTG), Federal Law Gazette 1990 Part I No. 28, with ammendments.
[297] Johannes W Flume, 2021, pp. 213-214.
[298] Ibid., p. 214.
[299] Walter van Gerven, Jeremy Lever, and Pierre Larouche: 2000, Common law of Europe casebooks, Tort law, Hart Publishing, Oxford and Portland, Oregon, p. 468. It should be noted that a reform of tort law is currently in progress in France. It started with "Catala Viney draft of 2005, after that "Terré draft of 2010", and "preliminary draft law of 2016" when the provision of this subject matter was changed. Furthermore, there was "draft law of 2017" and the final "law proposal of 2020". The idea is to increase the number of articles that refer to tort law. Dimitra Tsiaklagkanou (2023): p. 243.
[300] Ibid., p. 467.

as *domestiques or préposés)* to a third party, „in the functions for which they have been employed" („*dans les fonctions auxquelles ils les ont employés*").[301] If they acted outside of their roles, the employer can release themselves from liability.[302] The negligent injured party's contribution to the emergence of the damage is the reason for the employer to release themselves from liability, which is, in theory, strict.[303] As a kind of vicarious liability, it provides additional security for the injured party because the other party is economically stronger than the direct tortfeasor.[304]

The rule uses archaic terms „masters" and „servants". Given the evolution of legal and social norms, these terms became obsolete, as the relationship between homeowners and their domestic staff is now classified under the terminology of employer/employee.[305] In addition, the term principal is also a translation of the French term *maître*, but the term employer is more convenient for everyday use because the principal's liability traces back to the time when servants (*domestiques*) lived with their masters. As mentioned previously, this has changed in the meantime.[306]

In fact, the French terms *"commettant"*[307] and *"préposé"* are frequently translated incorrectly into English as „employer" and „employee" because Article 1242 Section 5 is not limited solely to the traditional employer-employee relationship.[308] In the French language, "employment relationship" is a translation of *lien de preposition*, but related to Art. 1242 Sec 5, this syntagma is beyond its literal meaning.[309] Namely, it encompasses various situations where one person is tasked with completing an assignment on behalf of another, because vicarious liability applies to cases involving neighbours or family members where one may be held liable for the actions of another[310] or a friendly and gratuitous favour to another person.[311] But in order to apply Article 1242 Section 5, the real existence of a relationship between employer and employee is

[301] Article 1242 alinéa 5 of the new provisions of the Code civil created by Ordonnance n° 2016-131 of 10 February 2016. Original version, *Les maîtres et les commettants, du dommage causé par leurs domestiques et préposés dans les fonctions auxquelles ils les ont employés*.
[302]Walter van Gerven et al. 2000, p. 500.
[303] Cees van Dam: 2013, p. 506.
[304] Corinne Renault-Brahinsky: Droit des obligations, Gualino éditeur, p. 293.
[305] Jonas Knetsch (2021): Tort Law in France, Kluwer Law International BV, The Netherlands, p. 75.
[306] Cees van Dam: 2013, p. 507.
[307] The word commettant has its narrow meaning in contract law, specifically in the contract of commission *(le contract de commission*). François Terrè; Philippe Simler, Yves Lequette 2002, Droit civil, Les obligations, Dalloz, p. 784. Namely, in this contractual representation, the represented party is called commettant while the representing party is commissionnaire. Ph. Didier, 110, cited in François Terrè et al. p. 179.
[308] Jonas Knetsch (2021): p. 75.
[309] Walter van Gerven et al (2000), p. 469.
[310] Jonas Knetsch (2021): p. 75.
[311] Cees van Dam: 2013, p. 506.

needed, not a pure appearance of the employer/employee relationship, although the employment agreement is not necessary.[312] This broad interpretation by the court seems not to be correct since, in that event, the basis for liability must be Article 1240 (old Article 1382, which was in force until 2016) if someone willingly establishes an appearance of a subordinate relationship.[313]

However, it is evident that the formulation of Article 1242 Section 5 is written in general and gives the space to the court for wide interpretation because „it cannot be disregarded in cases where liability may stem from a contractual obligation in application of the non-cumul rule, since courts also cite the article when dealing with contractual matters:[314] French law recognises a general principle of contractual liability for the acts of auxiliaries[315], comprising the rule in"[316] this Article 1242 Section 5 (previously it was Article 1384 Section 5 until 2016 when the French Civil Code was renumbered as a result of reforms).

Another question is whether the employee acts in the „in the functions for which they have been employed"? In English, it is the phrase "in the course of employment" (in the common law jurisdictions). When attempting to analyse the meaning of this expression, the task is to find an appropriate test or standard to follow when determining whether an employee inflicted the damage "*dans les fonctions*." as mentioned above. This has elicited discussion in both jurisdictions (European and common law) because the judges had difficulties establishing with certainty whether an employee is operating within the scope of employment if they take into account only the linguistic meaning of the term. For example, should an employer be considered liable in cases where an employee engages in criminal activity during working hours or in situations where an employee disregards explicit warnings and commits a criminal act? The solution is found in a case-by-case approach recognised by the French court, which seems to be the fairest, similar to the one adopted in common law system, and such an attitude is applied to the analysis of Article 1242 alinéa (Section) 5 of the Civil Code.[317]

---

[312] Ibid., p. 506.
[313] „Crim. 15 February 1972, D. 1972. 368, JCP 1972. II. 17159, on which see Van Gerven (2000), 490." Cited in Cees van Dam: 2013, p. 507.
[314] „Viney/Jourdain, Les conditions de la responsabilité3 nos 791-2 and 813", cited in Olivier Moréteau in Helmut Koziol (ed), „Basic Questions of Tort Law from a Comparative Perspective, *Jan Sramek Verlag KG Wien*, 2015., p. 77.
[315] This term is also used for the term employee. In Olivier Moréteau: 2015., p. 77.
[316] „Viney/Jourdain, Les conditions de la responsabilité3 nos 791-2 and 822", cited in Olivier Moréteau: 2015., p. 77.
[317] Eva Steiner: French Law: A Comparative Approach (2nd edn), Oxford University Press, 2018., P. 278.

In terms of matters regarding conditions for establishing the employer's liability, the personal fault of the employee is a precondition in addition to the existence of damage and causation.[318] Thus, these are the conditions stipulated under art. 1240 and 1241 (previously art. 1382 and 1383).[319] But, first, the employee should be the employer's préposé or subordonné who performs work duties for them and is subject to their oversight, guidance, and control.[320]

In that event, the defendant is obliged to prove that the damage caused by the employee's fault (in French, préposé's faute)[321] while any personal misconduct on the part of the employer is not of legal significance.[322] However, they can be held liable by fault under Article 1240, which will be discussed below.[323] From a historical perspective, the irrebuttable presumption of fault of the employer for damage caused by their employee was prescribed in a particular provision of the old Civil Code of 1804 (the Napoleonic Code).[324] The contemporary standpoint of the employer's strict liability, which does not require proof of their fault, originated in the late nineteenth century and was established through case law.[325]

Regarding the employee's fault despite not being specifically prescribed in Article 1242 Section 5 of the Civil Code, the necessity of fault was unequivocally upheld by the Court of Cassation in 1866 and has been often reaffirmed.[326] Therefore, the standard of fault under Article 1240 of the Civil Code must be used to evaluate the preposé's behaviour.[327] However, the majority of legal scholars assert that the relation between the employee's fault and their functions for which they are employed are only relevant for the employer's defence at their disposal.[328] Furthermore, they strive for the judicial practice to adopt the standpoint that an employee's fault is no longer required as a condition for establishing the employer's liability.[329]

[318] Cees van Dam: 2013, p. 507.
[319] Walter van Gerven et al: 2000, p. 468.
[320] Suzanne Galand-Carval in J. Spier (ed.) Unification of Tort Law: Liability for Damage Caused by Others (2003), p. 93.
[321] Jonas Knetsch (2021): p. 78.
[322] Jonas Knetsch (2021): p. 75.
[323] Ibid., p. 76.
[324] The Code Napoleon (William Benning, 1804), cited in Tsiaklagkanou Dimitra (2023): French Tort Law Reform: A Rapprochement to Other Legal Systems?, Journal of International Business and Law, pp. 244-245.
[325] Ibid, p. 245.
[326] „Req, 19 February 1866. See more recently Civ 2, 8 April 2004, no. 03-11653". Cited in Jonas Knetsch (2021): p. 78.
[327] Jonas Knetsch (2021): p. 78.
[328] Ibid.
[329] Viney and Jourdain et al. Cited in Walter van Gerven et al: 2000, p. 468.

French courts, with rare exceptions, tend to assume a connection between fault and the functions of the employee. It means that the employer must demonstrate that the employee's actions were wholly unrelated to the tasks they were assigned or that there was an abuse of authority.[330]

Case law has established the prerequisites under which the employer can be released from liability: the employee must have acted outside the scope of their assigned duties (*abus de fonctions)*, without authorisation, and for reasons unrelated to the tasks entrusted to them.[331]

Furthermore, the damage must be caused by the employee outside working hours, away from the workplace, and without utilising any equipment or means supplied by the employer.[332]

In theory, in addition to the aforementioned case law, the liability of the employer is strict (the principle of strict liability applies to employers), even though Article 1242 Section 5 of the Civil Code does not explicitly stipulate that. As mentioned, historically, early 19th-century jurisprudence framed this liability in terms of an irrebuttable presumption of fault either in the selection (*culpa in eligendo*) or in the supervision (*culpa in vigilando*) of employees (*préposés)*.[333]

There are decisions in the case law (such as Cass. civ., 8 mai 1908, DP 1909.1.130; 7 avr. 1924, DH 1924.373)[334] in which a person, if they did not choose the employee, was not held liable for that employee who acted under their instructions. However, this concept of free choice was later abandoned.[335]

In addition, the case law also gave decisions according to which the existence of a relationship of authority and subordination whereby one person gives orders and is therefore liable for another is not so straightforward because the person giving the orders may merely be an intermediary.[336]

However, contemporary legal literature and judicial interpretation have clarified that vicarious liability relies on strict liability with aforementioned defences, and force majeure as an additional ground for exemption from liability.[337]

---

[330] Jonas Knetsh (2021): p. 78..
[331] „Ass. plén. 19 May 1988, D. 1988. 513, comm. Larroumet, Gaz. Pal. 1988, 640, on which see Van Gerven (2000), 501–502 from which the translation is derived", cited in Cees van Dam: 2013, p. 507.
[332] Jonas Knetsch (2021): p. 79.
[333] Ibid., p. 75.
[334] Cited in François Terrè et al., p. 784.
[335] Ibid.
[336] Ibid. pp.784-785.
[337] Jonas Knetsch (2021): pp. 75-76.

The justification for this strict liability regime is the concept of guarantee. Namely, both the literature and case law emphasise that an innocent third party should not bear the consequences of an employee's financial inability to compensate for damage caused with negligence, particularly when the employer, who benefits from the employee's labour, is in a better position to indemnify such losses. That is why the act of engaging another person's work inherently generates risk, and this should warrant a correspondingly heightened standard of liability, even exceeding that which attaches to one's own direct actions.[338]

Thus, as mentioned previously, the employer can be at fault and liable under Article 1240 of the Civil Code. Namely, this Act can be applied in addition to Article 1242 Section 5, because the employer could be liable on the grounds of fault, for example, they are at fault because they did not give proper instructions to the employee or failed to supervise them. Furthermore, there are cases which are related to contractual liability and not delictual.[339]

Another peculiarity is that in cases where the employees negligently cause damage, they are released from liability based on the so-called general 'civil immunity' introduced by the French Court of Cassation in the *Costedoat* case.[340] Namely, according to this judgement, of the Assembly of the Court of Cassation in France of 25 February 2000, the injured party could not claim damages directly from the employee who negligently caused damage to them and stayed within the limits of duties.[341] According to case law, this solution stems from assuredness that the employer is insured against the damage caused by their employees and the insurer company will pay compensation for damage.[342]

However, in theory, the injured parties may opt who to claim damages from.[343] When the employer is the defendant, in that event, the Art. 1242 Section 5 applies. The employee can also be a defendant, based on Art. 1240. However, they will not have the right of recourse against the employer, which is unfair according to many legal scholars because the employee cannot pay the total damages.[344] Furthermore, the claim can be addressed against both, when their liability is joint and several (in solidum).[345] However, case law has a standpoint that the

[338] Ibid., p. 76.
[339] Ibid,. p. 76.
[340] Ibid., p. 76.
[341] Cass. Plen. Ass. 25 February 2000, No. of pourvoi 97–17.378. and 97.20.152. Cited in Goran Georgijević (2025): CIVIL LIABILITY OF PRINCIPAL FOR THE ACTS OF AGENT–A COMPARISON BETWEEN FRANCE AND MAURITIUS, *Anali Pravnog fakulteta u Beogradu*, p. 76.
[342] Goran Georgijević (2025): p. 76.
[343] Bénac et al. Cited in Walter van Gerven et al: 2000, p. 470.
[344] Viney and Jourdain, Schmidt/Larroumet. Cited in Walter van Gerven et al: 2000, p. 470.
[345] Bénac-Schmidt/Larroumet et al. Cited in Walter van Gerven et al: 2000, p. 470.

employee can be directly sued only for personal fault.[346] The theory of risk (théorie du risque) relies on the employee's fault because their fault is important in establishing employer's liability. Earlier, this theory did not offer reasoning why personal fault of the employee is the basis for the employer's recourse right against them. Later, according to this theory, the purpose of the risk was to determine who was liable. Basically, there are two subtypes of risk theory, which explain why the employer is liable. The theory of risk-profit, which gives the rationale that the employer is liable because they bear the risk due to their economic benefit from the employee's work for them. Secondly, the theory of risk-authority is due to the employer's authority over the conduct of the employee. Thus, the idea was to make the company liable due to the risk it bears for the actions of the employee on its behalf.[347]

There is a background of liability insurance that requires insurers to pay damages that support this theory.[348]

6.2 Liability of a legal person for damage caused by its organ

The concept of liability of legal persons (*personnes morales*) for their organs emerged in the case law, that is actually the liability for the acts of their executives.[349] These organs are defined as persons who manifest the legal person's will and act on its behalf (*qui veut et agit en son nom*); thereby, their acts are identified with the legal person.[350]

Namely, a legal person is liable for acts conducted by its organs possessing the authority to make decisions, as well as for acts undertaken in the name of the legal person and for its account. Notably, liability may arise even in cases where the organ acts beyond the scope of its authority.[351] Furthermore, legal persons are liable for the acts of their appointed representatives. Namely, appointed employees with granted authority (*salarié titulaire d'une délégation de*

[346] Ibid, p. 471.
[347] Philippe Malaurie, Laurent Aynès and Philippe Stoffel-Munck (2011): Droit Civil, Les obligations, Defrenois, p. 76.
[348] Paula Giliker (2018): Comparative Law and Legal Culture: Placing Vicarious Liability in Comparative Perspective, The Chinese Journal of Comparative Law Vol. 6 No. 2 pp. 265-293, p. 283.
[349] Jonas Knetsch (2021): p. 88.
[350] Terré-Simler-Lequette (2009), 725; Le Tourneau (2012), 1372: 'La faute commise par un organe de la personne morale, c'est-à-dire par une personne qui veut et agit en son nom, est une faute de la personne morale.' Cited in Cees van Dam: 2013, p. 508.
[351] Le Tourneau (2012),1373. Cited in Cees van Dam: 2013, p. 508.

pouvoirs) are real representatives, and it would not be correct to designate general employees as representatives.[352]

In a significant judgement from 1997, the Cour de cassation adjudicated that an organ or representative cannot be held personally liable if they acted within the scope of their granted authority. In 1993, the same was true for the employee.[353] Generally, the court does not require from the plaintiff to identify the specific person liable for the damage caused.[354]

Furthermore, in addition to the non-contractual liability (`responsabilité délictuelle'), based on Art. 1242, Sec. 5, a legal person can be contractually liable (`responsabilité contractuelle'). That is in the situations when the contractual relationship exists between the injured parties and the legal person.[355] For example, board members, executive officers, trustees in bankruptcy can cause damage as corporate organs through breaching the contract or law within their authority to represent the legal person.[356] These organs are actually natural persons, thus they can also be personally liable for their conduct.[357]

6.3 State liability for damage caused by public officials

In France, the Civil Code does not regulate state's liability; it is regulated by administrative law.[358] Namely, administrative law (*droit administrative*) and tort law are combined in France's two-track system, with a focus on the former[359] which will be analysed below.

This system was established in 1790 by Law 16-24, which separated judicial and administrative functions; thus, ordinary courts were forbidden to intervene in the public authorities' acts or scrutinise the claims brought against their official duties. First, both were liable for such claims. However, the Conseil d'Etat was transformed into an independent body based on Law on May 24, 1872.[360]

[352] Le Tourneau (2012), 1365. Cited in Cees van Dam: 2013, p. 508.
[353] Civ. 2e 19 February 1997, Bull. 53; JCP 1997, 4070, 25. Viney, RTD 1998, 688, Jourdain. Cited in Cees van Dam: 2013, p. 508.
[354] Suzanne Galand-Carval, 2003, 294. Cited in Cees van Dam: 2013, p. 508.
[355] Walter van Gerven et al: 2000, p. 473.
[356] Viney and Jourdain, cited in Walter van Gerven et al: 2000, p. 473.
[357] Ibid., p. 473.
[358] Cees van Dam: 2013., p. 533.
[359] Ibid., p. 532.
[360] S Braconnier, 2014, 188. Cited in Thomas Perroud (2020): in Giacinto della Cananea, Roberto Caranta (eds.): Tort Liability of Public Authorities in European Laws, Oxford University Press, p. 48.

Namely, administrative liability is the result of the application of the separation of powers as a constitutional principle. Therefore, the administrative courts and the State Council (*Conseil d'État*), which is the highest appeal court, have jurisdiction in this subject matter. The distinction between administrative and civil liability emerged as a result of an odd situation regarding the issue of medical negligence and as well as the issue of applicable law on it, because in the concrete case the main task was to determine the fact whether the patient received the treatment at a private clinic or in a state hospital.[361]

In addition, the principle of administrative liability has its foundation in the notable Blanco case, in which the Tribunal of Conflicts (*Tribunal des conflits)* clarified that administrative courts hold jurisdiction over claims for compensation against the state and which would not be subject to the rules of the Civil Code.[362]

Namely, the government commissioner, David, gave an opinion on this topic (paraphrased): Considering that the state may be held liable for damage caused to private persons by persons employed in its service, such liability arising from relations between private persons cannot be governed by the Civil Code. This liability is not general, and its specific rules, depending on the needs of the public service, should be harmonised with both state and private rights; thus, jurisdiction lies exclusively with the administrative authority.[363]

Thus, this famous French case of Blanco, which is still valid, although it is from the 19th century, was a turning point in dividing law as "public" or "private".[364]

The case was about a five-year-old girl named Agnès Blanco, who had suffered serious injuries after being struck by a wagon from a Bordeaux state-owned tobacco factory.[365]

Her father, Jean Blanco, lodged a lawsuit before the ordinary court to hold the state liable for the damage sustained by his daughter from a traffic accident caused by a wagon driven by a state employee, citing Articles 1382, 1383, and 1384 of the French Civil Code. At that time, the Prefect of the Département (*Le Préfet du Département)*[366] represented the state and initiated a

[361] Ibid., p. 533.
[362] Ibid., p. 533.
[363] Jacqueline Morand-Deviller (1995): Cours de droit administratif, Cours – Thémes de réflexion Commentaries d'arret avec corrigés, Montchrestien, p. 683.
[364] Bartłomiej Jaworski (2019): The case of Blanco: Epoch-making ruling vs. general law doctrine. The public–private divide in historical context, *Studenckie Prace Prawnicze, Administratywistyczne i Ekonomiczne*, p.9.
[365] Tribunal des Conflits, Les grands arrêts de la jurisprudence administrative, no. 1, 8 February 1873 (Blanco). Cited in Bartłomiej Jaworski (2019), p. 16.
[366] It was about *le préfet du département de la Gironde*. See *Tribunal des conflits, du 8 février 1873, 00012, publié au recueil Lebon*, https://www.legifrance.gouv.fr/ceta/id/CETATEXT000007605886/

conflict of jurisdiction proceeding, asserting that the ordinary courts lacked competence. The Tribunal of Conflicts determined that the provisions of the Civil Code governing the relations between private persons could not be applied by analogy to the state liability for damage caused by its civil servants to third parties. The focus is on the public service in order to determine which statute will be applied. The father of the injured girl could not bring the lawsuit before the ordinary court; in this regard, the Prefect of the Département referred to the Civil Code. Furthermore, the state is subject to specific rules, as its liability is neither general nor absolute, but rather varies depending on the needs of public service, the public interest, and the necessity to harmonise the rights of the state with the rights of private persons.[367]

The court considered that the employees (civil servants), when transporting tobacco by wagon, were conducting a public service. In that event, the administrative court had jurisdiction according to the court's standpoint. Therefore, the Blanco case represents the foundation of administrative law, as it established the principle of state liability for damage caused to a natural person and marked the separation between administrative and civil law.[368] However, many rules of civil law have been incorporated into administrative law, but there are also reverse situations where administrative rules have been transplanted into civil law. This phenomenon is known as the osmosis of private and public law.[369]

In addition, it should be noted that this issue under the French Constitution of 1958 (*Cinquième République*) is not regulated. The reason was that the Council of State (*Conseil d'Etat*) developed French administrative law, but the principles regarding compensation were established by the Constitutional Council (*Conseil Constitutionnel*).[370] In addition, it controls the law passed by this branch of law by using other mechanisms, while Conseil d'Etat defines it (state liability).[371]

[367] Bartłomiej Jaworski (2019), p. 16.
[368] Ibid., 16-17.
[369] E. Huisman, 1987, pp. 273–372. Cited in Bartłomiej Jaworski (2019), p. 17.
[370] Thomas Perroud (2020): p. 46.
[371] Ibid., p. 47.

6.4 Employer's Liability for Damage Caused by the Employee to a Third Party using a dangerous thing or performing a dangerous activity

Once again, this issue falls under the general regime of delictual liability for the act of keeping the things that caused the damage, according to Art. 1242, Sec. 1 of the Civil Code. The injured party does not have to prove that the thing was defective or dangerous, nor that the thing was instructed by a human or not.[372] The Court of Cassation interpreted this article in a way that the presumption of liability for damage caused by the thing under the control of a person can be rebutted only if a force majeure, an external cause or a *casus* not attributable to that person is proven. Proving that the person committed no fault is not sufficient.[373] Namely, the facts of the case were that the truck driven by the employee, which was owned by a legal person, "Aux Galeries Belfortaises", hit a child on the street. The court of first instance assessed that the injured party had to prove the fault of the truck driver according to Art. 1242, Sec. 1 of the Civil Code (former Art. 1384, Sec 1) and did not apply this provision because it does not apply to a moving truck driven by a person, in this case an employee (a driver), unless there is a defect in the vehicle. However, the court of the second instance held the standpoint that this provision does not distinguish whether the thing by which the damage was caused was set in motion by a human hand or not. Furthermore, the thing doesn't need to have a defect, since this article concerns liability for the control of the thing (keeping the thing) rather than the thing itself. Thus, the Court of Cassation quashed the impugned judgment on the aforementioned grounds.[374] In the old literature, the same standpoint was held. According to Raymond Saleilles and Louis Josserand, they interpreted this provision to mean that anyone who cares for things is liable for damage caused by those things, regardless of fault.[375] Solely the law is the basis of this liability.[376] The author deliberately analysed older case law and literature in this case, as

[372] Suzanne Galand-Carval in B.A. Koch and H. Koziol (Eds.) (2002) Unification of Tort Law: Strict Liability, Kluwer Law International, p. 132.
[373] „Cour de Cassation, Chambres réunies, du 13 février 1930, Publié au bulletin, Décision attaquée : Cour d'appel Lyon 1927-07-07, du 07 juillet 1927“. Decision of the Court of Cassation in France of 7 July 1927, published in the Bulletin ARRETS Cour de Cassation Chambres réunies N. 34 p. 68. https://www.legifrance.gouv.fr/juri/id/JURITEXT000006952821/
[374] Ibid.
[375] P. B. Mignault (1910): The Modern Conception of Civil Responsibility, Journal of the Society of Comparative Legislation, Vol. 11, No. 1, pp. 102-113, Cambridge University Press on behalf of the British Institute of International and Comparative Law, p. 105.
[376] Ibid, p. 105.

the early twentieth century marked the transition from fault-based to strict liability when it came to the liability for dangerous things and dangerous activities.

In addition, particular special laws envisage liability for damage caused by special groups of things.[377] Regarding this topic, the most important act until 2010 was Code de l'aviation civile (aircraft).[378] Art. L.141–2 prescribed that strict liability of the operator of an aircraft emerges for damage caused by the aircraft (its movement and things inside the airplane).[379] Now it is Code des transports Art. L6131-2.[380] Similar liability is prescribed in Art.6 loi du 8 août 1941 for the operator of a cable car.[381]

When it comes to imposing strict liability on the state and other public authorities for damage caused by dangerous things, the main role in developing that rule was played by the French administrative court, Conseil d'État.[382] The first time such liability was adjudicated was when an explosion at an ammunition depot[383] caused damage.
Later, this rule was applied to other situations, such as a police officer or soldier accidentally injuring someone with a firearm[384] or damage occurring due to dangerous public installations.[385] As far as dangerous activities are concerned, for example, Loi du 5 juillet 1985 is the basic single act that regulates compensation for victims of road traffic accidents.[386] Another special law is Loi n° 68-943 du 30 octobre 1968 that regulates civil liability for damage arising in the field of nuclear energy.[387] Furthermore, until 2000, Code de la santé publique was about public health, the healthcare system, medical ethics, patient protection, and medical research.[388] Now it is Loi n° 2012-300 du 5 mars 2012.[389] In addition, according to Art.

[377] Suzanne Galand-Carval (2002):., p. 133.
[378] According to Art. L.141–2 Code de l'aviation civile, since repealed.
[379] Ibid.
[380] „L'exploitant d'un aéronef est responsable de plein droit des dommages causés par les évolutions de l'aéronef ou les objets qui s'en détachent aux personnes et aux biens à la surface.
La responsabilité de l'exploitant ne peut être atténuée ou écartée que par la preuve de la faute de la victime." Article L6131-2.
[381] Art. 6 of the Law of 8 July 1941 (still in force) establishes strict liability of the operator of a cableway.
[382] Suzanne Galand-Carval 2002, p. 133.
[383] E, 28 March 1919,Regnault-Desroziers, [1919] Revue de droit public (RDP), 239 et seq. Cited in Suzanne Galand-Carval 2002, p. 133.
[384] E, 24 June 1949, Franquette et Daramy, [1949] RDP, 583 et seq. Cited in Suzanne Galand-Carval 2002, p. 133.
[385] E, 25 January 1929, Soc. du gaz de Beauvais,[1929]D.3,35. Cited in Suzanne Galand-Carval 2002, p. 133.
[386] Loi n° 85-677 du 5 juillet 1985 „tendant à l'amélioration de la situation des victimes d'accidents de la circulation et à l'accélération des procédures d'indemnisation". https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000693454/ (Access 09.03.2026.) This act is known as the 'Badinter Law' (Robert Badinter, who served as Minister of Justice from 1981 to 1986, initiated this act).
[387] Loi n° 68-943 du 30 octobre 1968 „relative à la responsabilité civile dans le domaine de l'énergie nucléaire."
[388] since repealed.
[389] Journal officiel "Lois et Décrets".

L. 1222-9 Code de la santé publique, blood agencies are strict liable for injuries sustained by blood donors.[390]

7 Employer's Liability for Damage Caused by the Employee to a Third Party under Austrian Law

7.1 General considerations

Under Austrian law, provisions from § 1313. a to 1316, the Austrian General Civil Code (Allgemeines Bürgerliches Gesetzbuch, abbreviated as ABGB) prescribe circumstances under which the employer is liable for damage caused by their employee to a third party.[391] Primarily, this liability is vicarious, meaning that the employer, as defendant, is liable for the acts carried out by their assistants while performing work duties. It is important to emphasise that the employer's own conduct does not need to be wrongful for liability to arise, and these cases are common in the labour environment.[392] The employee is engaged as an assistant in the performance of work duties (*Besorgungsgehilfen*) by the employer, whose liability is an exception from the principle incorporated in § 1313. ABGB.[393] This principle stipulates that no one is liable for the acts of others without their own participation in those acts, except if the statute stipulates otherwise. If that is the case, the recourse right remains as a legal remedy against that person who is liable.[394]

In addition, § 1315 ABGB foresaw vicarious liability of anyone who uses another person without the qualifications or a potentially dangerous person for conducting their activities, for damage caused by those persons.[395] In legal theory, the liability is strict when the person is

[390] Code de la santé publique.
[391] General Civil Code for all German hereditary lands of the Austrian Monarchy StF: JGS No. 946/1811, with all amendments up to today: last update: BGBl. I Nr. 33/2024 (NR: GP XXVII RV 2462 AB 2481 S. 257. BR: AB 11461 S. 965.). § 1313. a to 1316 .
[392] Ferdinand Kerschner & Erika Wagner (2015): p. 112.
[393] Sandra Laleta 2006, p. 1022.
[394] ABGB, § 1313. „Für fremde, widerrechtliche Handlungen, woran jemand keinen Theil genommen hat, ist er in der Regel auch nicht verantwortlich. Selbst in den Fällen, wo die Gesetze das Gegentheil anordnen, bleibt ihm der Rückersatz gegen den Schuldtragenden vorbehalten."
[395] ABGB, § 1315. „Überhaupt haftet derjenige, welcher sich einer untüchtigen oder wissentlich einer gefährlichen Person zur Besorgung seiner Angelegenheiten bedient, für den Schaden, den sie in dieser Eigenschaft einem Dritten zufügt."

incompetent, while fault-based liability is attributed to the principal who is aware that the engaged person acts in a dangerous way.[396]

Strict liability also stems from § 1313.a ABGB in the theoretical interpretation.[397] According to this provision, the master's liability is strict for the acts of their servants in performing the contract (the terms master and servant are also used instead of notions principal and assistant in the literature).[398] The fault of the assistant (*Erfüllungsgehilfen*) is a precondition for the principal's liability, while the principal's fault is not legally relevant because the assistant's fault is considered as the principal's own fault.[399] That is the reason why their liability is strict in legal theory, as mentioned, in addition to the standpoint that the liability based on this § 1313.a is contractual, although it is in the domain of vicarious liability.[400] The answer lies in the fact that a principal in a contractual setting is generally liable for the unlawful acts of their assistants who are hired to perform the contract.[401] Since assistants are not contracting party in this contractual relationship between the principal and the contractual partner, the latter could lose their right to claim damages if this liability were not vicarious.[402]

The following case describes this situation. It relates to medical malpractice, where the patient and the hospital are the sole contracting parties, while the hospital's staff fall outside the contractual relationship.[403] Based on this, they are outside the medical treatment contract and are liable according to the rules of law of delicts. By contrast, the rules of contractual liability apply to contracting parties.[404] However, regarding the legal relationship between the doctor and the patient, it is considered contractual.[405]

---

[396] Sandra Laleta 2006, p. 1022.
[397] Bernhard BURTSCHER and Martin SPITZER 2021., p. 88.
[398] Ibid.
[399] ABGB, § 1313. a. „ Wer einem andern zu einer Leistung verpflichtet ist, haftet ihm für das Verschulden seines gesetzlichen Vertreters sowie der Personen, deren er sich zur Erfüllung bedient, wie für sein eigenes." Similar, Bernhard BURTSCHER and Martin SPITZER 2021., p. 88.
[400] Bernhard BURTSCHER and Martin SPITZER in Ernst Karner (ed) • Tortious and Contractual Liability, Wien 2021, Jan Sramek Verlag KG, pp. 87-88.
[401] Bydlinski (fn 46) 206ff; A Ehrenzweig, (1928) 295; HP Westermann 2017, § 278 no 1; M Wilburg, 1930, 641, 649. 125 Koziol (fn 108) no 6/106. Cited in Bernhard BURTSCHER and Martin SPITZER 2021., p. 88.
[402] Bernhard BURTSCHER and Martin SPITZER 2021, p. 88.
[403] Bernhard A. Koch: Austrian Cases on Medical Liability, European Journal of Health Law, June 2003, Vol. 10, No. 2 (June 2003), Brill, pp. 91-114, p. 91.
[404] Ibid. p. 91.
[405] W. Holzer, (1992), p. 1 (pp. 18-19); D. Engljähringer, (1996), pp. 17... Bernhard A. Koch: 2003, p. 92.

Following this approach and the theoretical interpretation of the application of § 1313a ABGB (ex contractus), some scholars, such as Kletečka[406], draw a clear line between § 1313a ABGB, which is primarily interpreted as a rule of contractual liability, and § 1315 ABGB, regulating torts, because he considers the tortfeasor and the injured party to be in equal position.

This approach is also supported by Karollus,[407] although he noted that there are cases when the assistant is exempt from liability, their conduct is then attributed to the principal.[408]

In case law, usually the patient brings a claim based on the rules of contractual liability rather than the rules of non-contractual liability.[409]

The conditions for establishing liability under § 1313a ABGB are the existence of a special legal relation (obligation) between the principal and the third party, and the damage caused by the assistant (*Erfüllungsgehilfen*) in the course of fulfilling the special obligation.[410]

Having regard to the medical malpractice, in addition to the two previous conditions, which pertain to contractual liability, the injured party has to prove the requirements that stem from tort liability: causation, wrongfulness, and fault.[411]

Concerning causation, the plaintiff must prove that their injuries were caused by the defendant, in this case, the doctor's acts or omissions.[412] According to the case law, it is sufficient that the doctor did not act as necessary in the given circumstances.[413] Namely, it is common in tort law that the connection between the tortfeasor and the damage exists in order to be established their liability.[414] This is in line with the general rules of tort law incorporated in § 1294 and § 1295

[406] Mitverschulden 28ff. Zustimmend F. Bydlinski, Zur Haftung der Dienstlei- stungsberufe in Österreich und nach dem EG-Richtlinienvorschlag. JBI 1992,347: Grassl- Palten, Gehilfenmitverschulden, Fremdversicherung und anderes, JBI 1992, 505 ff. Cited in Helmut Koziol, 1997, Österreichisches Haftpflichtrecht, Vienna: Manz, p. 402.
[407] ÖJZ 1994, 257. Cited in Helmut Koziol, 1997, p. 402.
[408] Helmut Koziol, 1997, p. 402.
[409] Bernhard A. Koch: 2003, p. 92.
[410] Ferdinand Kerschner & Erika Wagner (2015): p. 113.
[411] Bernhard A. Koch: 2003, pp. 92-94.
[412] Ibid. p. 92.
[413] OGH Entscheidungen des österreichischen Obersten Gerichtshofes in Zivilsachen (SZ) 62/53; SZ 63/90; Juristische Blätter (JB1) 1993, 316; JB11994, 540 (cmt. by R. Bollenberger); SZ 67/9 = JB11995, 245 = Recht der Medizin (RdM) 1994/25 (cmt. by C. Kopetzki); JB11995, 453 (cmt. by J.Steiner) = RdM 1995/15 (cmt. by C. Kopetzki); SZ68/207 = JBl 1996, 181 = RdM 1996/7; JB11999, 246 (cmt. by C. Bumberger) = RdM 1999/1. Cited in Bernhard A. Koch: 2003, p. 92.
[414] Helmut Koziol in J. Spier (ed.) Unification of tort law: causation, 1998, The Hague: Kluwer Law International, p. 11.

General Civil Code (ABGB).[415] The direct tortfeasor *Beschädiger* is obliged to compensate for the damage caused (*zugefügt*) by themselves.[416]

However, in situations of vicarious liability, the damage is not caused directly by them, but it is caused in the sphere of their activities.[417] The main issue in this regard is attributing damage, and the theory of causation answers it.[418] However, under `*Äquivalenztheorie*' (theory of equivalence), which prevails, every fact which is the cause of the damage is considered causal.[419]

There are two exceptions: the first relates to situation when multiple causes lead to the damage and joint and several liability applies.[420] The second is the situation when there is no causation, when the liability cannot be established, and the tortfeasor is not obliged to pay compensation.[421]

§ 1294 of the General Civil Code foresees the requirement of unlawfulness, or wrongfulness.[422] According to this provision, an unlawful act or omission can cause damage in addition to the coincidence (accident). Fault involves unlawful behaviour.[423]

Based on next § 1295 Sec 2 of the General Civil Code unlawfully behaviour means acting *contra bonos mores*.[424]

These provisions on tort § 1294 and § 1295 of the General Civil Code are relevant for employer's liability for damage caused by employees in light of their earlier interpretation in legal literature and case law. Namely, under Austrian law, according to earlier literature, the general rules of the law of obligations incorporated in the Austrian General Civil Code ABGB applied to the issue of the employee's liability for damage caused either to the employer or a third party.[425]

---

[415] General Civil Code (ABGB), § 1294 and § 1295.
[416] Helmut Koziol, 1994, p. 11.
[417] Cf. R. Bienenfeld,Die Haftung ohne Verschulden (1933) pp. 119 et seq. Cited in Helmut Koziol, 1998, p. 11.
[418] Helmut Koziol, 1994, p. 11.
[419] H. Koziol, 1997, cited in Helmut Koziol, 1994, p. 11.
[420] F. Bydlinski, pp. 16-17. Cited in Helmut Koziol, 1994, p. 14.
[421] Helmut Koziol, 1994, p. 11.
[422] Helmut Koziol in Helmut Koziol (ed.) Unification of tort law: wrongfulness, 1998, The Hague: Kluwer Law International, p. 11.
[423] Ibid., p. 11.
[424] Ibid., p. 15.
[425] Koziol, Helmut, Österreichisches… 1975., str. 161.; Konowalczyk, Thomas, Sauer, Stefan, Arbeitnehmerhaftung… 1995., 383. Cited in Sandra Laleta: Neka pitanja odgovornosti za štetu koju prouzroči posloprimac...
Zb. Prav. fak. Sveuč. Rij. (1991) v. 27, br. 2, 1005-1031 (2006), pp. 1005-1006.

That interpretation was based on Art. 1295 Sec. 1[426] of the Austrian General Civil Code, which prescribes the right of every person to claim damages from the tortfeasor who is at fault for the damage caused. In addition, liability may arise from either a contract or a tort.[427] Fault is a requirement of liability which is based on *iustitia commutativa*.[428] However, case law demonstrated prior to and around 1956 (earlier in the 20th century) that applying this provision would place the employee in an unfavourable position if they were held liable for every degree of fault.[429] The same view is supported in the literature, especially because the employer bears the risk for commercial success, and based on this, it would be unjust for the employee to bear the consequences of a compensation claim.[430] These were the reasons for enacting, in addition to the ABGB, the Employees' Liability Act (*Dienstnehmerhaftpflichtgesetz*) of 31 March 1965, in order to limit employees' liability.[431] First, this Act differentiates between direct and indirect damage caused to the employer.[432] In this regard, the indirect damage is a subject matter of this research because the employer is an indirect injured third party in situations when the employee causes damage to a third party by fault in the performance of work duties.[433] It means that the employer is liable in line with the rules of civil law to the third party in that event. However, the injured party may claim damages from the employee, but usually the defendant is the employer because the employee is economical weaker party than the employer, who has, in that event, the right of recourse against the employee.[434] This right is stipulated by § 4. Sec. 1. of the Employees' Liability Act.[435] It foresees the employer's liability for damage caused by the employee to a third party at work, grounded on § 1313a to 1316 of the General Civil Code or

[426] „§ 1295. (1) Jedermann ist berechtigt, von dem Beschädiger den Ersatz des Schadens, welchen dieser ihm aus Verschulden zugefügt hat, zu fordern; der Schaden mag durch Übertretung einer Vertragspflicht oder ohne Beziehung auf einen Vertrag verursacht worden sein."
[427] § 1295. ABGB
[428] F. Bydlinski, 1996. Canaris, 1995, 15-16. Cited in Helmut Koziol in P. Widmer(ed.) Unification of tort law: Fault, 2005, The Hague: Kluwer Law International, p. 13.
[429] Schwarz, Walter, Die Haftung des Dienstnehmers, DRdA, 6. Jahr, H. 24 (1956.), str. 112. Cited in Sandra Laleta: 2006, p. 1006.
[430] Floretta, Spielbüchler, Strasser, Arbeitsrecht 1998. 208-209.; Fenzl, Friedrich, Einschränkung der…1952. 567. i d.; Schwarz, W., op. cit., str. 112. i d.; Weinzierl, Johann, Die Beschränkung der Haftung des Arbeitnehmers gegenüber dem Arbeitgeber 1964., str. 1. i d.; Hannak, Karl, 1962., str. 120. i d.; Dirschmied, Karl, 1980. str. 115. Cited in Sandra Laleta: 2006, p. 1006.
[431] with all amendments, Bundesgesetz über die Beschränkung der Schadensersatzpflicht des Dienstnehmers was the full title of the statute, (Bundesgesetzblatt, Federal Law Gazette BGB1), 1965, No. 80. Cited in Sandra Laleta,2003, Odgovornost za štetu koju prouzroči radnik na radu i u vezi s radom trećim osobama (usporedba s Njemačkim, Austrijskim i Europskim pravom), Veleučilište u Rijeci, Pravni fakultet, p. 229.
[432] Nora Melzer: 2023, Labour law in Austria, Kluwer Law International, Alphen aan den RijnThe Netherlands, p. 99.
[433] Ibid., p. 100.
[434] Ibid., pp. 100-101.
[435] Sandra Laleta, p. 232.

another obligation, in which situation the employer has to notify the employee about these circumstances without delay, and the same applies in case of bringing the lawsuit.[436]

Furthermore, Sec. 2 provides that where the employer has compensated a third party for damage, either with the employee's consent or pursuant to a final and binding court decision, the employer shall have a right of recourse against the employee for the amount of compensation paid, including necessary legal and enforcement costs. In cases where the damage was caused by negligence, the court may, on equitable grounds, reduce the compensation or waive it entirely where the negligence was of a lesser degree. In addition, this provision also applies §. 2, Sec. 2 regarding the amount of damage.[437]

Thus, only when damage is caused by the employee with the intent to the third party, the employer can recover full amount of damages. Otherwise, they do not have this right when the damage is caused by the employee with 'excusable carelessness' (entschuldbare Fehlleistung).[438]

In addition, § 1313 of the General Civil Code stipulates the right of redress of the employer.[439] However, when the assistant has a status of employee of the employer, then the application of previously § 2 Dienstnehmerhaftpflichtgesetz (DHG; Employee Liability Act) is required.[440]

Furthermore, it should be noted that in Austria all employees do not have a unified labour code, especially since special laws make a difference between different categories of employees, for example, whether an employee is a manual worker or not. The correct legal terms for these categories of employees are white or blue-collar workers (Angestellter or Arbeiter).[441]

Therefore, when it comes to blue-collar workers, the most important category is industrial workers (Gewerbearbeiter, Gewerbearbeiterinnen).[442]

The Industrial Code of 1859 (Gewerbeordnung) applies to „qualified craftsmen, assistants, factory workers, apprentices and unskilled workers". [443] Those are blue-collar workers, while

[436] Employees' Liability Act (Dienstnehmerhaftpflichtgesetz), § 4. Sec. 1.
[437] Employees' Liability Act (Dienstnehmerhaftpflichtgesetz), § 4. Sec. 2.
[438] Nora Melzer: 2023, p. 101.
[439] ABGB, § 1313 .
[440] Kerschner; Oberhoferin Schwimann (ed.), ABGB § 4 DHG. Cited in Ferdinand Kerschner & Erika Wagner (2015): p. 114.
[441] Nora Melzer: 2023, p. 79.
[442] Ibid., p. 79.
[443] Nora Melzer: 2023, p. 79. Similar, Industrial Code 1859 (Gewerbeordnung), RGBl. Nr. 227/1859, RGBl. Nr. 22/1885, StGBl. Nr. 42/1919, BGBl. Nr. 277/1925, BGBl. Nr. 52/1933, BGBl. Nr. 104/1933, BGBl. Nr. 548/1935, BGBl. Nr. 399/1974, BGBl. I Nr. 153/2017. **§** 73

white-collar workers (who perform their work duties in offices or do commercial or trading non-manual work) are excluded from this statute.[444] In addition to this category, there are construction workers who are subject to two statutes Construction Workers' Holiday and Severance Pay Act (Bauarbeiter-Urlaubs- und Abfertigungsgesetz) and the Construction Workers' Bad Weather Compensation Act (Bauarbeiter-Schlechtwetterentschädigungsgesetz).[445] Furthermore, there are plenty of single acts that regulate other categories of workers, such as mine workers, agricultural and forestry workers, domestic servants (Hausgehilfen), and janitors (HausbesorgerInnen). Regarding a group that does not belong to any category, the Civil Code applies.[446] The second category of workers, white-collar workers, is defined by the White-collar Workers Act (Angestelltengesetz).[447]

7.2 Liability of a legal person for damage caused by its organ

A legal person is liable for damage caused by its organs in the same way as a natural person. It is required to act in the capacity of an organ. The relevant provisions are the same as in the previous section: §§ 1313a and 1315 of the General Civil Code.[448] However, in legal theory,[449] liability is not limited only to the rules of § 1315 ABGB because it also encompasses executive employees or representatives with their own autonomy, which makes this standpoint analogous to § 337 ABGB (it is about the German term 'Machthaber', which means a person with decision-making authority).

7.3 State liability for damage caused by public officials

The issue of state liability is generally governed under Article 23 of the Federal Constitutional Law (Bundes-Verfassungsgesetz, abbreviated as B-VG).[450] Sec. 1 prescribes the liability of

[444] Nora Melzer: 2023, p. 79.
[445] Ibid., p. 80.
[446] Ibid. pp. 80-81.
[447] Bundesgesetz vom 11. Mai 1921 über den Dienstvertrag der Privatangestellten (Angestelltengesetz). StF: BGBl. Nr. 292/1921 with amendments.
[448] Ferdinand Kerschner & Erika Wagner, 2015, p. 114.
[449] Koziol, Haftpflichtrecht 2II 376, Bydlinski, in Götz/Seifert (eds.), Verantwortung in Wirtschaft und Gesellschaft (2000) 21 ff. Apathy, in FS Krejci (2001) I 427. Cited in Ferdinand Kerschner & Erika Wagner, 2015, p. 114.
[450] Bundes-Verfassungsgesetz, Federal Law Gazette No 1/1930 with amendments. Art. 23.

every entity established under public laws (such as the Federation, the provinces, the municipalities and the other bodies and institutions) for damage caused by illegal behaviour of persons, for example, public officials, acting on their behalf in execution of the laws to a third party.[451] Thus, these persons act under public law while executing the law. This notion ('in execution of the law') involves acts of jurisdiction and sovereign administration by which the damage was caused.[452]

In addition, the Federal Act on the Liability of Territorial Authorities and other Bodies and Institutions of Public Law for Damage caused when Implementing the Law (abbreviated as AHG) stipulates public authority liability in detail.[453] In line with § 1, Sec. 1, uses the German colloquial term *Rechtsträger* (in English legal entity) to denote the Federal Government, the Länder (states), the districts, the municipalities, other public corporations, and the social security institutions as legal entities which are liable according to the rules of civil law for damage caused at fault to any party or property by unlawful acts of public official while executing the law.[454]

The State is always the legal subject against whom the claim should be addressed. On the contrary, the claim against the organs is inadmissible.[455] The conditions for establishing the state liability are: first, there must be an act of a natural person or organ executing the law on behalf of the State. Secondly, the damage (in German: Schaden) must be caused by them. Thirdly, causality (in German: Rechtswidrigkeit) must exist between the damage and the execution of the law. The fourth condition is the unlawfulness (Rechtswidrigkeit) of that execution of the act, and the fifth is the existence of fault (Verschulden).[456] It comprises every degree of fault for the following reasons: as far as slightly negligent, the liability of the State is for financial loss; when it comes to gross negligence or intent, § 1324 Civil Law Code applies.[457]

It should be noted that if the damage is caused within the private sphere of administration, in that regard, the General Civil Code applies.[458]

---

[451] Ibid.
[452] Stefan Storr, Kathrin Bayer, Daniela Bereiter, and Luca Mischensky in Giacinto della Cananea and Roberto Caranta (eds.): Tort Liability of Public Authorities in European Laws, 2020, p. 39.
[453] Liability of Public Bodies Act, Federal Law Gazette No 20/1949 with amendments. Cited in Stefan Storr, Kathrin Bayer, Daniela Bereiter, and Luca Mischensky 2020, p. 39.
[454] Ibid. § 1, Sec. 1.
[455] Stefan Storr, Kathrin Bayer, Daniela Bereiter, and Luca Mischensky 2020, p. 39.
[456] Ibid., p. 39.
[457] Ibid., p. 40.
[458] Ferdinand Kerschner & Erika Wagner, 2015, p. 115.

Furthermore, § 1299 of the General Civil Code applies to State organs' liability in the sense that they are liable as experts.[459] Regarding the aforementioned, slightly negligent, the Organhaftpflichtgesetz (abbreviated OrgHG or in English Public Officers Liability Act) applies in cases where the damage is caused by the organ administrator, even with slight negligence.[460] for s § 3 OrgHG and § 2 Employee Liability Act applies in order to mitigate the damages.[461]

7.4 Employer's Liability for Damage Caused by the Employee to a Third Party using a dangerous thing or performing a dangerous activity

Under Austrian law, there are plenty of special statutes prescribing strict liability for damage caused by using a dangerous thing or performing a dangerous activity. In addition, they extend the scope of its application to the issue of vicarious liability from § 1315 General Civil Code.[462]

The possessor of a dangerous thing alongside to their liability for damage that emerges from the risk that possession bears, is also liable for the fault of their personnel engaged in using a dangerous thing or performing a dangerous activity.[463]

The following single acts prescribe the liability for damage arising from using a dangerous thing or performing a dangerous activity. § 79a GTG- Gentechnikgesetz (Genetic Engineering Act) prescribes the liability of anyone who operates a genetic engineering facility for damage caused by activities involving genetically modified organisms.[464] This is an example concerning substances, as a dangerous thing.[465] The next example is about energy, as well as a dangerous thing in this regard.[466] Namely, the Reich Liability Act (*Reichshaftpflichtgesetz*, abbreviated as RHPflG) in § 1a prescribes the liability of the owner of the facility for transmitting or distributing electricity or gas, if the damage is caused by the effects of these dangerous things. In addition, the mere presence of such a facility can cause damage. Thus, this rule applies even

[459] Stefan Storr, Kathrin Bayer, Daniela Bereiter, and Luca Mischensky 2020, p. 40.
[460] Ferdinand Kerschner & Erika Wagner, 2015, p. 116.
[461] Ibid., p. 116.
[462] §17 AtomHG, §19 subs.2 EKHG, §56 subs.2 ForstG, §79h subs. 2 GTG, §166 MinroG, §2 RHPflG. Cited in B.A. Koch and H. Koziol (Eds.) Unification of Tort Law: Strict Liability, Kluwer Law International, 2002, p. 33.
[463] B.A. Koch and H. Koziol, 2002, p. 33.
[464] Gentechnikgesetz (Genetic Engineering Act) Federal Law Gazette No. 510/1994, last amended by Federal Law Gazette I No. 73/1998, § 79a.
[465] B.A. Koch and H. Koziol, 2002, p. 16.
[466] Ibid.

if electricity and gas did not have any influence on the arising of the damage, except that the facility for transmitting or distributing electricity or gas was in proper working order, which means that it was in line with engineering standards.[467]

In cases when the damage is caused by pipelines and long-distance gas pipelines, strict liability is provided by § 10 RohrlG.[468]

8 Employer's Liability for Damage Caused by the Employee to a Third Party under Italian Law

8.1 General considerations

This form of liability for auxiliaries is regulated by two separate norms of the Italian Civil Code: Art. 1228, triggering contractual liability, and Article 2049, relating to extra-contractual liability.[469]

In Italian law, the liability of the master for damage caused by their servant is an expression of a civil law principle. It is rooted in the Roman law principle „qui facit per alias facit per se", which has endured to the present day, adapted to modern times and circumstances.[470] From a historical perspective, the Italian Civil Code of 1865 (Codice civile del Regno d'Italia or codice civile, cc), which was modelled on the Code Napoleone, in Art 1183 stipulated the principle of vicarious liability. Today, it is the Italian Civil Code of 1942 where this principle is almost verbatim mirrored as in the Civil Code of 1865.[471] That is Art. 2049, which stipulates the vicarious principle as the liability of masters and employers for the damage caused by an

[467] §. 1a, RHPflG
[468] Federal Law of 3 July 1975 on the commercial transport of goods in pipelines (Pipeline Law), (Gesamte Rechtsvorschrift für Rohrleitungsgesetz), BGBl. No. 411/1975, with amendments. „§ 10. (1) Der Inhaber einer im § 2 genannten Anlage haftet ohne Rücksicht auf die Gewerbsmäßigkeit des Betriebes für den Ersatz der durch einen schädigenden Vorgang beim Betrieb der Rohrleitung und der Anlagen verursachten Schäden insoweit, als dadurch ein Mensch getötet, an seinem Körper oder an seiner Gesundheit verletzt oder eine Sache beschädigt wird."
[469] Cristina Amato and Giovanni Comandé: 2019, p, 302.
[470] Grech Alfred: 1973, The 'ratio' behind article 2049 of the Italian civil code, *Għaqda Studenti tal-Liġi*, p. 15.
[471] Ibid.

unlawful act of their servants and employees in exercising the functions to which they are assigned.[472]

Under this article, for establishing an employer's liability, a formal subordinate or agency relationship need not exist. Rather, collaboration or auxiliary involvement suffices, indicating that these activities are genuinely executed on behalf of the employer and fall within the scope of the principal's operational framework or business organisation.[473]

In theory, according to some legal scholars such as Paladini,[474] this is a direct liability of the master and the employer, where their personal fault is not legally relevant.[475] Even if it does not matter where they act with due care.[476] Others think that this is indirect liability, but in the final analysis, the difference between these two approaches is purely terminological.[477] Conditions that have to be met and proved by the injured party in order to establish their liability are as follows. Namely, there must be damage caused by the wrongful act committed by the "employee or agent". That act has to be attributed to the employee's or agent's duties. In addition, there must be established a relationship of subordination between the employee and the "master or principal".[478] In the Italian language, this relationship is called *preposizione,* which means that the employee is under the employer's control.[479]

Furthermore, considering the aforementioned wrongful act, the term wrongfulness was codified in Art. 2043 of the Civil Code, which represents a general norm of tort.[480] This Art. prescribes the obligation of the tortfeasor to compensate the damage wrongfully caused to the injured party, whether it was caused with intent or negligently.[481] The notion of wrongfulness was a

---

[472] Art. 2049. titled as „Responsabilita' dei padroni e dei committenti" prescribes as follows: „I padroni e i committenti sono responsabili per i danni arrecati dal fatto illecito dei loro domestici e commessi nell'esercizio delle incombenze a cui sono adibiti". Italian Civil Code (Codice civile 042U0262) was enacted by the Royal decree „Regio decreto 16 marzo 1942, n. 262". The king was Vittorio Emanuele III, the king of Italy and Albania, and emperor of Ethiopia („Per grazia di dio e per volonta' della nazione re d'Italia e di Albania, imperatore d'Etiopia"). „Approvazione del testo del Codice civile, GU 79/1942.", last changes Decreto legislativo of 26. October 2020., No. 147, GU 276/2020.

[473] Paolo Cagliari: „La responsabilità del preponente ex art. 2049 c.c" („The liability of the principal under Article 2049 of the Civil Code") www.eclegal.it, p. 51, access 24.05.2025.

[474] Responsabilita civile e penale p. 36-37. Cited in Grech Alfred: 1973, p. 15.

[475] Grech Alfred: 1973, p. 15.

[476] T. Primarchi 2021, 314, M. Barcellona, 2021, 211, G. Visintini 2021, 250, De Menech et all. Cited in Claudio Scognamiglio (ed): 2024, Enciclopedia de diritto, I Tematici, VII Responsabilita civile, Giuffre Francais Lefebvre S.p.A., Milano, p. 1162.

[477] Grech Alfred: 1973, p. 15.

[478] Ibid.

[479] Francesco Donato Busnelli, Elena Bargelli and Giovanni Comandé: 2003, p. 165.

[480] Francesco D. Busnelli and Giovanni Comande in Helmut Koziol (ed.) Unification of tort law: wrongfulness, Italy 'Wrongfulness' in the Italian legal system, 1998, The Hague: Kluwer Law International. p. 69.

[481] Art. 2043. of the Civil Code titled as „Risarcimento per fatto illecito", states as follows: „Qualunque fatto doloso o colposo, che cagiona ad altri un danno ingiusto, obbliga colui che ha commesso il fatto a risarcire il danno."

new category placed alongside the damage in the new Civil Code of 1942, unlike the previous Civil Code of 1865 (Art. 2043 compared to Art. 1151), where it did not exist.[482] In addition, this notion was considered as an illegal act. Furthermore, this comparison demonstrated the rigid German influence on the latter Code, although the former is based, as mentioned, on the Code Napoleone (Art. 1382 as the general clause in this event). The German model involves sanctioning plus damage compensation as rewritten in Art 2043 of the Civil Code (according to the literature), and the intention of the lawmaker was to create a middle Italian model, which is placed between the German and French models.[483] However, nowadays in the contemporary interpretation of Art. 2043, the focus is on compensation, not on sanctioning, as well as rather on damage than the wrongful act. Thus, this is a functional concept of damage compensation which gives the ground to the court for flexible interpretation of this provision.[484]

Moreover, according to the earlier theoretical interpretation concerning the general rule in Art. 2043 cc, that the liability cannot be established without fault of the tortfeasor, the employer's liability is considered as an exception of this rule.[485] In this regard, for all kinds of vicarious liability, the fault of the tortfeasor is presumed, and it relies on the aforementioned general rule concerning the existence of fault, but the fault in the sense that the employer is liable on *culpa in vigilando, culpa in eligendo* and *culpa in instruendo*.[486]

Culpa in eligendo vel vigilando was developed by Baudrio Lecaucinerie and Giorgio, who held the view that the employer was liable for negligent selection of the employee during the hiring process and, as mentioned, presumed fault in the absence of any contrary evidence.[487]

However, De Cupis held the view that the employer's liability is independent of fault, and that proving careful selection of staff is irrelevant. Furthermore, the theory of Rischio Profitto (risk and profit) was accepted by authors such as Barassi, Pacchioni and Trimarchi, under which the employer and the company (legal person) are the same subject. If the employer derives a benefit from the employee's work, then they must also bear the consequence of any damage the employee causes in the course of that work.[488] The same explains the theory of 'Rischio

[482] Francesco D. Busnelli and Giovanni Comande: 1998, p. 69.
[483] Ibid.
[484] Ibid., p. 70.
[485] Francesco Donato Busnelli, Elena Bargelli and Giovanni Comandé in J. Spier (ed.) Unification of tort law: Liability for damage caused by others, 2003, The Hague: Kluwer Law International. p. 159.
[486] Francesco Donato Busnelli, Elena Bargelli and Giovanni Comandé 2003: p. 159.
[487] Grech Alfred: 1973, p. 15.
[488] Ibid, p. 16

d'Impresa' (risk of the enterprise), which was accepted by De Cupis.[489] Thus, based on these interpretations, this is a strict liability of the employer.[490]

The subsequent Art. 2043 cc applies to the category of "borrowed employees" because the liable person for them is someone who exercises control and supervision over them.[491] In case law, the following example focuses more on the relationship of *preposizione* rather than the business risk.[492] The subject matter was before the Supreme Court, which brought the decision on the issue of who is liable regarding the institute of secondment (*distacco*).[493] Namely, it concerns a workplace injury that occurred to an employee seconded to another subject (*distaccatario*).

The employee was assigned to work on the conveyor belt when another also employee seconded forcefully struck the conveyor belt with a hammer, after which the employee sustained an injury.[494]

Thus, the injured employee brought an action before the court, following which the lower courts established the liability of the shift leader and the team leader, as well as of the principal for their subordinate employee, but the obligation to pay damages attaches to the host employer (*datore di lavoro distaccatario*).[495] However, taking into account that the liability of the employer seconding the employee (datore di lavoro distaccante) was not established, the injured employee lodged an appeal against that judgment for inappropriate application of Art. 2049 of the Civil Code.[496] The Supreme Court merely upheld the judgment on the grounds that only the employer who has direct control over the employee is liable within the meaning of Art. 2049 of the Civil Code.[497]

Following this case, it is necessary to return to the third condition of the relationship of subordination between the employee and the employer. It is essentially a factor which differentiates between an employee engaged under a contract of employment and, for instance, a self-employed person or a partnership.[498] The employee is obliged to follow the employer's instructions how the work should be performed, and this is an essential component of

[489] Ibid., p. 16.
[490] Ibid., p. 17.
[491] Francesco Donato Busnelli, Elena Bargelli and Giovanni Comandé , p. 165.
[492] Elena Magi: Responsabilità ex art. 2049 c.c. e obbligo di sicurezza nella fattispecie del distacco, Diritto della Sicurezza sul Lavoro, 2-2018, p. 25.
[493] Cass. civ., III, 23, 2018, No. 1574, Available at: http://olympus.uniurb.it. Cited in Elena Magi: 2018, p. 25.
[494] Elena Magi: 2018, p. 25.
[495] Ibid.
[496] Ibid., pp. 25-26.
[497] Ibid. p. 26.
[498] T. Treu: Labour Law in Italy, Alphen aan den Rijn, the Netherlands, 2023, p. 41.

subordination. It should be noted that although Art. 2224 and 1665 of the Civil Code pertains to self-employment and contractors, they also contain limitations to their independence.[499] Art. 2224 prescribes the right of the client (committente) to terminate the contract if the contractor fails to perform the work in accordance with the contractual terms and the rules of professional practice.[500] While Art. 1665 stipulates the right of the client (committente) to verify the completed work.[501] There is no unique definition of the notion of subordination. In case law, it is common to apply conditions such as a fixed working time, the employer's power of control and discipline, remuneration etc. in order to determine the employment relationship.[502] In addition, there are different categories of subordinate employees, depending on the type of work.[503] Art. 2095 of the Civil Code provides a division on managers, executives, clerical staff and workers.[504] The proper legal terms for these categories of employees are blue-collar, white-collar and managers (dirigenti).[505] At the beginning of the twentieth century, according to the legal interpretation by the courts, of the Act No. 1825 of 13 November 1924, the main criterion which made a distinction between whether someone belonged to blue-collar or white-collar was the division on intellectual or manual work.[506] Nowadays, notice periods, trial clauses, etc., are the conditions on which the difference is made.[507] When it comes to the notion of managers, collective agreements and courts establish the criteria for distinction in relation to white-collar. According to the prevailing view, a distinction should be drawn between higher managers, middle and lower-level managers.[508]

[499] T. Treu: 2023, p. 42.
[500] Art. 2224. of the Civil Code is titled as: „Esecuzione dell'opera", and prescribes as follows: „Se il prestatore d'opera non procede all'esecuzione dell'opera secondo le condizioni stabilite dal contratto e a regola d'arte, il committente puo' fissare un congruo termine, entro il quale il prestatore d'opera deve conformarsi a tali condizioni. Trascorso inutilmente il termine fissato, il committente puo' recedere dal contratto, salvo il diritto al risarcimento dei danni".
[501] Art. 1665. of the Civil Code is titled as: „Verifica e pagamento dell'opera" and prescribes as follows: „Il committente, prima di ricevere la consegna, ha diritto di verificare l'opera compiuta. La verifica deve essere fatta dal committente appena l'appaltatore lo mette in condizione di poterla eseguire. Se, nonostante l'invito fattogli dall'appaltatore, il committente tralascia di procedere alla verifica senza giusti motivi, ovvero non ne comunica il risultato entro un breve termine, l'opera si considera accettata. Se il committente riceve senza riserve la consegna dell'opera, questa si considera accettata ancorche' non si sia proceduto alla verifica. Salvo diversa pattuizione o uso contrario, l'appaltatore ha diritto al pagamento del corrispettivo quando l'opera e' accettata dal committente."
[502] T. Treu: 2023, p. 42.
[503] Ibid. p, 44.
[504] Civil Code, Art. 2095.
[505] T. Treu: 2023, p. 44.
[506] Ibid.
[507] Ibid., p. 45.
[508] Ibid.

8.2 Liability of a legal person for damage caused by its organ

The Italian Civil Code does not specifically prescribe liability of a legal person for damage caused by its organ. Art. 2043 of the Civil Code can also be applied to this kind of liability, in addition to Art. 1337 and 2339 of the Civil Code, and an example of liability for misleading information by a company will be provided in this subtitle.[509] Namely, Art 2043 of the Civil Code is the basic provision that regulates tort liability.[510] The rule is prescribed as follows: "a deliberate or negligent act of any sort, which causes an unjust harm to another, obligates the person who committed it to compensate for the harm".[511] Thus, regarding the liability of the company (legal person), at the beginning, the company structure needs to be presented, taking into account that it involves the legal person's organs. As the most common form, the limited liability company is presented.[512] In Italian, the two most significant forms of limited liability company are 'Società per azioni' (S.p.A.) and 'Società a responsabilità limitata' (S.r.l.).[513] For the former, a characteristic is that it has a traditional, single-body, and two-tier system of corporate governance. However, all of them regulate the director's liability as an organ of a company (legal person) in the same way.[514] As aforementioned, the given example, reading Article 2043 through the prism of Article 2395 of the Civil Code, it addresses disclosure liability.[515] Namely, under the tort law rules, it does not make diference between negligent and intentional acts. Thus, liability applies to both cases of misleading or false information and situations involving omissions (negligent or intentional).[516] In this case directors are held liable for disclosing inaccurate or false information and in other words, they aren't protected by the legal person.[517] When it comes to the situations in which the directors cause damage with intent or negligence, the third party can directly sue them, provided that they prove their intent or

[509] G. Ferrarini, 1986, cited in Guido Ferrarini and Paolo Giudici (2019) The Protection of Minority Investors and the Compensation of Their Losses, Cambridge University Press, p. 454.
[510] Rossi Filippo (2003): Tort Liability of Financial Regulators, A Comparative Study of Italian and English Law in a European Context, European Business Law Review, 14, Issue 6, pp. 643-671, p. 655.
[511] T.G. Watkin, 1997, 247. Cited in Original: „Qualunque fatto doloso o colposo, che cagiona ad altri un danno ingiusto, obbliga colui che ha commesso il fatto a risarcire il danno." Art. 2043 of the Civil Code.
[512] Fagnano Gabriele in Alexander Loos (ed.) Directors' Liability, Kluwer Law International, Alphen aan den Rijn, The Netherlands, p. 275.
[513] Ibid., p. 275.
[514] Ibid., 275.
[515] Guido Ferrarini and Paolo Giudici (2019) p. 455.
[516] Ibid., p. 455.
[517] Ibid., p. 455.

negligence.[518] This is prescribed by Art. 2395 of the Civil Code.[519] In this case, the directors were acting as an organ of the legal person, thus the legal person will also be liable (it can't waive liability).[520] According to Art. 2407 of the Civil Code, statutory auditors will be liable in addition to them.[521] Furthermore, liability can also extend to aiders and abettors due to the rules on liability for negligence, which means joint and several liability.[522]

8.3 State liability for damage caused by public officials

From a historical perspective, the issue of applying private legal rules against the state was widely discussed.[523] In the nineteenth century, legal scholars had opposing viewpoints[524] on the justification of applying private law rules to public administration. The Civil Code had supremacy at the time, and that was the reason why the idea of the general rules of *ius privatum* application in this regard prevailed.[525] However, until today, this issue is debatable.[526] Namely, direct liability of public officials is provided by the Constitution of 1948. Art. 28 prescribes their liability in criminal, civil, and administrative matters. In addition, civil liability applies to the state and their agencies.[527] Through this provision, the principle of liability is raised to the constitutional level, implying that the rules of civil law apply.[528] In case law, the regulation of governmental liability is based on Art. 2043 of the Civil Code.[529] The idea was that the civil law and administrative law were applied, while the jurisdiction was divided between basic and

[518] Ibid., p. 283.
[519] „Le disposizioni dei precedenti articoli non pregiudicano il diritto al risarcimento del danno spettante al singolo socio o al terzo che sono stati direttamente danneggiati da atti colposi o dolosi degli amministratori. L'azione puo' essere esercitata entro cinque anni dal compimento dell'atto che ha pregiudicato il socio o il terzo.“ Art. 2395 of the Civil Code.
[520] Ferrarini, 142; A. Tina, 2008. Cited in Guido Ferrarini and Paolo Giudici (2019), p. 455.
[521] Guido Ferrarini and Paolo Giudici (2019), p. 455.
[522] Ibid., p. 456.
[523] FD Busnelli, 1999; A Lazari, 2005. Cited in Giovanni Comandé and Luca Nocco in Ken Oliphant: The Borderlines of Tort Law, Interactions with Contract Law, Intersentia, 2019, p. 251.
[524] Santilli (fn 1) and Caranta (fn 1) 44. Cited in Giovanni Comandé and Luca Nocco: 2019, p. 252.
[525] Giovanni Comandé and Luca Nocco: 2019, p. 252.
[526] Ibid., p. 252.
[527] Costituzione della Repubblica Italiana, Gazzetta Ufficiale della Repubblica Italiana. Art. 28: „I funzionari e i dipendenti dello Stato e degli enti pubblici sono direttamente responsabili, secondo le leggi penali, civili e amministrative, degli atti compiuti in violazione di diritti. In tali casi la responsabilità civile si estende allo Stato e agli enti pubblici“.
[528] Giovanni Comandé and Luca Nocco: 2019, p. 254.
[529] Jean-Bernard Auby in in Giacinto della Cananea and Roberto Caranta (eds.): Tort Liability of Public Authorities in European Laws, 2020, p. 299.

administrative courts.[530] In cases involving administrative orders, administrative courts have jurisdiction, while in all other cases, basic courts are competent to handle them.[531]

In addition, the state is directly liable for damage caused by its public officials.[532] In this regard, the state is a kind of insurer for its injured citizens.[533] But this solution is not absolute because public servants are liable directly as well as personally for damage caused with intent or gross negligence as stipulated by Art. 28 of the Constitution. An injured party can opt between them (public officials) or the state (public administration) against whom to bring an action. If public administration pays damages, it has a recourse right against a public official.[534] The way of exercising this right is stipulated by Law No. 20/94 because it provides mitigating treatment for the tortfeasor in cases of slight negligence.[535]

8.4 Employer's Liability for Damage Caused by the Employee to a Third Party using a dangerous thing or performing a dangerous activity

Art. 2054 of the Civil Code regulates liability stemming from performance of dangerous activities, in a general way. It is provided that any person performing a dangerous activity is obliged to compensate for any damage caused by that activity, whether it results from the nature of the activity itself or from the nature of the means used for such activity. That person may be released from liability only if they prove that they applied all measures necessary to prevent the damage.[536] It means that measures are taken with the standard of diligence, thus that person is not at fault if they did so in order to be released from liability. Furthermore, according to the court's interpretation, the cause is outside of their control (casus), whether it is an accidental cause, an act by the victim, or an act by a third party.[537] In line with this understanding, in

[530] Giovanni Comandé and Luca Nocco: 2019, p. 252.
[531] Jean-Bernard Auby 2020, p. 300.
[532] Elisa Scotti: Liability of Public Administration in Italy: Considerations on Recent Changes, International Journal of Public Administration, 34: 104–109, 2011, p. 105.
[533] Ibid., p. 105.
[534] Ibid., p. 105.
[535] Legge 14 gennaio 1994, n. 20, (GU n.10 del 14-01-1994), Art. 1.
[536] Art. 2050. titled as „Responsabilita' per l'esercizio di attivita' pericolose" prescribes as folows: „Chiunque cagiona danno ad altri nello svolgimento di un'attivita' pericolosa, per sua natura o per la natura dei mezzi adoperati, e' tenuto al risarcimento, se non prova di avere adottato tutte le misure idonee a evitare il danno." Civil Code.
[537] Koch and H. Koziol (Eds.) Unification of Tort Law: Strict Liability, Kluwer Law International, 2002, p. 212.

theory, this liability is described as a quasi-strict.[538] Among numerous authors, Trimarchi offered the intermediate solution, which qualifies this liability as one between fault-based and strict. According to him, the standard of care should not be set excessively high, but rather in proportion to the benefits obtained and the costs involved.[539] Moreover, many legal scholars claim that for liability to be established, it is only necessary to prove a causal link between the dangerous activity and the damage.[540] Another legal scholar, de Martini, has a standpoint that this is a strict liability due to the dangerous characteristic of this activity, thus it does concerns the quality of the conduct of an agent.[541]

Namely, it is not sufficient that special statutes merely prescribe which activities are considered dangerous; rather, courts are granted broad discretion to interpret and determine which activity is dangerous in line with Art. 2050 of the Civil Code.[542] According to this provision, the activity is dangerous if it, by its nature, as well as the means that are used, creates a higher probability of causing damage.[543] For example, the following activities are considered dangerous: transporting fuel by ship, medical activities, oil transportation, producing and distributing gas tanks, managing an electric line, a cave or a mine, and building activities, etc.[544]

It should be noted that Article 2050 only refers to activities (i.e., the agent's *commissio)* while omissions are not included under this norm.[545] In addition, it refers to a continuous process of activities ("esercizio di attività" or "svolgimento di attività", English translation as "performance of an activity" or "carrying out an activity"), not a separate, only one single act, because if so (regardless of whether it is dangerous) it could not be included in Art. 2050 of the Civil Code.[546]

[538] Ibid. p. 212.
[539] Salvatore Cardillo and Hans-Bernd Schäfer: 2022, p, 4.
[540] Koch and H. Koziol: 2002, p. 212.
[541] Salvatore Cardillo and Hans-Bernd Schäfer: 2022, p, 5.
[542] Ibid., p. 212.
[543] Ibid., p. 213.
[544] Ibid., p. 213.
[545] Parziale, 2019; Monateri, 1998. Cited in Salvatore Cardillo and Hans-Bernd Schäfer: A Unique Liability Regime for Hazardous Activities in a Civil Law Country The Enhanced Level of Due Care and Presumption of Negligence in Article 2050 of the Italian Civil Code, 2022. p. 2. Available at SSRN: https://ssrn.com/abstract=4144092 or http://dx.doi.org/10.2139/ssrn.4144092
[546] Graziadei, 2010. Cited in Salvatore Cardillo and Hans-Bernd Schäfer: 2022, pp. 2-3.

9 THE LEGISLATION OF COUNTRIES OF CENTRAL AND SOUTH-EASTERN EUROPE:

10 Employer's Liability for Damage Caused by the Employee to a Third Party under Hungarian Law

10.1 General considerations

From a historical perspective, the regulation of employer's vicarious liability in Hungarian law began with the draft Civil Code of 1928. Although it was never enacted, its influence on case law was significant at the time.[547] Specifically, Article 1721 of this draft provided, in general terms, for the liability of a person (the principal) who entrusted another person with their tasks, for damage caused by the unlawful acts of the latter to a third party during the course of the entrusted duties, unless they can prove that they demonstrated due care in selecting, supervising and instructing another person or the damage would have occurred in any case.[548]

This rule reached its final form with the adoption of the Civil Code of 1959, specifically through articles 348 to 351 concerning vicarious liability.[549] In the 1959 Code, civil law regulated the legal relationship for both state enterprises and private persons.[550]

These articles included provisions regarding damage caused by employees, members of cooperatives, representatives and agents who were involved in chapter 30 titled on specific cases of liability concerning liability for non-contractual damage and unjust enrichment (Book 4 of the 1959 Civil Code). Thus, in line with Article 348, the employer was liable for damage caused by an employee to a third party within the scope of their duties and authority. When the employee caused damage by a criminal offence intentionally, the employee and the employer

[547] Barry, D. (1970). Governmental Tort Liability in the Soviet Union, Bulgaria, Czechoslovakia, Hungary, Poland, Romania and Yugoslavia. Leyden, Sijthoff, p. 201.
[548] Ibid., p. 204.
[549] Ibid., p. 211.
[550] Attila Harmathy and Ágnes Németh (eds.) 1990, Questions of civil codifications, Institute for Legal and Administrative Sciences of the Hungarian Academy of Sciences, Budapest, p. 58.

were jointly liable. The same provision applied to members of cooperatives. When an employee was hired by a private employer who could not pay the compensation for damage caused by the employee, the employee was obliged to pay it instead of the employer.[551]

The next article 349 pertained to liability regarding state authority, while Article 350 stipulated the liability of the principal for damage caused by their agent to a third party.[552]

The principal could exempt themselves from liability if they could prove that they did not negligently select, instruct and supervise the agent (*culpa in eligendo*, *culpa in instruendo, culpa in vigilando*). This rule was not applicable to damage caused by dangerous activities. However, it applied to the relations between the principal and the injured party in the event when the principal and agent were in the capacity of socialist organisations, or between them was a permanent agency relationship. In relationships between the legal representative and the person represented, the latter was not liable for damage caused by the former.[553] The following article 351 regulated that the agent and legal representative were liable to the employer or represented person, and the employer or represented person had recourse right against them for damages paid to the third party. However, for the claims between the principal and agent, or represented person and legal representative the provisions of Labour Code were applied.[554]

The old Labour Code of 1992 (*Munka Törvénykönyve 1992 évi XXII*), in § 181, Sec. 1, also provided the employer's liability for damage sustained by relatives of the employee. The employer is also obliged to compensate expenses arising from the damage. In the proceedings, the „preliminary issue" that must first be determined is whether the employer is liable for the damage caused; thus, the relatives' claim for damages is subsidiary.[555] The same solution applies according to the Labour Code in force. Based on §171, Section 1 of the Labour Code of 2012, employers bear liability to compensate the relatives of employees who sustained any damage connected to the incident. Section 2 prescribes that in the event that an employee loses their life due to such incidents, their relatives are entitled to claim compensation that substitutes the lost support in addition the damages from Sec. 1. This compensation is intended to cover the financial void left by the deceased, ensuring that the family can maintain their previous standard of living. The amount they may claim will be reflective of the employee's actual or

[551] Barry, D. (1970). p. 211.
[552] Ibidem.
[553] Ibidem.
[554] Ibid., p. 212.
[555] Barany, 4. Cited in Sipka Péter (2021): A munkáltatói kárfelelősség elmélete és gyakorlata, HVGorac, Budapest, p. 31.

reasonably expected earnings, taking into consideration the income that would have supported them had the tragedy not occurred.[556]

The new Civil Code, entered into force on 15 March 2014 (Act V of 2013 of the Civil Code), replaced the previous Act IV of 1959 of the Civil Code. The novelty related to this topic is the fact that the basis of liability is divided into contractual and non-contractual liability[557] where the non-contractual liability regime encompasses liability for employees and agents in addition to liability of legal persons and public authorities (under this regime is the liability for dangerous things and dangerous activities[558] which will be discussed below as well).

Namely, this issue is in the domain of the rules regarding the liability for damage caused by another person. It applies when these persons act on behalf of the liable person based on employment, agency, or other contractual relationships and cause damage to third parties who are not in contractual relationship with the liable party. That fact is essential because otherwise, contractual liability principles may be invoked. The rationale for the existence of this specific liability rule includes that these persons are acting on behalf of another who can control their behaviour and gains the profit, but at the same time bears the risk for the conduct of the former. As the degree of control the liable person exercises over the actions of these other persons increases, so too does the strictness of their liability, which can make it challenging to assert exemptions from liability. Moreover, establishing liability for employers, legal persons, or principals can significantly enhance the prospects of the injured party receiving fair compensation from a financially stable subject.[559]

In concrete, in chapter LXIX titled: „Liability for the Acts of Another Person“ in 6:540§, subtitled: „Liability for the acts of employees and members of legal persons“, Section 1, of the Hungarian Civil Code, it is prescribed that the employer is liable for damage caused by the employee to a third party „in connection with his employment relationship“.[560] Section 2 prescribes verbatim the same, with the only difference that instead of the tortfeasor, that is, the

[556] Act I of 2012 on the Labour Code, Art. 171, Sec. 1 and 2.
[557] László Pribula (2019): Practical Problems Concerning the Introduction of a New Legal Institution – Tort in Hungarian Civil Law, *Studia Iuridica Cassoviensia*, p. 87.
[558] Ádám Fuglinszky (2014): Risks and Side Effects: Five Questions on the ‘New’ Hungarian Tort Law, *Elte Law Journal*, p. 200.
[559] Ádám Fuglinszky (2019) in Attila Harmathy (ed.): Introduction to Hungarian law, *Kluwer Law International B.V.*, Introduction to Hungarian Law, Kluwer Law International B.V, Alphen aan den Rijn, p. 190. What is specific in Hungarian tort law theories is the question of what the primary aim of liability is - compensation or prevention? Menyhárd Attila in Helmut Koziol (ed) (2015): Basic Questions of Tort Law from a Comparative Perspective, Jan Sramek Verlag, p. 254.
[560] Act V of 2013 on the Civil Code, promulgated on 26 February 2013, Art. 6:540, Sec. 1.

employee, in this case, is a member of a legal person who causes the damage to the third party in connection with their membership, and instead of the employer, the liable party is the legal person.[561]

Case law broadly interprets the phrase "in connection with his employment relationship" as a prerequisite for establishing the employer's liability.[562] That means that the employment relationship provided the opportunity for the employee to cause damage, so all costs are in connection with the employment relationship of the employee (they are considered attributable). According to the interpretation in the case law, this is the strict approach of liability of the employer because they are liable even if the employee did not conduct their instructions or committed a criminal offence against a third party. The employer cannot be released from liability if proves that damage is not attributable to their fault. However, the employer has the possibility of indirect exemption, by proving that the employee is not at fault. The justification for these interpretations is that the employees are involved in the employer's organisations and they are subjects of the latter's control, direction and supervision.[563] In the situation, if the employee or a member of a legal person causes damage intentionally, they will be jointly and severally liable together with the employer or the legal person.[564]

Furthermore, 6:541§ was repealed by the Act LXXVII of 2016, which was in force from 2 January 2017 to 31 December 2023, and was applicable if the damage was caused before 1 July 2016 as well as after the entering into force of the Civil Code.[565]

Namely, that section concerned liability of a senior officer for damage caused to a third party.[566] They were jointly and severally liable with the legal person to the injured party. It meant that the senior officer is a party against whom the claim should have been addressed by the injured party if could prove the damage and its causal relationship with the activities of the senior officer.[567]

If a top manager caused damage negligently, it was also possible to bring a direct lawsuit against them, as the statute did not prescribe any additional requirements. This served to prevent abuse,

[561] Civil Code, Art. 6:540, Sec. 2.
[562] Fuglinszky Ádám (2019): , p. 191.
[563] Ibid., p. 191.
[564] Civil Code, Art. 6:540, Sec. 3.
[565] See National Legislation Database https://njt.hu/jogszabaly/2016-77-00-00, Accessed 17/07/2025.
[566] Hanyu Henrietta 2015: Munkajogi kárfelelősség a gyakorlatban, Wolters Kluwer, Budapest, p. 101.
[567] Ibid., p. 101.

since before this statute, such a possibility existed, and top managers exploited limited liability to cause damage to the third party with intent.[568]

However, such a legislative solution created a risk that even the managers who act with due diligence could be held liable. For slight errors, they could be held liable with their entire personal assets, whereby such errors are easy to make. Therefore, after the entry into force of the new Hungarian Civil Code in 2014, insurance companies offered directors' and officers' liability insurance (*D&O insurance)*.[569] The role of insurance is becoming increasingly important when it comes to risk allocation. However, the insurance company is entitled to the right of recourse against the perpetrator based on insurance law regulation.[570]

In addition, it should be noted that the labour law divides managers into different categories.

As they are leading employees, three categories are designated: first, executive employee, which means that a person is the director of the employer; second, deputy director, and that person is under direct supervision of the director and has the authorization to act in that capacity, third, contractually employed executive employees as specific category based on agreement which involves special provision on executive employee as a special position of significant importance in the company with salary seven times greater than the average.[571]

These differences are important when determining the amount of damages because the employee is primarily liable to the employer, and joint and several liability arises only when the damage is caused with intent.[572]

The following 6:542§ regulates liability for agents.[573] It foresees joint and several liability of the principal and agent if the agent caused damage in that capacity and in the course of performance of the agency, through actions required to complete the tasks within the agency's work. In addition, it is not relevant if the agency created the opportunity for the agent to cause damage. Another peculiarity is that the agent and the principal are jointly and severally liable, but the principal's liability must be proven. The principal can be released from liability if proves that the agent was not at fault, just as the principal was not at fault for selecting, instructing and supervising the agent either (*culpa in eligendo, culpa in instruendo et culpa in inspiciendo*).

[568] Ibid., p. 101.
[569] Ibid., p. 101.
[570] Menyhárd Attila (2015): p. 254.
[571] B. Zoltán, B. Gyula, K. György, S. Gergely L. Nagy 2019. Cited in József Hajdú (2024): Labour Law in Hungary, Kluwer Law International BV, The Netherlands, p. 116.
[572] Hanyu Henrietta 2015: p. 102.
[573] Fuglinszky Ádám (2019): p. 191.

However, as the agent enjoys greater autonomy in performing the tasks, over which the principal has limited control, this liability is less strict than that from 6:540§. In situations of a permanent nature of the agency, the employee's liability is stricter.[574] Namely, if the agency relationship is permanent, the injured party may also claim damages based on the rules applicable in situations when the employee causes damage.[575]

The last 6:543§ applies if there is no agency or employment relationship between the tortfeasor and the person in whose name the tortfeasor acted.[576] This provision is titled 'Liability for damage caused by the obligor of another contract' and involves three parties: 1) the obligee of another contract, 2) the obligor and 3) the third party. It prescribes that the obligee of another contract is liable for any damage caused by the obligor to a third party due to the conduct of the contract, since the obligor is engaged in a contractual relationship with the obligee during the execution of the contract. However, they will not be liable if the injured party does not know the identity of the person who caused the damage.[577] In addition, for the term the obligee, the term customer is used in literature; however, the statutory notion (in the Civil Code) is the obligee. It can be shown by the example where construction is taking place on a customer's premises, and employees of the construction company accidentally damage some windows of a neighbouring building. In this case, the construction company is neither the customer's employee nor their agent, as a construction agreement exists between them.

This is a typical situation in which the injured party may not be aware who caused damage and who shall be liable for it. Therefore, the customer can only be released from liability if discloses the identity of the tortfeasor. In matters concerning construction and other types of agreements (aside from employment and agency agreements), the customer's ability to exercise control is significantly diminished. That is the reason why this solution allows the customer to be released from liability simply by providing the necessary information to identify the tortfeasor to the injured party in order to file an action; however, that could be challenging to find out alone.[578]

[574] Ibid., p. 191.
[575] Civil Code, 6:542§, Sec. 2.
[576] Fuglinszky Ádám (2019): p. 192.
[577] Civil Code, 6:543§.
[578] Attila Harmathy (2019): p. 192.

10.2 Liability of a legal person for damage caused by its organ

This issue is regulated in § 3:24 of the Civil Code titled "Liability of executive officers", Sec. 2. It foresees the liability of the legal person for damage caused by its executive officers to a third party. However, in the second sentence of this provision, the joint and several liability of a legal person and executive officers is stipulated for damage caused by executive officers with intent.[579] The repealed § 6:541 of the Civil Code also stipulated joint and several liability of a legal person and its executive officers for damage caused by executive officers[580]; however, it did not require that the executive officers cause damage with intent. In literature, this provision was variously interpreted. According to the first interpretation, this provision gave the possibility to the injured party to claim damages directly from the executive officer. The second interpretation was that the executive officer acts in capacity and status as a representative of the legal person, enabling them to perform wrongful action; it is justified that a legal person and its executive officers are jointly and severally liable. The last interpretation stands between these two and raises doubts whether the application of this provision is justified in certain cases. For example, instead of being transported to a hazardous materials storage facility, the hazardous waste is stored on the neighbour's land. In this situation, the executive officer knew that this activity was wrongful, thus their liability cannot be exempted.[581]

10.3 State liability for damage caused by public officials

The Constitution of Hungary (the Fundamental Law of Hungary) regulates the issue of state liability in two articles: Article XXIV, Section 2 and Article IV 4.[582]

According to Article XXIV, Section 2, everyone has the right to compensation for any damage that the authorities in the course of their duties unlawfully cause, according to special statute.[583]

[579] Civil Code, § 3:24, Sec. 2.
[580] Fuglinszky Ádám (2014): p. 204.
[581] Ibid., pp. 204, 205, 206.
[582] Lilla Berkes (2020): in Giacinto della Cananea, Roberto Caranta (eds.): Tort Liability of Public Authorities in European Laws, Oxford University Press, p. 55.
[583] Magyarország Alaptörvénye, 2011. április 25. (Hungarian Constitution of 2011), Art. XXIV, Sec. 2.

Furthermore, Article IV Section 4 stipulates the right to compensation for damage to anyone whose freedom has been restricted unlawfully or without grounds.[584]

In addition, under the Civil Code, Chapter LXXI is titled „Liability for damage caused in the course of exercising public authority", and 6:548§ provides the liability for any damage that occurs while exercising administrative powers when such damage occurs from such exercise public authority, particularly when ordinary legal remedies or actions in administrative courts fail to prevent it.[585] Notwithstanding that fault is not prescribed in this provision, according to the literature, the liability is still assessed as fault-based. Namely, the fault is presumed by the application of the general rules on extra-contractual liability.[586]

The courts expressed an opinion that there must be an extraordinary breach of the law. It introduces an additional, uncodified requirement for establishing the liability of public authorities, despite criticism in legal theory. According to this approach, liability arises only when the conduct of the authority qualifies as extraordinary breach of legal norms, such as in situations when a legal provision is not applied, or it is not correctly interpreted, in addition to wrong evaluation of facts, or evidence.

For example, if building authorities approve permits despite clear violations of building regulations, or unjustifiably refuse them when all legal requirements are met. A similar example is land registry offices, when they unlawfully remove, register or refuse the registry of entries. Claims must be directed against the authority possessing legal personality.[587]

The issue of whether the state can be held liable for damage caused by legislative acts is somewhat controversial. The Civil Code does not explicitly provide for such liability, although the 'big general clause' might, in theory, be interpreted to include it. The opinion of legal scholars is divided.

Some completely reject this kind of liability, arguing that legislative acts do not create direct civil legal relationships between the state and natural persons. They are also of the opinion that compensation for damage for "wrongful legislation" would violate the separation of powers and sovereignty, especially in matters involving state budget. Others claim that the state should be liable under the general rules of tort law, non-contractual, without any special preconditions. In addition, there are those who argue that state liability should only arise if the Constitutional

[584] Hungarian Constitution, Art. IV, Sec. 4.
[585] Civil Code, Art. 6:548.
[586] Ádám Fuglinszky (2019) in Attila Harmathy (ed.): p. 193.
[587] Ibid., p. 194.

Court declares a statute which is a subject matter before the court as unconstitutional (ideally with retroactive effect) or finds that the legislature failed to act where it had a constitutional duty (unconstitutional omission). In practice, the courts have followed either the first or third standpoint.[588]

The civil court has jurisdiction over this type of claim for damages, including those brought against public authorities, under the rules of civil procedure. However, when the new Act on Administrative Court Procedure entered into force, claims for damage compensation caused by administrative or public service relationships now fall under the jurisdiction of administrative and labour courts, and the law on administrative court procedure applies to this issue.[589]

This applies only when the damage is caused within such legal relationships. If it is sustained by someone outside of this relationship, then the general court has jurisdiction.

Administrative courts have jurisdiction to annul unlawful administrative decisions but most of the cases are decided by the general civil courts. Thus, it should be noted that different courts have jurisdiction for annulling an administrative decision or for awarding damages.[590]

10.4 Employer's Liability for Damage Caused by the Employee to a Third Party using a dangerous thing or performing a dangerous activity

Under the first Hungarian Civil Code of 1959 (Act IV of 1959), one general rule was dedicated to all activities which involved an elevated risk of causing damage.[591] The Civil Code in force continued this statutory solution and foresaw one *Generalklausel* on strict liability for performing highly dangerous activities. It contains a few exceptions.[592]

Namely, 6:535§ Sec. 1 stipulates the duty to compensate for damage by a person who performs a dangerous activity. If the damage was caused by an unavoidable event outside the scope of the dangerous activity, that is the reason for relief from liability in such a case, if that person

[588] Ibid., pp. 194-195.
[589] Act I of 2017—on the Code of Administrative Litigation Art. 38, Sec. 1. Cited in Lilla Berkes (2020): p. 57.
[590] Lilla Berkes (2020): p. 57.
[591] Pusztahelyi Réka (2025): Analysis of the Changing Position of the Strict Liability Rule for Highly Dangerous Activities under the Civil Code of Hungary 2013, European Review of Private Law 1 & 2-2025 [387–406], Kluwer Law International BV, The Netherlands, p. 390.
[592] Ibid., 390.

can prove those circumstances.[593] According to Pusztahelyi, this provision does not define which activities are considered dangerous or to what extent, nor does it specify the person (operator) who is liable.[594] Rather, in court practice, guidelines have been elaborated for assessing what is considered a dangerous activity and who will be liable for it (the operator). The court considers all the facts of the case when deciding if an activity is dangerous.[595] For example, dangerous activities are "the operation of motor vehicles or industrial machines, chemicals, explosives, acids or other dangerous materials; activities requiring special prevention such as mining, well-digging, etc are specified as considerably hazardous triggering the application of the strict liability regime".[596] Not always is the person who performs dangerous activities liable. The so-called 'operator' is the liable person.[597] As referred to above, the notion of the operator was not specified by law, thus it gave advantage to case law to determine conditions under which the proper person will be designated.[598] Those conditions are as follows First, to answer the question regarding the ownership of the equipment used for performing dangerous activities, thus, who is the owner? Secondly, in whose interest is the dangerous activity performed, and who has the profit from these activities? Third, who controls them? Fourth, at which place and at what time were the dangerous activities performed?[599]

Regarding the liability for things, there is no particular provision except one that addresses the liability for damage caused by animals.[600]

In Hungarian law, there is no distinction between holding a dangerous thing and performing a dangerous activity. That is why it could fall under the liability for dangerous activities. Moreover, the liability of a legal person does not have a special form. As mentioned, strict liability is prescribed for dangerous activity, and two characteristics facilitate the position of the injured party.[601] Namely, liability falls on the operator, not just on the person who performed dangerous activities. Their liability will be established if it cannot be proven that the cause of

[593] Civil Code, 6:535§ Sec. 1.
[594] R. Pusztahelyi, „A veszélyes üzemi felelősség szabályozási környezete", pp. 129–130. Cited in Pusztahelyi Réka (2025): p. 390.
[595] Menyhárd Attila (2015): p. 322.
[596] Ibid., p. 323.
[597] Fuglinszky Ádám (2014): Risks and Side Effects: Five Questions on the 'New' Hungarian Tort Law, ELTE Law Journal, ELTE Eötvös University Press, p. 203.
[598] Ibid., p. 203.
[599] Lábady Tamás, in Vékás Lajos, Gárdos Péter (eds.), Kommentár a Polgári Törvénykönyvhöz 2014, 2274. Cited in Fuglinszky Ádám (2014): p. 203.
[600] Menyhárd Attila (2015): p. 321. I have to express my personal view and support those who think that animals cannot be considered things; they are living beings capable of feeling pain, suffering, fear, and stress.
[601] Menyhárd Attila (2015): p. 323.

the damage was outside the scope of this activity, in addition to the fact that it was unavoidable.[602]

11 Employer's Liability for Damage Caused by the Employee to a Third Party under Czech Law

11.1 General considerations

There is no particular provision regulating employer's vicarious liability in the Czech Civil Code,.[603] In Article 2914 of the Civil Code, this issue is regulated as a general type of liability of an associate who causes damage to a third party.[604] Namely, it regulates the liability of a person who assigns an agent, employee, or associate (auxiliary) in their activities. Thus, that person is liable for any damage caused by that agent as if they caused it directly. Conversely, if the assisting person is tasked with performing a specific activity independently, then they do not qualify as an auxiliary (helper, assistant). However, if that person fails to appoint an agent with due diligence or exerts insufficient oversight, they may be held liable as a surety for the obligation to compensate for any damage.[605] There is a similarity between this article and §831 of the German Civil Code, that the principal is liable for the associate. However, the main difference is that the employer's fault is not of legal relevance. The principal is liable for the appointment of the associate and has to bear the risk for their fault if they wish to gain benefits from their work. However, the principal cannot be released from liability even if they prove that they selected, supervised and instructed the employee with due care.[606] In addition, taking into account that a comparison is made between the Czech and German Civil Code regarding §831, it should be emphasised that the Austrian legal tradition influenced some basic characteristics of the Czech general concept of civil liability. That is why, until 31 December

[602] Ibid., pp. 323-324.
[603] Lenka Dobešová and Jan Hurdík (2020): Tort Law in the Czech Republic, Kluwer Law International B.V., Alphen aan den Rijn, p. 67.
[604] Law No. 89/2012 Coll. as amended up to Act No. 163/2020 Coll, Civil Code of the Czech Republic, Art. 2914.
[605] Ibid.
[606] Lenka Dobešová and Jan Hurdík (2020): p. 67.

1950, the Austrian General Civil Code (Allgemeines Bürgerliches Gesetzbuch, ABGB) was in force in the Czech Republic. § 1295 of the ABGB on the general rule was incorporated in the Czech Civil Code (Obcanský zákoníkof 1950, which was in force from 1 January 1951 to 31 March 1964). It continued its influence also on the Civil Code (Obcanský zákoník of 1964, in force).[607] As mentioned above regarding the extensive interpretation of the terms employer and employee, it should be noted that Article 7 of the Labour Code defines the employer („zaměstnavatel“) as a legal or natural person who hires individuals based on of labour relations.[608] Article 8 is repealed, but it gave the same definition of the employer in the old Labour Code, (the employer is a legal or natural person who hires individuals because of labour relations and „other analogous labour relations“).[609]

The Labour Code does not provide a definition of employee. Article 6 of the Labour Code uses the terms individual or natural person for the employee and prescribes conditions regarding the age when that natural person can conclude the employment contract and acquire rights and obligations in terms of matters of employment relationship.[610] Thus, according to the Civil Code, the term agent is understood widely, and it implies the terms as associate or auxiliary in its meaning.[611] However, the main criterion to determine the real meaning is the relationship between the agent and principal, according to which the principal, as mentioned above, gives instructions to them, and the agent is in a dependent position related to the principal.[612]

In addition, according to the Civil Code, there is another specific liability for the associate who caused the damage while fulfilling a debt. In that situation, the position of the associate is

---

[607] Luboš Tichý in B.A. Koch and H. Koziol (ed.) 2002, p. 75.

[608] Zákoník práce, No. 262/2006 Coll., as amended by Acts No. 585/2006 Coll., No. 181/2007 Coll., No. 261/2007 Coll., No. 296/2007 Coll., No. 362/2007 Coll., Judgment of the Constitutional Court No. 116/2008 Coll., Acts No. 121/2008 Coll., No. 126/2008 Coll., No. 294/2008 Coll., No. 305/2008 Coll., No. 306/2008 Coll., No. 382/2008 Coll., No. 286/2009 Coll., No. 320/2009 Coll., No. 326/2009 Coll., No. 347/2010 Coll., No. 427/2010 Coll., No. 73/2011 Coll., No. 180/2011 Coll., No. 185/2011 Coll., No. 341/2011 Coll., No. 364/2011 Coll., No. 365/2011 Coll., No. 367/2011 Coll., No. 375/2011 Coll., No. 466/2011 Coll. and with regard to Decrees No. 567/2006 Coll., No. 462/2009 Coll., No. 377/2010 Coll. And No. 429/2011 Coll. Art. 7.

[609] Zákoník práce No. 65/1965 Coll., as amended by Acts No. 88/1968 Coll., No. 153/1969 Coll., No. 100/1970 Coll., No. 20/1975 Coll., No. 72/1982 Coll., No. 111/1984 Coll., No. 22/1985 Coll., No. 52/1987 Coll., No. 98/1987 Coll., No. 188/1988 Coll., No. 3/1991 Coll., No. 297/1991 Coll., No. 231/1992 Coll., No. 264/1992 Coll., No. 590/1992 Coll., No. 37/1993 Coll., No. 74/1994 Coll., No. 118/1995 Coll., No. 287/1995 Coll., No. 138/1996 Coll., No. 167/1999 Coll., No. 225/1999 Coll., No. 29/2000 Coll., No. 155/2000 Coll.*, No. 220/2000 Coll., No. 238/2000 Coll., No. 257/2000 Coll., No. 258/2000 Coll. (with the full wording of the Labour Code promulgated in Act No. 85/2001 Coll.), No. 177/2001 Coll.**, No. 6/2002 Coll.**, No. 136/2002 Coll.*, No. 202/2002 Coll.**, No. 218/2002 Coll.*, No. 309/2002 Coll.*, No. 311/2002 Coll.* and No. 312/2002 Coll. Art. 8, this code is not in force.

[610] Labour Code, Art. 6.

[611] Vojtech Lovetinsky (2017): "Liability for Agents in Czech Tort Law: A Step in the Right Direction," Common Law Review. p. 33.

[612] Lenka Dobešová and Jan Hurdík (2020): p. 67.

irrelevant, whether it is related to the debtor or to the autonomous subcontractor or whether the debt arose from a contract or a statute, such as unjust enrichment.[613] Another specific rule is applied in situations when the associate (or an employee of the employer) caused the damage to another employee of the same employer during the course of the work, the employer is obliged to compensate the damage sustained by that another employee, in this event, the injured party.[614]

To establish employer's liability, the associate must be in a subordinate position.[615] It is a matter of *de facto* subordinations, meaning it must exist in reality, be carried out and functional, not just exist as a legal formality.[616]

When the employee causes damage in the capacity of associate, it should be compensated in line with Article 250 of the Labour Code. It is a provision on the general liability for damage, and according to Section 1, the employee will be liable to the employer for damage caused by their fault during the performance of work duties or work-related tasks.[617] For an employee to be held liable for damage, the following prerequisites must be met: misconduct while performing work tasks or related activities, damage, a causal relationship between the failure to meet work duties and the damage caused, and the employee's fault that the employer has to prove, but it is sufficient for the employer to prove the employee's negligence.[618]

Furthermore, Article 265 of the Labour Code regulates employer's liability for damage caused by their employees in general. Namely, Article 265 Section 1 of the Labour Code stipulates the employer's liability for damage to their employee who sustained it while conducting the tasks.[619] Furthermore, Section 2 regulates the employer's liability for damage to their employee who sustained it by another employee who breached statutory obligations while conducting the tasks for the employer.[620] While according to Section 3, the employer is not liable for damage sustained by their employee while using the employer's means of transport, tools, equipment and other things for the performance of work that the employee used them without the consent of the employer.[621] The employer's liability is assessed as strict in these situations, and their

[613] Ibid., p. 67.
[614] Act No. 262/2006 Coll., Labour Code, Art. 265. Sec. 2, cited in Lenka Dobešová and Jan Hurdík (2020): p. 68.
[615] Lenka Dobešová and Jan Hurdík (2020): p. 68.
[616] Ibid., p. 68.
[617] Act No. 262/2006 Coll., Labour Code, Art. 250. Sec. 1.
[618] Lenka Dobešová and Jan Hurdík (2020): p. 68.
[619] Act No. 262/2006 Coll., Labour Code, Art. 265. Sec. 1.
[620] Act No. 262/2006 Coll., Labour Code, Art. 265. Sec. 2.
[621] Act No. 262/2006 Coll., Labour Code, Art. 265. Sec. 3.

fault is not relevant.[622] Nevertheless, Article 2914 of the Civil Code envisages an exception in the form of an independent subcontractor who is, according to the standpoint of the Supreme Court of the Czech Republic, a person who does not perform work tasks in line with instructions or orders nor under the control of the defendant in this case, but instead acts independently, in their own name and at their own risk.[623] The term independent contractor can also be used for an independent subcontractor. That is why there are three parties involved in this contractual relationship: the creditor, debtor, and the debtor's subcontractor. Thus, the debtor is obliged to choose the subcontractor with care (*culpa in eligendo*) and supervise how the subcontractor fulfils their duties (*culpa in custodiendo*).

If the debtor failed to demonstrate due care in appointing and supervising the subcontractor, they shall be liable as a surety for the damage.[624]

This seems unusual without a practical impact because the injured party, according to this solution, could claim the principal compensation for damage due to a breach of the duty of care under tort law.[625] Thus, this liability is assessed as strict; the Czech concept permits a case-by-case approach that can be mitigated under Article 2953 of the Civil Code.[626] One factor that the court should especially consider is how the damage is caused.[627]

In addition, if the debtor proves that the choice of and supervision over the subcontractor was appropriate (culpa in eligendo and culpa in custodiendo), they can release themselves from liability.[628]

It should be noted that the former Czech Civil Code did not explicitly prescribe the possibility of direct claims against agents.[629] Namely, the agent was solely liable to the principal, and in cases where an employee acted with negligence, they were obliged to pay 4.5 months' average gross salary as established by the Labour Code[630] except when they acted with intent or under

[622] Lenka Dobešová and Jan Hurdík (2020): p. 69.
[623] Martin Štefko (2022): Liability of the Employer for Injury Caused to a Third Party in His or Her Workplace, Societas et Iurisprudentia, 3 (10), p. 28.
[624] Lenka Dobešová and Jan Hurdík (2020): p. 74.
[625] Vojtech Lovetinsky (2017): p. 35.
[626] This Article prescribes that damages may be reduced for specific, significant reasons. When considering a reduction, factors such as the nature of how the damage occurred, the personal and property relationships of the person liable for the damage, and the circumstances of the injured party will be taken into account. However, it is important to note that damages will not be reduced if it was caused intentionally. Civil Code, Art. 2953.
[627] Vojtech Lovetinsky (2017): p. 35.
[628] Lenka Dobešová and Jan Hurdík (2020): p. 74.
[629] The former Czech Civil Code - zjkon e. 40/1964 Sb., obeansky zikonk, Art. 420, Section 2.
[630] Tichy, L. In Spier, J., p. 60. Cited in Vojtech Lovetinsky (2017): pp. 35-36.

alcohol or drugs.[631] However, the Civil Code in force, according to the interpretation of legal scholars, does not exclude a claim against the agent.[632]

Regarding conditions for establishing the principal's liability, the agent must cause damage in the course of employment.[633] For instance, if an employee steals something from a client of the employer during off-hours or weekend, it is generally accepted that the employer would not be held liable in such cases.[634]

However, every scenario should be considered on a case-by-case basis because it is possible that cases of intentional damage or even criminal acts can occur within the course of employment.

In addition to the condition that the associate should act in the course of employment, another conditions are the existence of an unlawful act and fault of the agent. Thus, if the agent is not at fault, the principal will be exonerated from liability. However, this does not apply to the agent's culpability, such as in cases where the agent is a minor or mentally incapacitated.[635]

11.2 Liability of a legal person for damage caused by its organ

First, the notion of 'legal person' requires clarification, for which the terms 'juridical person', or 'legal entity' are also used in the literature.[636] It is defined by the Czech Civil Code in Article 20 Section 1 as an organised entity with legal personality, recognised by a statute. In addition, it has rights and duties in line with its legal nature, without regard to its scope of activities.[637] The theory of fiction is the basis of the conception of a legal person.

But this theory further imposes the necessity to define by statute the legal personality of every kind of legal person. The legal person does not have the capacity to act by itself, because it is an empty vessel. That is the reason why it acts through its organs or other persons. Its capacity

[631] Act No. 262/2006 Coll., Labour Code, Art. 257. Sec. 2.
[632] Cited in Vojtech Lovetinsky (2017): p. 36.
[633] Ibid.
[634] Koziol, H.p. 356. Cited in Vojtech Lovetinsky (2017): p. 34.
[635] Vojtech Lovetinsky (2017): p. 35.
[636] Lenka Dobešová and Jan Hurdík (2023): Tort Law in the Czech Republic, Kluwer Law International B.V., Alphen aan den Rijn, p. 74.
[637] Civil Code, Art. 20, Sec. 1.

to act is divided into the capacity to manage legal acts and delictual capacity, which means to be liable for unlawful acts.[638]

As previously mentioned, Article 167 of the Civil Code prescribes that if a member of an elected body, an employee or representative commits an unlawful act to a third party while carrying out their duties, the legal person is liable.[639]

According to the wording of this rule, it should be noted that this group of persons are 1) legal persons' organs established by statute or by the memorandum of association and 2) employees with their position and title. Provisions regarding the representation of a legal person by an employee also apply to the representation of a legal person by its member or a member of another organ that is not registered in a public register.

In addition, there are 3) other appointed representatives who are empowered to act on behalf of the organs of legal persons which persons do not belong to any of the previous two groups.[640]

To establish the liability of the legal person, there should be an unlawful act committed during the conduct of its duties by a member of an elected organ, or an employee or another representative to a third party[641] and according to the literature, this liability is strict.[642]

11.3 State liability for damage caused by public officials

In the Czech Republic, the first statute which regulated the state's liability was Act No. 58/1969 Coll.[643]

A special act in force which broadly regulates this issue is Act No. 82/1998 Coll., on the Responsibility for Damage Caused during the Exercise of Public Power.[644]

[638] Lenka Dobešová and Jan Hurdík (2023): pp. 74-75.
[639] Civil Code, Art. 167.
[640] Lenka Dobešová and Jan Hurdík (2023): p. 75.
[641] Ibid., p. 75.
[642] Vojtech Lovetinsky (2017): p. 35.
[643] Lenka Dobešová and Jan Hurdík (2023): p. 62.
[644] as amended on 1 January 2025 (amendments: 160/2006 Coll., 41/2009 Coll., 41/2011 Coll., 396/2012 Coll., 105/2013 Coll., 303/2013 Coll., 178/2018 Coll., 118/2020 Coll., 438/2024 Coll.)

The persons liable for exercising public power are categorised as the state, operating within its state powers and territorial self-governing units, which carry out public power as delegated by law within their autonomous scope of authority.[645]

To establish the liability of the state, the following conditions must be met: there must be a damage caused by its organs, legal and natural persons, while they exercise the state power or administration based on a statute (including notaries and bailiffs), organs of territorial self-governing units that exercise state administration tasks. In addition, the damage could be caused by a decision or wrongful administrative procedure.[646]

The procedure for holding the state liable is that the ministries and state organs act on the state's behalf. Furthermore, unlawful decisions need to be annulled or changed. Available remedies must be used. In addition, in cases when someone is taken into custody or to prison, the state is liable. In addition, failing to act when state organs ought to have taken action is another example of improper official procedure.[647]

Regarding the claims for damages, they must be filed before the organ of the state administration. If the injured party is dissatisfied with the decision, they can bring the claim before the court within six months.[648]

Concerning the liability of territorial self-governing units, or other bodies such as Ministries or the Government the ground for their liability can be found in §13 of the State Liability Act (Act No. 82/1998 Coll), which prescribes the liability for maladministration that refers to the failure to issue decisions, delayed issuance, other inactivity by a public authority, or flaw in the way proceedings are administered.[649] In addition, Act No. 82/1998 Coll. provides that the state or territorial self-governing units have a recourse claim in the amount of the compensation paid to the injured party against the official and the territorial self-governing unit with delegated authority.[650] Moreover, there are statutes that also foresee the state's liability as strict. For example, for damage caused by police, the Police Act (zákonno. 163/1996 Coll.policii) prescribes strict state liability.[651] In addition, "the state is liable under the act on the liability for

[645] Lenka Dobešová and Jan Hurdík (2023): p. 62.
[646] Ibid., p. 62.
[647] Ibid., p. 62.
[648] Ibid., p. 62.
[649] Luboš Tichý (2016) in Ken Oliphant (ed.) The Liability of Public Authorities in Comparative Perspective, Intersentia, p. 92.
[650] Ibid., p. 63.
[651] Luboš Tichý in B.A. Koch and H. Koziol (ed.) 2002, p. 82.

damage caused in exercising public authority (zákonno.82/1998 Coll.o odpovednosti za škodu zpu/sobenou pri výkonu verejnémoci rozhodnutím nebo nesprávným úredním postupem).”[652]

11.4 Employer's Liability for Damage Caused by the Employee to a Third Party using a dangerous thing or performing a dangerous activity

As mentioned at the beginning of the chapter on general considerations regarding the Austrian General Civil Code's influence on the first socialist Czech Civil Code of 1950 and the following code, the same applies when it comes to the issue of dangerous activities. Namely, from a historical perspective, under the rules of strict liability in § 351 of the former Civil Code, dangerous activities were covered. Precisely those were special dangerous operations or businesses.[653] It prescribed strict liability of the business operators for damage caused by the source of special danger.[654]

In addition, special laws were adopted on this subject matter. Furthermore, an amendment from 1991 on the later Civil Code of 1964 (the so–called ‘Large Amendment’) established for both types of liability, tortious and contractual, the strict liability principle. That was established as the second general principle (the first is the principle of liability based on fault), but it covered only the liability for damage caused by ‘operations’. However, it should be emphasized that the strict liability regime of the Civil Code of 1964 also covered the situations when the damage was caused during the provision of the services using the instruments (these instruments caused the damage).[655]

According to the Civil Code of 2012 § 2925 Sec 1 of the Civil Code, the operator of a plant or other equipment, which is considered dangerous, shall be liable, although they exercise due care. The reasons for exculpation are admissible only if the operator can prove force majeure, actions of the injured party or a third party.[656] Sec. 2 of the same article foresees that if a significant increase in the likelihood of adverse consequences was evident as a result of working, operators can pay a reduced price due to other causes that could have influenced of

[652] Ibid., p. 83.
[653] Ibid, p. 76.
[654] Ibid., p. 76.
[655] Luboš Tichý in B.A. Koch and H. Koziol (ed.) 2002, pp. 75-76.
[656] Zákon ze dne 3. února 2012 občanský zákoník, Sbírka zákonů č. 89 / 2012 (Civil Code of 2012), § 2925 Sec 1.

emerging of damage.[657] Lastly, Sec 3 of § 2925 stipulates that the operations are considered dangerous if, in a factory, explosive or hazardous substances are used during the operations.[658]

Czech case law is lacking creativity in the process of interpreting the law.

Wrongfulness is not required as a precondition to establish strict liability. Rather, the statute foresees a special harmful event due to the existence of the heightened level of risk that exists.[659] In this regard, an elevated level of risk involves risky economic activities. Strict liability concerns a lot of cases founded on a harmful event, such as entrepreneurial activity, possession of things, when damage was caused due to the nature of a thing used in conducting some obligations and risky economic activities, such as the operation of a means of transport and others.[660]

The following case demonstrates a situation in which damage was caused during the operation of a means of transport. Namely, it concerns non-material damage sustained by a passenger (injury to health - bodily injuries) during aircraft landing, during a sightseeing flight in an ultralight aircraft.[661] The claim was aimed at compensation because the damage was caused due to the nature of the means of transport. However, the court of the second instance annulled the first-instance court's decision in favour of the plaintiff because it held that an ultralight sightseeing aircraft is not a means of transport within the meaning of the Civil Aviation Act and other regulations, as it is not used for transporting passengers from one place to another, thus the defendant was not liable. Further reasons for that judgment were that there was no contractual relationship between the defendant and the plaintiff. Furthermore, the flight was organised at the user's and the pilot's own risk. It involved a different type of aircraft and sports flying equipment, and its use for such a purpose was at their own risk. In this case, the pilot (flight instructor) was an employee hired by the defendant who operated the aircraft and was killed in the crash. The plaintiff filed an appeal against the judgment, and in the further proceedings, it was established that the claim was well-founded. Taking into account that this judgment was rendered during the validity of the former Civil Code, the legal ground of the judgment in favour of the plaintiff was Art. 427. According to this article, the court of the second instance established the strict liability of the defendant. Namely, Sec 1 of Art. 427 prescribed

[657] Civil Code, § 2925 Sec 2.
[658] Civil Code, § 2925 Sec 3.
[659] Ibid., p. 80.
[660] Ibid., p. 80.
[661] Judgment of the Czech Supreme Court No. 25 Cdo 2053/2005, of 28 February 2007. ECLI:CZ: NS:2007:25.CDO.2053.2005.1, https://www.zakonyprolidi.cz/judikat/nscr/25-cdo-2053-2005?text=25+Cdo+2053%2F2005&sit=1

the liability of both natural and legal persons for damage caused due to the special nature of the transport operation they are engaged in. In addition, Sec. 2 of the same article stipulated that the operators of motor vehicles, motor vessels, and aircraft are liable.[662] Today, this article is substituted by § 2927 of the Civil Code.[663]

Following the analysis of the case law case law, this part is dedicated to the special acts that also prescribe strict liability. For example, the Mining Act (zákonno. 44 of 1988 Coll. – horní zákon) with amendments, in Art. 36 regulates liability for damage caused by mining (it is a strict liability of an organisation which operates the mine for damage caused). Furthermore, Art. 37 regulates compensation for damage and the manner of indemnification.[664] Another example of a single act that regulated the sources of special danger was the old Nuclear Energy Act (zákonno 18 of 1997 Coll. –atomový zákon). It implemented the Vienna Convention and the Paris Convention.[665] In addition, § 2925 of the Civil Code will be applied to the liability of the operator of the nuclear reactor.[666]

12 Employer's Liability for Damage Caused by the Employee to a Third Party under Polish Law

12.1 General considerations

The peculiarities of this issue under Polish law are that in literature it is analysed from both perspectives - labour law and the law of obligations. According to the labour law, Article 120 Section 1 of the Act of 26 June 1974. of the Labour Code regulates the employer's liability for

[662] Ibid.
[663] „(1) Kdo provozuje dopravu, nahradí škodu vyvolanou zvláštní povahou tohoto provozu. Stejnou povinnost má i jiný provozovatel vozidla, plavidla nebo letadla, ledaže je takový dopravní prostředek poháněn lidskou silou. (2) Povinnosti nahradit škodu se nemůže provozovatel zprostit, byla-li škoda způsobena okolnostmi,
které mají původ v provozu. Jinak se zprostí, prokáželi, že škodě nemohl zabránit ani při vynaložení veškerého úsilí, které lze požadovat.“ Civil Code, § 2927, Sec 1 and 2.
[664] Zákon č. 44/1988 Sb. Zákon o ochraně a využití nerostného bohatství (horní zákon), Act no. 44/1988 on the protection and use of mineral resources (the Mining Act), published in the Collection of Laws (Sbírka zákonů), Art. 36-37.
[665] Luboš Tichý in B.A. Koch and H. Koziol (ed.) 2002, p. 82.
[666] Ibid., p. 99.

damage caused by employees to a third party at work or in work-related situations.[667] A linguistic analysis of this article indicates that a lawsuit may be filed against the employer, [668] but not against the employee.[669] The compensation can be claimed by the third party only from the employer whose employee caused the damage.[670] The third party is not entitled to claim compensation from the employees themselves or the insurance company, which also cannot be sued because the employer is directly liable for the damage caused by their employees.[671]

Hence, it can be concluded that labour law protects employees, who are considered the weaker party in the employment relationship.[672] However, a broader understanding of this subject matter requires functional interpretation during the interpreting process.[673] This analysis determined that the legal basis for the third party claim is not specified within this provision of labour law.[674] This matter is governed by the tort provisions of the Civil Code.[675]

Thus, through the lens of the law of obligations, according to the majority interpretation, there are two ways for formulating the employer's liability. First, in tort law, the liability is considered strict, but the fault of the tortfeasor or liable person is relevant. Conversely, in contract law, the liability is strict where the fault of the debtor is not legally relevant except in Art. 474.[676]

The Labour Code of 26 June 1974, in Art. 300 also prescribes that „In matters not provided for in the labour law, the provisions of the Civil Code shall apply to an employment relationship unless those provisions are contrary to the requirements of labour law."[677] As a result, a third party may claim damages against the employer if such compensation is justified under civil law.[678] In the literature and case law, there is a standpoint that Article 120 of the Act of the

[667] Kodeks pracy z dnia 26 czerwca 1974 r. (t.j. Dz.U. 2023 poz. 1465), Art. 120.
[668] Dörre-Kolasa in Baran et al., 2016, p. 337. Cited in Ilić Milica (2025): Employer's Liability for Damage Caused by the Employee to a Third Party under Polish Law, Studia Iurisprudentiae Doctorandorum Miskolciensium, pp. 167-168.
[669] Moras-Olas, 2016, p. 353. Cited in Ilić Milica (2025): p. 168.
[670] Muszalski and Walczak, 2021. Cited in Ilić Milica (2025): p. 168.
[671] Ibid.
[672] Jasion, 2017, p. 102. Cited in Ilić Milica (2025): p. 168.
[673] Wolak, 2015, p. 21. Cited in Ilić Milica (2025): p. 168.
[674] Dörre-Kolasa in Baran et al., 2016, p. 337. Cited in Ilić Milica (2025): p. 168.
[675] Judgment of the Polish Supreme Court (SN) of 25 March 1987, II CR 48/87, LEX no. 8817. Cited in Dörre-Kolasa in Baran et al., 2016, p. 337.
[676] Ewa Bagińska and Magdalena Tulibacka (2022): Tort Law in Poland, Kluwer Law International, Alphen aan den Rijn, the Netherlands, p. 89.
[677] Act of 26 June 1974 – Labour Code, as amended, Art. 300. The Act of April 23, 1964, Civil Code, Journal of Laws of 2016, Dz. U. 1964 Nr 16 poz. 93 with amendments. This Civil Code "came into effect on January 1, 1965." and replaced „the Code of Obligations (1933), the Code of Commerce (1934), the Law of Property (1946), the Law of Inheritance (1946), the General Provisions of the Civil Law (1950). Szpunar, 1967, p. 86. Cited in Ilić Milica (2025): p. 168.
[678] Muszalski and Walczak, 2021, Article 120. Cited in Ilić Milica (2025): p. 168.

Labour Code is not sufficient for establishing the basis the employer's liability to a third party.[679] Namely, in this case, Articles 416, 417-421, 430, and aforementioned Art. 474, in connection with Art. 471 of the Civil Code, apply.[680]

Art. 416 prescribes the legal persons' liability for damage caused by their organs that were at fault, which will be discussed in a separate subtitle.[681] The subsequent Art. 417 stipulates the liability of the State Treasury, local government units, or other entities exercising public authority for damage caused by acts or omissions committed in the performance of such activities,[682] which will also be discussed later. Furthermore, the subsequent articles 418-419 also pertain to the state's liability[683] when its functionaries cause damage.[684] Art. 430 of the Civil Code foresees the liability of principals or masters.[685] Provisions of strict liability in Articles 433–436 of the Civil Code can be interpreted as a legal ground of the employer's liability.[686] In case law, strict liability also pertains to the employer's liability based on aforementioned Art. 474 of the Civil Code, in situations when a debtor engages someone to fulfil their obligation.[687]

In addition to the aforementioned that, Art. 430 of the Civil Code stipulates the liability of the principal or master; the term superior is also used in literature, thus this article stipulates superiors' liability for damage caused by subordinates, and their liability is strict according to theoretical interpretation. This interpretation is founded on the principle of risk.[688] It is not legally relevant if the superior was at fault in selecting a subordinate (*culpa in eligendo*). Furthermore, they can not release themselves from liability if they prove that they were not at fault for selecting and supervising a subordinate; thus, based on this approach, the nature of their liability is quasi-absolute.[689]

Concerning the conditions for establishing the superior's liability, the subordinate's fault is one of the prerequisites for that, according to Art. 415 of the Civil Code. Moreover, based on Art.

[679] Badowiec, 2017, p. 10. Similarly, Perdeus in Baran, 2022, Art. 120; Moras-Olas, 2016, p. 353.
[680] Ibid.
[681] Civil Code, Art. 416.
[682] Civil Code, Art. 417.
[683] Civil Code, Art. 418-419.
[684] Miroslav Nesterowicz and Ewa Bagińska in J. Spier (Ed.) (2003) Unification of Tort Law: Liability for Damage Caused by Others, Kluwer Law International, The Hague, the Netherlands, p. 185.
[685] Ibid, p. 185.
[686] Renata Badowiec (2017): Odpowiedzialność za szkodę wyrządzoną osobie trzeciej przy wykonywaniu obowiązków pracowniczych – uwagi na tle art. 120 k.p. (Liability for damage caused to a third party in the performance of employee duties – remarks based on Article 120 of the Labour Code), Młody Jurysta, p. 10.
[687] Ibid.
[688] Jantowski in Balwicka-Szczyrba M, Sylwestrzak A. (eds.), 2023, Art. 430.
[689] Ibid.

361 of the Civil Code it is required to exist the adequate causal link between the damage caused and a subordinate's conduct. Moreover, the relation of subordination must exist In addition, the unlawful behaviour of the subordinate performed in the course of the entrusted activity is required. It is challenging to determine whether such activity is caused during the performance of the activity or only that activity is an occasion for a subordinate to cause the damage.[690] That means that the employment relationship creates an „opportunity“ based on which an employee can cause damage.[691] According to this interpretation, a unique category of a new form of tort known as a "labour tort” or „labour law tort“ was created by case law and pertains to the situations when an employee causes damage with intent.[692] It should be emphasised that this is an interpretation from a labour law perspective [693] from the beginning of this chapter. In addition, concerning the conditions for establishing the employer's liability from the perspective of labour law, those are that the employer is liable only for the person who should be an employee according to the Labour Code (Art. 2).[694] According to this article, an employee is considered a person hired on various legal bases, such as an employment agreement, appointment, nomination, election, or a cooperative employment agreement.[695]

The subsequent Art. 3 defines the notion of the employer, which is considered an organisational unit that can also be without legal personality. In addition, they can be a natural person if they hire an employee.[696] A legal person is the most common form of entity, such as joint-stock companies, limited liability companies, and foundations. In addition, they can be a general partnership, a professional partnership, or a limited partnership, but these forms of entities are so-called imperfect legal persons, because they are not legal persons, although they have legal capacity vested by law on which Art. 33 of the Civil Code applies.[697] Furthermore, an internal organizational unit can be the employer if the right to hire and fire is conferred to it.[698]
Thus, if someone works for the employer in the status of an independent contractor or in non-employment relationships, the employer will not be liable according to Art. 120 of the Labour Code.[699]

---

[690] Ibid.
[691] Miroslav Nesterowicz and Ewa Bagińska (2003): p. 190.
[692] Renata Badowiec (2017): p. 7.
[693] Ibid.
[694] Moras-Olas, 2016, p. 352.
[695] Labour Code, Art. 2.
[696] Labour Code, Art. 3.
[697] Zbigniew Hajn and Leszek Mitrus (2024): Labour Law in Poland, Kluwer Law International, The Netherlands, p. 88.
[698] Ibid. pp. 88-89.
[699] Patulski, 2006, p. 52, cited in Moras-Olas, 2016, p. 352.

The employer is liable if damage results from the employee's activities during the performance of their work duties.[700] That link is difficult to explain (the link between the performance of activities and the act that the damage has been caused.[701] The most common standpoint is that the damage „must be caused by an activity intended to achieve some goal set by the principal".[702] Thus, the solution is that it „must be addressed case-by-case".)[703]

It should be emphasised that, according to Art. 120 Sec. 2 of the Labour Code, an employee is liable to the employer who compensated a third party for damage.[704]

Thus, according to the first section of this article, the liable person is the employer but, but according to Sec. 2 of the same article, the employer has the right of recourse against employees, after damage compensation to the third party.[705]

It is interpreted that the employee is liable as if they had caused the damage directly to the employer.[706] However, this provision does not prescribe whether the employee caused damage with intent or unintentionally.[707]

According to one theoretical interpretation, in a situation where an employee causes damage with intent, the rules of tort law apply.[708] In case law, their direct liability is foreseen in that case (when the employee causes the damage intentionally).[709]

However, there is also a second view according to which the rules of labour law apply to the employee for both their unintentional and intentional faults. The Supreme Court also took this standpoint.[710] That is why Article 122 of the Labour Code prescribes that the employee is held liable for the full amount of the damage if it is caused with their intent.[711] Other reasons for the direct liability of the employee are insolvency or underinsurance of the employer, and the damage didn't occur during employment, but 'on the occasion' of employment.[712]

[700] Moras-Olas, 2016, p. 352.
[701] Machnikowski, 2019, p. 165.
[702] Rembielinski, p. 18, p. 138, Szpunar, p. 19, p. 476, cited in Machnikowski, 2019, p. 165.
[703] Machnikowski, 2019, p. 165.
[704] Labour Code, Art. 120, Section 2, Journal of Laws of 2016 r., with amendments.
[705] Moras-Olas, 2016, p. 353, Similarly Jasion, 2017, pp. 102-103.
[706] Jasion, 2017, p. 103.
[707] Ibid.
[708] Badowiec, 2017, p. 7.
[709] Judgment of the Supreme Court of 28.08.1980, IV PR 252/80, LEX No. 12675, cited in Badowiec, 2017, p. 7.
[710] Resolution of the Supreme Court of October 11, 1977 (IV PZP 5/77), OSNC 1978, no. 4, item 66. Cited in Badowiec, 2017, p. 7.
[711] Ibid.
[712] Ewa Bagińska and Magdalena Tulibacka (2022): p. 92.

The following case pertains to the liability based on Art. 430 of the Civil Code, because the employee caused damage to a third party while performing their work duties, and not merely because they had the opportunity to abuse their position.[713] Namely, the facts of the case were that the plaintiff, as a bank's client, entered into a service agreement with a bank, which, in this case, is the defendant. The subject matter of the service agreement was the plaintiff's savings, which he entrusted to the bank for the purpose of continuous growth. He also granted power of attorney to an employee of the defendant bank, authorising her to perform all legal acts on his behalf, including managing investment accounts, but only on the basis of instructions given by the plaintiff, either by telephone or by fax. However, the bank's employee abused her position and, without the plaintiff's authorisation in the previously mentioned way, unlawfully invested his money and withdrew it from his account, as a result of which the plaintiff sustained damage.[714] In this case, Art. 430 of the Civil Code was applied, and the bank was obliged to compensate the defendant for the damage, as it failed to exercise proper supervision over its employee to whom the performance of official duties had been entrusted, and who acted for the purpose of obtaining personal gain.[715] The bank failed to supervise and monitor the work of its employee during the four-year period during which such unlawful conduct by the employee persisted.[716]

12.2 Liability of a legal person for damage caused by its organ

As a special type of liability for another's tortious conduct, Article 416 of the Civil Code prescribes this so-called vicarious liability.[717] This provision reads as follows: „A legal person shall be obliged to redress the damage caused by its organs and for which these organs were at fault."[718] Furthermore, the so-called theory of organs or the doctrinal organ theory, is chosen by the legislator[719] according to which the legal person is obliged to compensate for the damage caused by its organs with fault.[720] For example, in a situation when the organ acted beyond the limits of its authority and caused damage by concluding a contract, liability lies exclusively

[713] Judgement of the Supreme Court in Poland No. IV CSK 647/15 of June 10, 2016, p. 8.
[714] Ibid., p. 3.
[715] Ibid., p. 8.
[716] Ibid., p. 8.
[717] Szpunar, 1967, p. 90.
[718] Civil Code, Art. 416.
[719] Machnikowski, 2019, p. 161. Similar in Ilić Milica (2025): p. 174.
[720] Jantowski in Balwicka-Szczyrba M, Sylwestrzak A. (eds.), 2023, Art. 116.

with the natural person acting in the capacity of that organ.[721] Namely, a natural person with the authority to act on behalf of a legal person is actually the organ of a legal person.[722]

The actions of the persons who conduct the functions of that organ are considered the legal person's actions themselves, and the legal person will be liable for damage caused by its organ, no matter what their nature is[723] if the following conditions are met. Those are that they refer to the appointment of a natural person to perform a function of an organ, acting within the scope of any authority they have been given, and refraining from exceeding the scope of their authority.[724]

In a situation involving multiple individuals that an organ comprises there may be unclear who is liable for damage caused. According to literature interpretations, a legal person can be liable if any of them (members) cause damage by fault.[725]

According to previously mentioned, Professor Szpunar,[726], legal entities acted through representatives who were agents.[727] Thus, if they had committed wrongful acts, that would be attributed to that legal entity.

However, today, in modern times, the term „agent" is not used in Art. 416 of the Civil Code. Namely, the term „organ" is used, which is composed of one or more natural persons, and if only one of them causes damage that is enough to establish a liability of a legal person. Furthermore, it is required that the damage was caused directly by the organ's activities.[728]

In addition, it should be emphasised that legal persons' liability can also be based on previously Art. 430 of the Civil Code - for employees and other auxiliary, or based on Art. 429 of the Civil Code for independent contractors.[729] Moreover, their liability can be established for things and

[721] Ewa Bagińska and Magdalena Tulibacka (2022) p. 95.
[722] Machnikowski, 2019, p. 161. Similar in Ilić Milica (2025): p. 176.
[723] „See e.g. J. Kuzmicka-Sulikowska, Principles of liability..., pp. 42-43 and the literature cited there; see also M. Safjan, Tort liability..., pp. 188-189, P. Machnikowski [in] System Prawa Prywatnego, vol. 6, ed. A. Olejniczak, 2009, pp. 372-373." Cited in Jantowski in Balwicka-Szczyrba M, Sylwestrzak A. (eds.), 2023, Art. 116.
[724] Machnikowski, 2019, p. 161.
[725] See „the judgment of the Supreme Court of 5.12.2007, I CSK 304/07, LEX No. 365045"; "see also the judgment of the Supreme Court of 5.11.2010, I CSK 12/10, LEX No. 622195, in which it was explained that "basing the liability of a legal entity on Article 416 of the Civil Code does not mean recognising that the damage was caused by the culpable behaviour of all members of its body." Cited in Jantowski in Balwicka-Szczyrba M, Sylwestrzak A. (eds.), 2023, Art. 116. Similar in Ilić Milica (2025): p. 17
[726] Szpunar, 1967, p. 90.
[727] Szpunar, 1967, p. 90.
[728] „See e.g. the judgment of the Supreme Court of 5.12.2007, I CSK 304/07, LEX No. 365045; see also the judgment of the Supreme Court of 5.11.2010, I CSK 12/10, LEX No. 622195, in which it was explained that "basing the liability of a legal entity on Article 416 of the Civil Code does not mean recognising that the damage was caused by the culpable behaviour of all members of its body." Cited in Jantowski, 2023, Art. 116.
[729] Ewa Bagińska and Magdalena Tulibacka (2022): p. 96.

for animals. Strict liability is foressen by Articles 433–436, 491.[730] However, the result of these interpretations is that in practice, Art. 416 of the Civil Code has little application.[731]

12.3 State liability for damage caused by public officials

According to the famous Polish writer, Ernest Till: "There can be no true liberty and democracy without liability of the State for the torts committed by its agents in the fulfilment of public duties".[732] Namely, under the Polish legal system, the Constitution of 1921 proclaimed the principle of state liability.[733] Before that time, different legal regimes for state tort liability were prescribed by different legal systems.[734] Nowadays, state liability was introduced by Article 77 of the Constitution of 1997. It prescribes the right of everyone to compensation for any damage caused to them by the action of a public authority organ contrary to statute.[735] Thus, it can be concluded according to this provision that the liability of the public authority is strict (the principle of strict liability was introduced in the Polish legal system).[736] Furthermore, this is a model of a direct liability of a public legal person. This is not vicarious liability because the institution is liable, not the public official, although they are the direct tortfeasor. Namely, in cases of unlawful exercising of public authority, a general rule of liability for damage caused by an unlawful exercise of public authority that is foreseen by Art. 417 Sec 1 of the Civil Code.[737] This article prescribes the liability of the State Treasury or an entity, municipality or

[730] „Regional Court in Gdansk, 25 Apr. 2001, Rzeczpospolita 26 Apr. 2001“ cited in Ewa Bagińska and Magdalena Tulibacka (2022): p. 96.
[731] Ewa Bagińska and Magdalena Tulibacka (2022): p. 96.
[732] “E. TILL, Polskie prawo zobowiazari. Czesc ogolna. Projekt wstedpny z motywami [Polish law of obligations. General part. Preliminary bill with motives] (1923), p. 111-112“. Cited in Baginska, 2005, p. 851. and Ilić Milica (2025): p. 176.
[733] „Art. 12 provided: [E] very citizen has the right to damages for the harm caused to him by a state authority, civil or military, because of an official act which is against the law or the duties of service. The State and the responsible organ are jointly liable for the harm caused; the commencement of an action against the state or public servants does not require the government's consent. In the same way, local government bodies and other autonomous organizations are liable. Special laws will determine the bringing into force of this principle.“ „English text based on the translation by Wyrwa, Governmental Tort Liability (Law in Eastern Europe no. 17, ed. Barry) 233 (1970).“ Cited in Wagner, 1972, pp. 247-248. and Ilić Milica (2025): p. 177.
[734] These systems are in the East, Russian law, in the South, Austrian law, in the West, Prussian law, and a distinct legal system in Central Poland (they follow the French Civil Code). It varied in areas: state immunity was allowed by Russian law, and the opposite was allowed by Prussian law. „See e.g. Jodlowski, "La responsabilité des dommages causes par l'activité des organes du pouvoir et de l'administration" (Responsibility for Damage caused by Activities of the Organs of Government and the Administration), in Société, de Législation Comparée, Journées Juridiques I (1965) 87, 90.“ Cited in Wagner, 1972, p. 247. and Ilić Milica (2025): p. 177.
[735] Ewa Bagińska and Magdalena Tulibacka (2022), p. 65.
[736] Ibid., p. 66.
[737] Ibid., p. 66.

other legal person that exercises public authority for damage caused by an illegal act or omission undertaken in the course of exercising public authority.[738]

From a historical perspective, the Third Book of the Civil Code under Title VI (Obligations) defined torts for which the state was liable.[739] This article 417 Sec. 1 prescribed that „the State Treasury is liable for damages occasioned by a servant of the state in carrying out a delegated function.“[740]

The term „state agent“ was used by Professor Szpunar in interpreting Article 417, according to which the State was liable for damage caused by its agent in exercising its function.[741] While Professor Wagner used the term „servant“ that pertains to all employees hired in the state's institutions, as well as this notion pertains to persons appointed in the electoral process, such as judges or prosecutors, soldiers, etc.[742] According to Professor Szpunar „the classification of thousands of State agents into agents and servants is a very complicated matter“.[743] However, in practice, the most important thing is to prove that the agent or servant was at fault; in order to establish that the State was liable for redressing the damage.[744]

The fault of the servant was necessary for establishing the State Treasury's liability for damage that was caused before 17.10.1997 (this is one of the three periods of the development of this institute).[745]

However, from 17.10.1997. to 01.09.2004. the functionary's fault was not legally relevant for the existence of the State Treasury liability.[746]

The current version of Article 417 of the Civil Code has been in effect since 2004[747] where the liability of the institution is not bound by the fault of the functionary hired by that institution.[748]

[738] Civil Code, Art. 417.
[739] Wagner, 1972, pp. 250-251.
[740] Art. 417, Sec. 1, 2. Cited from Wagner, 1972, p. 250.
[741] Szpunar, 1967, p. 91.
[742] Wagner, p. 251.
[743] Szpunar, 1967, p. 91.
[744] Ibid.
[745] Jantowski in Balwicka-Szczyrba Małgorzata, Sylwestrzak (eds.), 2023, Article 417.
[746] Jantowski in Balwicka-Szczyrba Małgorzata, Sylwestrzak (eds.), 2023, Article 417.
[747] Jantowski in Balwicka-Szczyrba Małgorzata, Sylwestrzak (eds.), 2023, Article 417.
[748] Baginska, Cited in Ilić Milica (2025): p. 179.

It should be noted that the joint and several liability of the State Treasury or the local authority is foreseen in situations when a local authority or other legal person is delegated to exercise tasks falling within the scope of public authority and their liability is strict.[749]

12.4 Employer's Liability for Damage Caused by the Employee to a Third Party using a dangerous thing or performing a dangerous activity

In the Polish legal system, strict liability is prima facies prescribed by Art. 435 of the Civil Code. According to this article, forces of nature such as gas, fuel, or electricity that drive the operation of a legal person, if they cause damage to a person or their property, the person who manages that legal person or institution (the same applies) shall be held liable. In addition, they may be released from liability only if the damage was caused by force majeure or by the fault of the injured party or a third party. According to Sec. 2 of the same article if explosives or similar materials are used in their operations, Sec. 1 will also be applied.[750] Thus, this is a strict liability, and the practical situations where this provision applies are, for example: If damage occurs in trains, or their stations, including waiting rooms, restaurants, tracks, offices, even if they are located outside the train station, the railway will be liable for accidents that occur on their premises.[751]

Regarding special laws related to this subject matter, the next act is about nuclear operator liability. That is the Polish Atomic Law of 29 November 2000 with amendments, which in Art. 101 stipulates the strict liability of a nuclear operator for damage caused in nuclear facilities or related to it, unless the damage was caused by acts of warfare and aggression.[752]

Act of September 18, 2001, the Maritime Code ("Kodeks Morski") stipulates the liability of the shipowner for damage caused by pollution from vessels (it involves carrying goods, or dumping

[749] Ewa Bagińska and Magdalena Tulibacka (2022) pp. 66-67.
[750] Civil Code, Art. 435, Sec 1 and 2.
[751] Miroslaw Nesterowicz and Ewa Baginska in B. A. Koch, H. Koziol (eds.) 2002. p. 259.
[752] Ustawa z dnia 29 listopada 2000 r. – Prawo atomowe, Journal of Laws 2024, item 1277, Art. 101.

wastes into the sea).[753] In addition, general tort rules protect the environment, but the exception is sea pollution.[754]

13 Employer's Liability for Damage Caused by the Employee to a Third Party under Romanian Law

13.1 General considerations

Romanian tort law does not explicitly prescribe the employer's liability for unlawful acts of employees; instead, it stipulates a broader principle of a principal's liability for the acts of auxiliaries, which includes employer liability.[755]

This issue is regulated in the first paragraph of Article 1373 of the Civil Code (*Codul civil al României)*, which prescribes that the principal's obligation to redress the damage caused by their agents whenever their acts are related to their duties or with the functions of the assigned tasks.[756] The original paragraph reads as follows: „*Comitentul este obligat să repare prejudiciul cauzat de prepuşii săi ori de câte ori fapta săvârşită de aceştia are legătură cu atribuţiile sau cu scopul funcţiilor încredinţate*,"[757] where the term principal is a translation from the Romanian term *comitentul*, while besides the term auxiliaries, as previously mentioned, it could also be found the term agent in the literature as a translation of *prepus*.[758]

[753] Polish Maritime Code (Official Journal of Laws of 4 December 2001) with amendments.
[754] Miroslaw Nesterowicz and Ewa Baginska in B. A. Koch, H. Koziol (eds.) 2002. p. 261.
[755] L. Pop, Tratat de drept civil, p. 382., cited in Laura Toma-D˘auceanu, Ioan Ilies¸Neamt, Tort Law in Romania, Kluwer Law International B.V., Alphen aan den Rijn, p. 2022, p. 68.
[756] Law Nº 287/2009 on the Civil Code, Art. 1373, Sec. 1.
[757] Codul civil, din 17 iulie 2009, Art. 1373, Sec. 1.
[758] "Extracts from the New Romanian Civil Code." Journal of European Tort Law, vol. 2, no. 1, 2011, p. 113.

The rule is intended to provide the injured party with additional protection in situations where the tortfeasor acted under the direction of someone else, rather than independently.[759]

The second paragraph of Article 1373 of the Civil Code prescribes that a person is considered principal if they have the authority to direct, supervise, and control someone who performs tasks for their or someone else's benefit, either through a contract or by statute,[760] thus, there is no unitary statutory definition of „employer". The employee is defined as a person who carries out specific functions or tasks under the supervision, oversight, and authority of the employer. This relationship signifies that the employee acts serving the employer's interests. In addition, the old Civil Code of 1865 did not provide a contemporary definition of these persons in contrast to the new Code, and it used outdated terminology such as "masters" and "servants".[761]

In addition, another definition of employee can be found in the literature, but it is used for agents, defined as persons consenting to undertake actions on behalf of another, thereby placing themselves under the latter's direction, supervision, or control.[762] Furthermore, an agent performs functions following the directives and oversight of another party.[763] The basic principle distinguishing the roles of principal and agent lies in a subordinate relationship predicated on an agreement, wherein a natural or legal person assigns a specific task to another. This framework enables the principal to issue instructions and exert control, while the agent is obliged to adhere to the instructions.[764]

Although the concept of subordination is not used in the Labour Code in particular, it can be inferred from the definition of the employment agreement in Art. 10 that the employee is in a position of subordination to the employer.[765] Namely, the employee performs work duties on behalf and "under the authority of an employer".[766] According to Vartolomei's interpretation of the dictionary of the Romanian language, the authority implies "right, power, empowerment of

[759] Mangu, Ra˘spunderea civila˘ delictuala˘, p.115, cited in Laura Toma-Da˘uceanu, Ioan Ilie Neamts: p. 68.
[760] Romanian Civil Code, Art. 1373, Sect. 2.
[761] Călina Jugastru, Damage in the Context of the Liability for the Actions of Others, Jurnalul de Studii Juridice, 3-4/2013, pp. 31-32.
[762] M. N. Costin, C.M.Costin, 2007. p. 774, cited in Ioan Ciochină-Barbu, „The principals' liability for their agents in regulating the New Civil Code", Acta Universitatis George Bacovia. Juridica - Volume 4. Issue 2/2015, p. 537.
[763] The Romanian Academy, , 1998, p. 835, cited in Ioan Ciochină-Barbu, 2015, p. 537.
[764] C. Stătescu, C. Bîrsan p. 245; I. Ciochină-Barbu, 2012 p. 157., cited in Ioan Ciochină-Barbu, 2015, pp. 537-538.
[765] Brîndușa Vartolomei: 2014, The subordination of the employee to the employer – the fundamental legal characteristic of the individual employment contract and its consequences on labor law, Perspectives of Business Law Journal, p. 209.
[766] Ibid., p. 209.

command, to give orders or impose one's listening".[767] Thus, the employee's legal relationship of subordination to the employer is a main characteristic of the employment agreement.[768] The Labour Code also defines the notion of the employer, while the employee is not explicitly defined.[769] Legal theory offers different interpretation of these notions. The terms principal and agent can be found in Article 1373 of the Civil Code. In literature, R. Dimitriu, on the notions of these terms (principal and agent), emphasises that the definitions of principal and agent are intrinsically linked through their mutual relationship. Thus, even though Article 1373, paragraph 2 offers a definition of the principal, it inherently relates to the agency relationship, as the principal's status is contingent upon the person they supervise.[770]

Case law emphasises that the agency relationship arises from a mutual agreement of will, in which the principal assigns a specific function to the agent and retains the right to direct, guide, and control the agent's activities within that task.[771]

The new Civil Code introduces several changes concerning this subject matter. It clarifies, as described above, the definition of an employer, which is separated from the definition of the employee, outlines the sources of subordination, and establishes liability not contingent on fault (for both the employer and the employee).[772]

The conditions and grounds for liability remain unchanged. „The general conditions are, as it results from Article 1373 paragraph 1 Civil Code, the damage, the employee's wrongful act and the causal relationship between the wrongful act and the damage."[773]

For a detailed analysis, it is worth noting that while paragraph 1 specifically addresses the entrusted functions, it is important to relate this to paragraph 2, as it highlights that the principal's liability also comes into play when the acts are performed by an employee. The main distinction lies in whether the activity is conducted on regular or occasional basis. For instance, an employee typically acts within the scope of their job description, which means within the

[767] Dicţionarul explicativ al limbii române, Academia Română, 1998., pp. 279, 1034, 75. Cited in Brîndușa Vartolomei: 2014, p. 209.
[768] Brîndușa Vartolomei: 2014, p. 209.
[769] According to Art. 14 of the Labour Code, the employer is a natural or legal person who employs others based on an employment contract. The term employee is partly defined in Art. 10 through the definition of employment agreement as afore mentioned. Labour Code, The Official Gazette of Romania no 345 of 18 May 2011 with amendments.
[770] R. Dimitriu, 2014, p. 552-553., in M. Uliescu, cited in Ioan Ciochină-Barbu, 2015, p. 538.
[771] Court of Appeal Bucharest, decision no 1236/2001 in the "Court of appeal Bucharest, 2001-2002, p. 275, cited in Ioan Ciochină-Barbu, 2015, p. 538.
[772] Călina Jugastru, 2013, p. 32.
[773] Ibid.

assigned functions, but they may also receive additional tasks from a principal that occasionally go beyond those duties or assignments. If the employee causes damage while performing any of these tasks, the principal acting as the employer can be held liable. Thus, the principal is liable if the employee causes damage while executing their duties. However, the principal's liability extends further; they are also liable for any acts committed by abuse of authority, even if those acts exceed the employee's designated functions. It is only prescribed that the injured party must not be aware that the employee was acting outside of their assigned role or duties.[774] So, this conclusion is in line with Article 173 paragraph 3, as follows: „The principal is not liable if proves that the victim knew, or, as the case may be, may have known at the time when the damaging act was committed, that the agent acted without any connection with the duties or functions entrusted to them.“[775]

According to the principle of *per a contrario*, liability arises when the injured party is unaware of the employee's abusive activities. Good faith is presumed (as stated in Article 14, paragraph 2 of the Civil Code), meaning that the injured party is generally considered unaware that the employee acted outside the scope of their assigned duties. It is the duty of the principal to demonstrate that the injured party possesses this information.[776]

In addition, the standpoint of the literature is that this concerns strict liability, which is based on the concept of guarantee. This discussion relates solely to non-contractual liability, rather than the fulfilment of obligations arising from a contract. For that, Article 1519 of the Civil Code applies, stipulating that unless the parties agree otherwise, the debtor is liable for damage caused by the fault of the person they engage to fulfil their contractual obligations.[777]

Concerning the legal relevance of the fault of the employee, when the former Civil Code was in force, the legal literature was divided as to whether the fulfilment of this condition is required for establishing the employer’s liability. The majority opinion holds that the fault of the employee is legally relevant, but there are others who dissent, asserting that fault is not a necessary precondition.[778] Such a stance pertains to the current Civil Code in force[779], more precisely Article 1373 Section 1 of the Civil Code. The literal interpretation of this provision

[774] Laura Manea "Constants of tort liability’s", Bulletin of the Transilvania University of Braşov, Series VII: Social Sciences and Law, Vol. 11 (60) No. 2 – 2018, pp. 111-112.
[775] Codul civil, din 17 iulie 2009, Art. 1373, Sec. 3.
[776] Laura Manea, 2018, p. 112.
[777] Călina Jugastru, 2013, p. 32.
[778] E. Lipcanu, Law no. 10/1997, p. 26-31; R. Dimitriu, Volume III. Part I Book V About obligations (art. 1164-1649), Juridical Universe Publishing House, Bucharest, 2014, p. 560, cited in Ioan CIOCHINĂ-BARBU, 2015, p. 540.
[779] Ioan Ciochină-Barbu, 2015, pp. 540-541.

also indicates that the employee's fault is not a prerequisite for establishing the employer's liability.[780] It is enough that the damage was caused by the employee's act in connection with their work or assigned functions.[781] For example, the employer will not be liable for damage caused by one employee to another during the team-building activities.[782] That is demonstrated in one case from judicial practice, when a traffic accident occurred during the team building. Namely, the director of a legal person organized a journey for their employees and rented a vehicle that was driven by one of the employees. During the driving, an accident occurred, and another employee sustained bodily injury. The driver was convicted in a criminal proceeding, while the employer's civil liability was dismissed by the court. Since the damage was not caused in the course of duties entrusted to the employee, due to the fact that both the employee and another injured employee enjoyed their free time in an activity unrelated to the work functions, although it was organised by the employer.[783]

However, there were situations in which the injured party sued both the employee and the employer.[784] In situations where the employer pays damages, they have the right to recourse against the employee if the employee caused the damage with intent. Furthermore, the employer will be obliged to prove the employee's fault because they are liable for their own fault.[785] Art 1384 Sec 1 of the Civil Code that stipulates this right will be applied.[786] If further means that if the employee acted outside their work duties, they will be liable. Otherwise, they will not be liable.[787] In situations when the damage is caused partly by acting beyond given instructions and partly by following those instructions of the employer, both the employer and the employee may be held liable, with liability apportioned according to the employee's degree of fault.

---

[780] E. Lipcanu, Some reflections on regulation principals' liability for the agents in the new Romanian Civil Code, the Law no.1 / 2010, p.35-37; L.R. Boila, Objective substantiation of the principal liability in the new Civil Code, the Law no. 2 / 2010, p.52-54; L. Pop, I. F. Popa, S.I. Vidu Elementary treaty of civil law. Obligations. Under the new Civil Code, Juridical Universe Publishing House, Bucharest, 2012, p.477-478., cited in Ioan CIOCHINĂ-BARBU, 2015, p. 541.

[781] BARBU, 2015, p. 541.

[782] „C.A. Bucharest – S. II pen, Dec. No 786/A/18 June 2014 (www.rolii.ro).“ Cited in Răzvan Anghel (2023). Considerations regarding the inclusion in working time of periods during which the worker participates in team building activities. Revista de Drept Social, 4. https://nbn-resolving.org/urn:nbn:de:0168-ssoar-91061-8, p. 5.

[783] Ibid, p. 5.

[784] Laura Toma-D ̆auceanu, Ioan Ilies ̧Neamt (2022): p. 72.

[785] I.I. Neamt ̧and L.T. Da ̆uceanu, 163, L. Pop, Decision No. 3595/2003 in V. Terzea. Cited in Laura Toma-D ̆auceanu, Ioan Ilies ̧Neamt (2022): p. 72.

[786] „Cel care răspunde pentru fapta altuia se poate întoarce împotriva aceluia care a cauzat prejudiciul, cu excepţia cazului în care acesta din urmă nu este răspunzător pentru prejudiciul cauzat“. Art. 1384, Sec. 1. of the Civil Code.

[787] Laura Toma-D ̆auceanu, Ioan Ilies ̧Neamt (2022): p. 72.

In addition, if multiple employees cause damage under the instructions of different employers, the employer who compensated for the damage can seek reimbursement from the employees who contributed to the occurrence of the damage and from their respective employers.[788]

It should be noted that in addition to legal theory, there is an economic theory. The idea is to find a medium solution in the sense that between the employee and the employer should be a "win-win" relationship, not "win-lose". Taking into account that the employee is in an economically dependent position related to the employer, by virtue of their economic advantage, the employer has not disregarded the need to consult with the employee. The reason is that the employee has a creative role during the performance of work duties that is higher than monetary value.[789] However, the employee's legal subordination is necessary due to its role in social labour efficiency.[790]

13.2 Liability of a legal person for damage caused by its organ

There are various forms of legal persons, such as corporations, associations, companies, foundations, etc., but what they all have in common is their abstract concept. It means that they are an intangible intellectual creation without form in reality. Their existence is only why the statute recognises them, so they are created by the law.[791] In addition, legal persons cannot make decisions or take actions on their own; instead, they express their intentions, exercise their rights, and fulfil their obligations through their organs in line with Article 209 of the Civil Code.[792]

In terms of matters to third parties, there is no distinction between legal persons and their organs. The decisions made by the organs are considered the decisions of the legal person itself.[793]

This is the reason for establishing the legal person's liability, because if these decisions or acts of the organs caused damage to a third party, the legal person is liable as for its own acts. That's

[788] Laura Toma-D˘auceanu, Ioan Ilies¸ Neamt (2022): p. 73.
[789] Brînduşa Vartolomei: 2014, p. 210.
[790] Ibid., p. 210.
[791] Laura Toma-D˘aucean and, Ioan Ilies¸ Neamt (2022): p. 74.
[792] Ibid., pp. 74-75.
[793] Ibid., p. 75.

why the acts of organs are considered the legal person's own.[794] This standpoint stems from Article 219, Section 1 of the Civil Code specifying that the lawful or unlawful acts of the organs oblige the legal person itself, as long as they are related to the purpose of the organ's functions.[795]

There is no unanimity in the legal theory as to the conditions required for establishing liability.

However, one point is generally accepted: the injured party has to prove the resulting damage, the unlawful act and the causal relationship between them.[796]

The prevailing view in legal theory is that the legal person's liability is strict, but some legal scholars argue that it is fault-based.[797]

13.3 State liability for damage caused by public officials

From a historical perspective, in the pre-socialist period until 1948, everyone who had suffered damage caused by the state or its servants had the opportunity to claim damages from the state according to the first Constitution of the Kingdom of 1866.[798] The general principle of civil liability was the legal basis. Namely, Section 998 of the Civil Code of the Kingdom provided that the person who caused damage by fault to another was obliged to pay compensation. In addition, Section 1000 of the Civil Code regulated the liability of the person liable for another person who caused damage. Case law applied these rules to the state, as well.

Formal constitutional provision concerning public authority liability is Article 52, Section 1 stipulating that everyone has the right to compensation if a public authority fails to issue an administrative act or omits to do so within the legal time limit, as well as the right to the annulment of that act.[799]

---

[794] Neamț and L.T. Daŭceanu, 144–145; L. Pop, 338; L. Pop, 458–460; L. Pop, 359; P. Vasilescu, 633; C. Staŭescu and C. Bîrsan, 211;F.I. Mangu, 274. Cited in Laura Toma-Dăucean and Ioan Iliș, Neamț (2022): p. 75.
[795] Codul civil, din 17 iulie 2009, Art. 219, Sec. 1.
[796] Neamț, and L.T. Daŭceanu, 144–145; L. Pop, 338–339; L. Pop, 460; L. Pop, 359. Cited in Laura Toma-Dăucean and Ioan Iliș, Neamț (2022): p. 75.
[797] Laura Toma-Dăucean and Ioan Iliș, Neamț (2022): pp. 76-77.
[798] Virgil Veniamin in Barry, Donald D.; et al. Governmental Tort Liability in the Soviet Union, Bulgaria, Czechoslovakia, Hungary, Poland, Romania and Yugoslavia, 1970, p. 259.
[799] Constituția României (the Constitution of Romania), Official Gazette Nos. 233/1991, 767/2003, Art. 52, Sec. 1.

Organic statutes[800] determine the limitations of that right according to Sec. 2,[801] while Sec. 3 specifies that the state is also liable for judicial errors. Furthermore, organic laws determine the state's liability for judicial acts, as well as the liability of judges in cases of negligence and abuse of official position.[802]

In addition, judicial review of administrative acts is guaranteed, except for those related to Parliamentary affairs or military actions. Specialised administrative courts have the authority to decide on claims for damages caused by Government Ordinances or legal provisions that have been declared unconstitutional based on Article 126 Section 3.[803] Administrative Litigation Law 554/2004 (*Legea contenciosului administrativ*) is a general act which applies to the Romanian administration.[804] Everyone has the right to file a lawsuit before the competent administrative court if they consider that an administrative act has violated their right or legitimate interest, seeking the annulment of that act, the recognition of the right, and damage compensation.[805] Article 18 Section 3 clarifies that when the court decides on a claim for the annulment of an administrative act, it shall also decide on the claim for damages, if such a claim has been submitted.[806] In addition, it is possible to file a separate claim for damages in a distinct procedure, but no later than one year from the date the applicant became aware of the occurrence of damage. The applicant is required to prove their personal legal interest. In addition, the conditions for a successful claim are as follows: existence of an illegal administrative act, the applicant must have sustained damage, and existence of a causal link between the act and the damage. General principles allow exemption from liability in situations like force majeure or fortuitous event.[807]

In the literature the state liability is considered strict. The justification for such a standpoint lies in the interpretation of Law 29/1990 on judicial review of the administration, which was the first post-communist general act and Law 554/2004, in force that neither of which addresses

[800] According to Art. 73 of the Romanian Constitution, organic laws regulate: the electoral system, political organisations, the government organisation and national defence, public order, property and inheritance, education, labour and social policy, culture, and other fields for which the Constitution envisage the enactment of organic laws…The Constitution of Romania, Art. 73.
[801] The Constitution of Romania, Art. 52, Sec. 2.
[802] The Constitution of Romania, Art. 52, Sec. 3.
[803] The Constitution of Romania, Art. 126, Sec. 3.
[804] Lege nr. 554 din 2 decembrie 2004 (Law No. 554 of December 2, 2004), Official Gazette No.1154 of December 7, 2004.
[805] Law 554/2004, Article 1 (the title of this article was amended by Law no. 262 of July 19, 2007, Official Gazette no. 510 of July 30, 2007)
[806] Law 554/2004, Article 18.
[807] Hamangiu, 2009, 620–31; Tofan, 2009, G Bogasiu, 2011. Cited in Roxana Vornicu, p. 70.

the issue of fault of the administration as a condition for liability.[808] However, the theory supports an interpretation of administrative fault for an unlawful act, refusing to issue the act or the silence of administration.[809] In case law, the public authority's fault is needed to establish its liability only in the event of annulment of the unlawful administrative act.[810]

In accordance with Article 16 of Law 554/2004, pertaining to judicial review, everyone can claim damages from the public organ liable for issuing or declining to issue an act. The claims can be filed against the civil servant involved in the decision-making process related to the issuance or refusal of the act. Consequently, both the public organ and the civil servant may be held liable in the same legal proceedings.[811]

Particularly, the civil liability of civil servants is regulated under the Romanian Administrative Code.[812] It is prescribed in Article 490, titled "Disciplinary Sanctions and Liability of Civil Servants."[813] However, regarding the liability to the third party, Article 499, Section c of the Administrative Code provides that in situations when the public authority or institution pay damages to the third party as the main debtors, based on a final court decision, the civil servant's liability is triggered.[814]

13.4 Employer's Liability for Damage Caused by the Employee to a Third Party using a dangerous thing or performing a dangerous activity

According to Art. 1376, Sec. 1 of the Civil Code, it prescribes the liability of a legal guardian of the thing for damage caused by it without fault[815], whereby it is irrelevant whether the thing is material or immaterial, or it can be moving or immovable (for example, electricity is included under this notion).[816] The concept of legal guardianship is prescribed in Art. 1377 of the Civil

[808] Roxana Vornicu (2020) in Giacinto della Cananea, Roberto Caranta (eds.): Tort Liability of Public Authorities in European Laws, Oxford University Press, p. 70.
[809] IA Iorgovan, 1998, 303. Cited in Roxana Vornicu (2020), pp. 70-71.
[810] Decision 2132/2016 of the Supreme Court. Cited in Roxana Vornicu (2020) p. 70.
[811] Roxana Vornicu (2020) p. 70.
[812] Emergency Ordinance 57/2019 on the Administrative Code, published in the Official Gazette of Romania no. 555/05.07.2019.
[813] Administrative Code, Art. 490.
[814] Administrative Code, Art. 499.
[815] Law Nº 287/2009 on the Civil Code, Art. 1376, Sec. 1.
[816] High Court of Cassation and Justice, Decision No. 2725/2003, in V. Terzea, 376. Cited in Laura Toma-D ̆aucean and Ioan Ilies ̧Neamt (2022): p. 86.

Code. Namely, the owner, or someone who, by statute or contract, or even by fact, exercises independent control and supervision over the thing or animal for their benefit, has custody of it.[817] Furthermore, the usufructuary, the fiduciary or the retentor[818] can be the right holders in addition to the illegal possessor. To establish the liability, the following conditions must be met: an act that caused damage, damage, causation and the thing under someone's guardianship.[819] As prescribed by Art. 1377, fault is not a condition for establishing the liability because this is a hypothesis of strict liability.[820]

Regarding special acts that prescribe strict liability for dangerous activities, for example, Law no. 703 of 2001, December 3, (the Civil Liability for Nuclear Damage), in Art. 4 foresees the strict liability of nuclear plant operators.[821]

14 Employer's Liability for Damage Caused by the Employee to a Third Party under Bulgarian Law

14.1 General considerations

In accordance with Art. 49 of the Bulgarian Obligations Act, when a person assigns a task to another, they are liable for the damage caused by that another person during the performance of that task or related to it.[822] The person who delegates the performance of a task to another person is referred to as the Bulgarian term „възложител", which corresponds to the English term „principal". While the Labour Code uses the term „employer", for example, in the first article, which is titled on the subject and purpose of the labour law, it uses the terms „работник" for the employer and the term „служител" for the employee. (It prescribes that this Act

[817] Law Nº 287/2009 on the Civil Code, Art. 1377.
[818] L. Pop, 498; P. Vasilescu, 679. Cited in Laura Toma-D˘aucean and Ioan Ilies¸ Neamt (2022): p. 86.
[819] Laura Toma-D˘aucean and Ioan Ilies¸ Neamt (2022): p. 87.
[820] Ibid., p. 88.
[821] LEGEA nr. 703 din 3 decembrie 2001 privind răspunderea civilă pentru daune nucleare, Official Gazette no. 818 of December 19, 2001, Art. 4.
[822] „Този, който е възложил на друго лице някаква работа, отговаря за вредите, причинени от него при или по повод изпълнението на тази работа." Art. 49 of the Bulgarian Obligations Act. (Закон за задълженията и договорите, abreviated ЗЗД), Official Gazette, (Държавен вестник), No. 275/22.11.1950. with ammendments.

regulates the employment relationship (работодател) between them.)[823] In theory, the employer is defined more broadly as either a natural or legal person. The former is required to possess civil legal capacity, while the latter acquires it at the time of its establishment.[824] A legal person has to be organised as a separate entity, maintaining its own balance sheet, separate finances and bank account. In addition, it must have its own field of activity, or at least a part of it. Another characteristic of the employer is that they have the authority to hire and dismiss personnel (labour force). Another person acts in the capacity of an employee in order to perform the employer's activities, which can be public, private or combined.[825]

Thus, after this terminological delineation, it is required to determine the conditions of the application of Art. 49 of the Obligations Act. Those are first the existence of an entrusted task. Second, the perpetrator of that entrusted task has to be at fault, and last, the damage caused during the conduct of the entrusted task.[826]

It is up to the injured party to bring the action in unified civil proceedings against both the tortfeasor and the principal.[827] The action in that situation is based on Art 45 Sec. 1[828] (it pertains to the tortfeasor) and 49[829] (against the principal) of the Obligations Act. If the action is brought based on Art. 49, the principal has a legal interest that the employee is also involved in the proceedings due to their right of recourse against the employee. In theory, their liability is treated as an imputed (quasi) joint liability.[830] In that situation, if the civil proceeding is commenced only against the employer as mentioned above, besides the fact that the tortfeasor is involved in the dispute based on Art 45 Sec. 1, in addition, they can independently join the employee to the proceedings in the capacity of an intervenor.[831]

---

[823] „Този кодекс урежда трудовите отношения между работника или служителя и работодателя, както и други отношения, непосредствено свързани с тях.“ Кодекс на труда (Labour Code) State Gazette No. 26/1.04.1986 and No. 27/4.04.1986, with ammendments, Art. 1.

[824] V. Tadjer, 82–84. Cited in Vassil Mrachkov: Labour Law in Bulgaria, Kluwer Law International, Alphen aan den Rijn, The Netherlands, 2020, p. 252.

[825] Vassil Mrachkov: 2020, p. 252.

[826] Silvia Tsoneva: Отговорностнавъзложителянаработа, приилипоповодизвършва-ненаработата, английскоделиктноправо, българскоделиктноправо (Damage Caused by Another in the Course of his Employment under the English and Bulgarian Tort Law), Годишник на департамент „Право“ на НБУ, 2019, pp. 322-323.

[827] Ibid., p. 323.

[828] „Всеки е длъжен да поправи вредите, които виновно е причинил другиму.
Във всички случаи на непозволено увреждане вината се предполага до доказване на противното.“ Art. 45 Sec 1 of the Obligations Act.

[829] „Този, който е възложил на друго лице някаква работа, отговаря за вредите, причинени от него при или по повод изпълнението на тази работа.“ Art. 49 of the Obligations Act.

[830] Silvia Tsoneva: 2019, p. 323.

[831] Ibid., p. 323.

14.2 Liability of a legal person for damage caused by its organ

A Resolution of the Supreme Court in Sofia, № 60292 of 21.02.2022, provides an interpretation of Art. 45 and 49 of the Obligations Act and answers the question who was liable, the principal, perpetrator, direct perpetrator or all of them together (joint and several) for damage that the third party sustained.[832] The subject matter concerned a legal person who was sued, and it was the client who engaged another legal person for security services on the client's business premises. In this legal act, the court gave an opinion that the perpetrator will be liable on their own based on a common interpretation of the Art. 45 of the Obligations Act, which states that personal liability exists in a situation when the damage is caused by personal conduct that is unlawful and culpable, and when there is a causal link between such conduct and the arising of the damage. On the other hand, the interpretation of Art. 49 of the Obligations Act is as follows: When damage occurs as a result of the conduct of another person in connection with the performance of a certain task or during its performance, liability is borne by the person who entrusted that task. In legal theory, entrustment is understood to mean that a person separates their own task and has it carried out in practice through another person. In other words, a third party is engaged to perform the task in the interest of the principal. The performance of the task may be factual (practical acts) or legal (the undertaking of legal acts). Furthermore, the Court cited other decisions[833] which stated that this is vicarious liability which include acts or omissions. It is a form of strict liability, meaning that it is not based on the fault of the principal, but rather has a protective and guarantee function, and is fundamentally derived from the fault of the person to whom the task was entrusted. Thus, the perpetrator is directly liable for damage caused by their fault, while the principal is liable because they did not show due care in selecting the proper perpetrator for certain task. If the perpetrator is not at fault, or if the damage occurred outside the scope of the entrusted task, the principal may be released from liability.

[832] Resolution of the Supreme Court in Sofia, № 60292 of 21.02.2022. (Съдебен акт Решение, № 60292, гр. София, 21.02.2022 г. Върховният касационен съд).

[833] See „ППВС №7/1958 г., ППВС №4/1961 г., ППВС №9/1966 г., ППВС №4/1975 г., ТР №59/1974 г. на ОСГК, реш. № 465/28.12.2012 г. по гр.д. №1157/2011 г.,IV г.о., реш. №142/05.06.2013 г. по гр.д. №419/2012 г.,IV г.о., реш. № 503/21.07.2010 г. по гр.д. № 1069/2009 г., III г.о., реш. № 141/08.01.2021 г. по гр. д. № 3052/2019 г., IV г.о.,реш. № 63/ 01.03.2016 г. по гр.д. № 4885/2015 г., IV г.о. е.tc.“ cited in Resolution of the Supreme Court in Sofia, № 60292 of 21.02.2022.

However, what is specific in these circumstances is that if the principal's liability is not excluded by agreement, if the perpetrator further entrusts the task to the subcontractor.[834] However, their liability can also be joint and several.[835] For the latter situation, Art. 121[836]–127[837] of the Obligations Act applies. The injured party, as previously stated, has a wide range of options, including the right to claim damages from all parties together in a single proceeding or in separate proceedings. In a situation where the perpetrator pays damages, in line with Art. 54[838] of the Obligations Act, they have recourse right against the principal because their rights and obligations are regulated by the contract for services. In this case, it was a security services contract. The court examined this contract and assessed that the principal's liability for damage was not excluded; therefore, it applied Article 49 of the Obligations Act. Namely, the factual situation was that the defendant was the owner of a bar/club where the plaintiff sustained bodily injuries (a fractured heel) inflicted by the security staff when a misunderstanding arose between the plaintiff and the waiter regarding the payment of the bill. The security staff was hired by another legal person which concluded the security services contract with the defendant, in which the defendant (principal) entrusted the security of their premises (bar/club) to the latter. The case files also contained a security plan.

Based on the assessment of both documents, the court determined that the security services contract was concluded during the validity of the Law on Private Security Activities, under which the principal provides instructions and rules for the organization of security (imperative norms). The same conclusion was drawn from both the security services contract and the security plan. Although the defendant and another legal person which hired the security staff (personnel), jointly supervised and monitored them (security personnel), the court rendered a

[834] Judgements Nos. 465/28.12.2012, 1157/2011. cited in Resolution of the Supreme Court in Sofia, № 60292 of 21.02.2022.
[835] 3 PPVS br. 17/1963, cited in Resolution of the Supreme Court in Sofia, № 60292 of 21.02.2022.
[836] „Освен в определените от закона случаи солидарност между двама или повече длъжници възниква само когато е уговорена. (Ал. 2, отм. - ДВ, бр. 12 от 1993 г.)." Art. 121 of the Obligations Act.
[837] „Доколкото не следва друго от отношенията между солидарните длъжници, това, което е платено на кредитора, трябва да се понесе от тях по равно. Всеки солидарен длъжник, който е изпълнил повече от своята част, има иск срещу останалите съдлъжници за разликата. Ако някой от последните се окаже неплатежоспособен, загубата се разпределя съразмерно между другите съдлъжници, включително и този, който е изпълнил. В случай че изпълнилият солидарен длъжник не е противопоставил на кредитора някое общо възражение или не е уведомил своите съдлъжници за изпълнението, той отговаря спрямо тях за причинените вреди." Art. 127 of the Obligations Act.
[838] „Лицето, което отговаря за вреди, причинени виновно от другиго, има иск против него за това, което е платил." Art. 54 of the Obligations Act.

judgment holding the principal (the defendant) liable under Article 49 of the Obligations Act, as they had direct control over the security personnel in their premises at all times.[839]

14.3 State liability for damage caused by public officials

The state's liability for damage caused to its citizens is regulated under the State and Municipal Liability Act of 1989.[840] Art. 1, paragraph 1 stipulates that the state and municipalities are liable for damage caused to citizens and legal persons by unlawful acts or omissions by their organs and public officials in the course of administrative activities, in addition to the damage caused by actions of by-laws that have been annulled as unlawful or declared void.[841]

The second paragraph of the same article prescribes the state's liability for pecuniary and non-pecuniary damage caused by the failure to issue documents in accordance with the Administrative Procedure Act.[842] In addition, the claim will be filed in line with the rules of administrative procedure.[843]

14.4 Employer's Liability for Damage Caused by the Employee to a Third Party using a dangerous thing or performing a dangerous activity

The Obligations Act in Art. 50 prescribes joint and several liability of the owner of and the person supervising a thing that caused the damage.[844] However, it does not specifically

[839] Resolution of the Supreme Court in Sofia, № 60292 of 21.02.2022. (Съдебен акт Решение, № 60292, гр. София, 21.02.2022 г. Върховният касационен съд).
[840] Закон за отговорността на държавата и общините за вреди (State and Municipal Liability Act, with ammendments of 11.04.2006. and 12.07.2006.)
[841] „Държавата и общините отговарят за вредите, причинени на граждани и юридически лица от незаконосъобразни актове, действия или бездействия на техни органи и длъжностни лица при или по повод изпълнение на административна дейност, както и за вредите, причинени от действието на отменени като незаконосъобразни или обявени за нищожни подзаконови нормативни актове.“ Art. 1, par. 1 of the State and Municipal Liability Act.
[842] „Държавата отговаря за имуществени и неимуществени вреди, причинени на граждани и юридически лица от неиздаване на документ в срока по чл. 174 от Административнопроцесуалния кодекс.“ Art. 1, par. 2 of the State and Municipal Liability Act.
[843] „Исковете по ал. 1 и 2 се разглеждат по реда, установен в Административнопроцесуалния кодекс, като местната подсъдност се определя по чл. 7, ал. 1.“ Art. 1, par. 3 of the State and Municipal Liability Act.
[844] Obligations Act, Art. 50.

prescribe the liability for damage caused by dangerous activities. Furthermore, it also does not prescribe employer's liability for damage caused by the employee to a third party using a dangerous thing or performing a dangerous activity.

However, in the following case, the European Court of Human Rights cited decisions of the Supreme Court of Bulgaria, according to which this Art. 50 applies to legal persons, in addition to Art. 49. of the Bulgarian Obligations Act.[845]

Namely, the applicant lodged an application against the State of Bulgaria before the European Court of Human Rights in Strasbourg, claiming compensation for the damage he suffered as a result of a serious injury caused by the lack of safety measures at a transformer station. The claim was based on the fact that the Bulgarian judicial system had failed to identify the employees and legal persons liable for the incident.

Furthermore, the facts of the case were that the plaintiff was eleven years old when he suffered an electric shock while entering a building that housed a transformer. He argued that, under the law in force at the time, the ownership of the power plants was held by the state. The same law stipulated that power plants and state organs were liable for the safety of those installations. The fact is that the transformer station in which the plaintiff was injured was not locked due to the negligence of the staff and organs who were liable for supervising that installation, as this activity was dangerous as prescribed by the Law on Electrical Energy of 1975.[846]

Namely, until 16 July 1999, the Electricity Act of 1975 was in force, and according to Sec. 2 the State was the owner of electricity power stations, installations and networks. In addition, the Energy Agency has the authority to authorise the acquisition of these electrical facilities (other organisations could acquire them).[847]

The court found that a criminal investigation was initiated after the incident and that the prosecutor's office brought charges against an employee employed in the transformer station for causing the injury to the plaintiff negligently. However, during the criminal proceedings, the charges against the employee were dismissed because it was established that the transformer station did not belong to the electricity supply company. The court concluded that the investigation was not effective because the owner of the transformer station was not identified, which prevented the applicant from bringing a new lawsuit. However, the plaintiff failed to

[845] Case of Iliya Petrov vs Bulgaria, Application No. 19202/03, final decision, Strasbourg, April 24, 2012.
[846] Ibid.
[847] The Electricity Act of 1975, Regulations on its implementation of 1976, cited in Ilinovi v. Bulgaria Decision, Application no. 23590/06, p. 4.

submit medical documentation as evidence for his claim that the State should pay him compensation for head surgery, and the court rejected that claim. However, the court awarded him EUR 15,000 for non-pecuniary damage for a violation of Article 2 of the Convention on Human Rights.[848]

15 EMPLOYER'S LIABILITY FOR DAMAGE CAUSED BY THE EMPLOYEE TO A THIRD PARTY UNDER THE LAWS OF SUCCESSOR STATES OF THE FORMER YUGOSLAVIA

16 Employer's Liability for Damage Caused by the Employee to a Third Party under Slovenian Law

16.1 General considerations

In Slovenia, Article 147 Section 1 of the Obligations Act stipulates that a legal or natural person who hired the employee is liable for damage caused by the employee to a third party at work or in work-related situations, unless they can prove that the employee acted as required under the given circumstances.[849]

Being a form of vicarious liability, the employer's liability arises from the actions of another person, and as a result, the employee's actions toward third parties are considered to be the actions of the employer.[850]

[848] Case of Iliya Petrov vs Bulgaria.
[849] Obligacijski zakonik [Obligations Act], Official Gazette of the RS, Nos. 83/01, 32/04, 28/06, 40/07, 97/07– official consolidated text, 64/16 and 20/18.
[850] Samec, N. Berghaus, A. Bitrakov Drnovšek, K. (2024) *Tort Law in Slovenia*, Kluwer Law International, Alphen aan den Rijn, the Netherlands, p. 71.

The employer cannot be held liable for the actions of an employee merely due to fault made during the hiring process (*culpa in eligendo*) or fault in supervising the employee's performance of duties (*culpa in custodiendo*), or fault in wrongful instructions given to an employee (*culpa in inspeciendo*).[851] According to Cigoj's opinion, the Obligations Act establishes strict liability for both legal and natural persons (referred to as employers) regarding their employees. This stipulation indicates that employers are held liable even when they can demonstrate that they have conducted proper employee selection, provided adequate supervision, and delivered appropriate training. Even when an employer diligently fulfils all duties and adheres to best practices, resulting in no fault attributable to them, they assume the risk for the actions of their employees.[852]

The employees carry out their duties on behalf of the employer, for the employer's interest and account. Thus, it is essential to shift the risks associated with the employees' activities to the employer. The employer is liable for establishing the employment relationship with the employee, and the employee is the employer's extended arm. This perspective seems most just, particularly from the viewpoint of the injured party who suffered damage. If the employer is permitted to demonstrate their lack of fault, the injured party may frequently end up without compensation, especially in cases of significant damage, as it could be challenging to redress it from a financially weaker employee. The principle of strict liability of the employers for their employees is also a standpoint of case law.[853]

Thus, the employer is liable instead of the employee for damage caused related to their work, because the employee acted for the benefit of the employer. This liability arises from the legal doctrine known as respondeat superior, which asserts that the employer is the higher subject in this relationship.[854]

In that hierarchical relationship of subordination and authority lies the fundamental aspect of defining the legal terms employee and employer. The Obligations Act includes both natural and legal persons in the term employer;[855] however, the definition of these terms is provided by the Employment Relationship Act. Namely, as defined, the employee is a natural person engaged

[851] Jadek Pensa, 836 cited in Samec, N. Berghaus, A. Bitrakov Drnovšek, K. (2024), p. 71.
[852] Cigoj, 629. Cited in Špela Mežnar (2004): Odgovornost delodajalcev v obligacijskem pravu, Pravnik, Ljubljana p. 55.
[853] Špela Mežnar (2004): p. 55.
[854] Dunja Jadek Pensa 2004: Odškodninska odgovornost delodajalcev za delavce, Delavci in delodajalci, 2-3/IV, p. 292.
[855] Jadek Pensa, D. (2003a): '4. odsek: Odgovornost za delavce' in Juhart, M., Plavšak, N. (eds.) Obligacijski zakonik (OZ) (splošni del) s komentarjem, Ljubljana: GV Založba, p. 837.

in an employment relationship based on an employment contract.[856] While the term employer refers to a legal or natural person, as well as other subjects, including state authorities, local government units, branch offices, foreign companies, and diplomatic or consular missions that employ employees based on an employment contract.[857] In addition, another reason why the employer is held liable instead of the employee is the intention to encourage the employee to act on their own initiative, without constantly fearing personal liability for actions undertaken in the interest of the employer.[858] Nevertheless, the employer's liability is not absolute, as it is reflected in their right to seek recourse from the employee.[859] This right is stipulated in Article 147 Section 2 of the Obligations Act, but as mentioned above, this Act uses the term employer to refer to natural and legal persons (only the title of the Article 147 uses the term employer) and stipulates that any person who pays compensation for damage caused intentionally or with gross negligence to the injured party by the employee is entitled to full recourse against the employee.[860] This right expires in six months following the date on which compensation was given.[861]

In order to establish the employer's liability, in addition to the general rules, some other prerequisites must be met, according to Article 131 Section 1 of the Obligations Act, which encompass unlawful conduct, damage, causation and fault (culpability); thus, additional conditions are the existence of an employee-employer relationship and that the damage was caused by the employee at work or related to work, according to Article 147, Section 1 of the Obligations Act.[862]

The legal basis of the employee-employer relationship is an employment contract or employment relationship's elements.[863] Namely, according to Article 18 of the Employment Act, these elements of the employment relationship are subject to evaluation in the event of a dispute, whether an employment relationship exists between the employer and employee.[864] Employment relationship exists in the event of voluntary engagement of the employee in the

[856] Zakon o delovnih razmerjih (ZDR-1), Uradni list RS, št. 21/13, 78/13 – popr., 47/15 – ZZSDT, 33/16 – PZ-F, 52/16, 15/17 – odl. US, 22/19 – ZPosS, 81/19, 203/20 – ZIUPOPDVE, 119/21 – ZČmIS-A, 202/21 – odl. US, 15/22, 54/22 – ZUPŠ-1, 114/23 in 136/23 – ZIUZDS, Article 5, Sec. 1.
[857] Employment Relationship Act, Article 5, Sec. 2.
[858] Jadek Pensa, D. (2003a): p. 836.
[859] Ibid., p. 837.
[860] Obligations Act, Art 147, Sec. 3.
[861] Obligations Act, Art 147, Sec. 4.
[862] Dunja Jadek Pensa 2004: p. 291-292.
[863] Samec, N. et al, p. 71
[864] Zakon o delovnih razmerjih [the Act on employment relationships], Official Gazette of the RS, Nos. 21/13, 78/13, 47/15, 33/16, 52/16, 15/17, 22/19, 81/19, 203/20, 119/21, 202/21, 15/22, 54/22, 114/23 and 136/23.

work process of the employer, acting under their supervision and control in exchange for a salary.[865] This relationship also includes other cases of the subordinate position of every natural person who undertakes work under the control of the employer, where the legal ground and duration of that relationship are not legally relevant. It is only relevant that the work is done for another interest, rather in person than with the help of an intermediary.[866] Neither risk nor profit is attributed to a person acting on behalf of another.[867]

Regarding the condition of the existence of damage, it must emerge during work or in connection with work duties. It should be noted that an employee's conduct during work or related to work that causes damage to a third party is considered a damaging event (*škodni dogodek*). It is regarded that the damaging act was committed at work if the employee caused it during working hours, at the workplace, and within the scope of their functions.[868] The existence of a functional connection is of essential importance because if the employee caused damage merely in the course of performing their duties, the employer will not be held liable.[869] However, an opposite standpoint can also be found in the case law, where the possibility that damage occurs outside working hours and the workplace is not excluded, but in such a case, as mentioned, it is essential that there is a connection between the employer's business activity and the employee's act that caused the damage. As explained in the judgment, the case involved a police officer who brought a weapon into the canteen after working hours, which accidentally discharged. The employer was not held liable because the officer's conduct was not functionally connected to their duties.[870] Another case in which the employer was not held liable concerns a telephone operator who stole a watch while at work, either from another employee or from a third party, as the act was not committed in the capacity of an employee. The situation would be different, for instance, if a security guard responded inappropriately to verbal abuse from a guest while performing their duties as an employee. That is why in such professions, a higher level of tolerance is required. Moreover, Article 16 of the Obligations Act was also infringed, which imposes a general duty that everyone is obliged to refrain from actions that cause harm to others.[871]

[865] Samec, N. et. al., 2024, p. 71.
[866] Ibid., p. 71.
[867] Ibid., p. 71.
[868] Dunja Jadek Pensa 2004: p. 294.
[869] Špela Mežnar (2004): p. 58.
[870] VSS II Ips 295/99, 2001, 124. Cited in Dunja Jadek Pensa 2004, p. 295.
[871] VSS II Ips 679/95, 1997. Cited in Dunja Jadek Pensa 2004, pp. 295-296.

In addition, the most common case when an employee causes damage outside of the workplace and working hours, but related to tasks assigned to them in the course of the employer's work activities, involves the use of a company vehicle. In such circumstances, the damage is considered work-related and the employer shall be held liable even if the driver permitted another person to drive the vehicle and that person caused the damage.[872]

16.2 Liability of a legal person for damage caused by its organ

Article 148 of the Obligations Act contains a special rule on the liability of a legal person for damage caused by its organs during the performance of its functions or in relation thereto.[873]

The Slovenian literature also emphasises that, as an artificial creation, a legal person expresses its will through its organs consisting of natural persons. In legal matters, the intentions of these organs are considered the intentions of the legal person itself. Therefore, the legal person is liable for any damage caused to third parties by its organs while performing their duties or related to them. This does not constitute vicarious liability, because the organ is a part of the legal person; thus, this is the liability for one's own actions. A legal person is liable under the general rules on liability for damage, unless the statute prescribes strict liability.[874]

Consequently, the legal person can be released of liability for damage if it demonstrates that the members of the organ acted with the due diligence expected in completing that specific type of transaction or related activity.[875] It should be emphasised that in any instance, diligence is assessed based on the standards applicable to legal persons; however, if a specific issue pertains to the profit-making activities of the legal persons, the members of its organs must exercise a higher level of diligence (that of a competent professional)[876], which encompasses adherence to professional standards and customary practices.[877]

[872] VGS Slo 448/66, 71; Cigoj, 441. Cited in Špela Mežnar (2004): p. 58.
[873] Obligations Act, Art 148, Sec. 1.
[874] Samec, N. et. al., 2024, p. 76.
[875] Ibid.
[876] Part I, Ch. 1, §§2 and 3. Cited in Samec, N. et. al., 2024, p. 76.
[877] Obligations Act, Art. 6.

16.3 State liability for damage caused by public officials

The right to seek compensation for damage caused by unlawful acts of officials, government organs, municipalities, or other public authorities is guaranteed to everyone under the Slovenian Constitution.[878] Furthermore, according to Article 26, Section 2 of the Constitution, the injured party may claim damages directly from the tortfeasor under the conditions prescribed by other statutes.[879]

As the rules stipulated by the Constitution are insufficient for this broad issue, the general rules of the law of obligations apply.[880] First, provisions regarding the employer's liability for damage caused by an employee to a third party at work or in work-related situations (Article 147 of the Obligations Act) and the legal person's liability for damage caused by its organs (Article 148 of the Obligations Act) are applied to the state.[881]

16.4 Employer's Liability for Damage Caused by the Employee to a Third Party using a dangerous thing or performing a dangerous activity

The Slovenian legal literature points out, that although it is not forbidden to possess dangerous things or perform dangerous activities, it carries a risk of causing damage.[882] There is a certain degree of tolerance by society for the increased risk of causing the damage, but not for the damage itself.[883] In addition, the Obligations Act in Art. 10 prohibits causing damage to others.[884] Fault-based liability for unlawful conduct is not the most suitable ground of establishing liability, because the focus is on the risk of causing the damage and its allocation.[885]

[878] Ustava Republike Slovenije [Constitution of the Republic of Slovenia], Official Gazette RS, Nos. 33/91-I, 42/97, 66/00, 24/03, 47, 68, 69/04, 69/04, 69/04, 68/06 , 140, 143, 47/13, 47/13 75/16 and 92/21, Art. 26. Sec. 1.
[879] Constitution of the Republic of Slovenia, Art. 26. Sec. 2.
[880] Samec, Berghaus, Bitrakov and Drnovšek, 2024, 64.
[881] Samec et al., 2024, p. 64. Obligations Act, Art. 147 and 148.
[882] D. Jadek Pensa in Miha Juhart, Nina Plavšak (eds): (2003) Obligacijski zakonik (OZ) (splošni del) s komentajrem, 1. knjiga (1 do 189. člen), Založba, Ljubljana, p. 848.
[883] Ibid., p. 848.
[884] Obligations Act, Art. 10.
[885] D. Jadek Pensa 2003, p. 848.

As far as this topic is concerned, as already explained in the first chapter, Article 147 Section 1 of the Obligations Act provides liability of a legal or natural person for damage caused by an employee to a third party, unless proven that the employee acted as required.[886] Sec 5 of the same article foresees that Sec 1 does not preclude liability if the damage is caused by dangerous things or dangerous activities.[887] Art. 131 Sec 2 of the Obligations Act applies to the employer, pertaining to the fact that their liability is strict.[888] Furthermore, the employer could also be in a position of an owner of a dangerous thing or a person who performs dangerous activities on their own or through the employee.[889] The employer cannot realise themselves from liability for the reason prescribed in Art. 147 Sec 1 because the liability in this event is grounded on causation, not on the behaviour of the employee.[890] Thus, the causation is presumed; it originates from the dangerous thing or activity, and the employer will not be liable if they prove that the dangerous thing or activity were not the cause.[891]

17 Employer's Liability for Damage Caused by the Employee to a Third Party under Croatian Law

17.1 General considerations

Under Croatian law, Article 1061, Section 1 of the Obligations Act prescribes that the employer is held liable for damage caused by an employee to a third party at work or in work-related situations, unless they can prove that there are grounds for excluding the employee's liability.[892] This is a form of vicarious liability where a legal relationship involves three parties: the

[886] Obligations Act, Art. 147, Sec. 1.
[887] „Določba prvega odstavka tega člena ne posega v pravila o odgovornosti za škodo, ki izvira od nevarne stvari ali nevarne dejavnosti.“ Obligations Act, Art. 147, Sec. 5.
[888] D. Jadek Pensa 2003, p. 840.
[889] Ibid., p. 840.
[890] Ibid., p. 840.
[891] „Za škodo, nastalo v zvezi z nevarno stvarjo oziroma nevarno dejavnostjo, se šteje,
da izvira iz te stvari oziroma te dejavnosti, razen če se dokaže, da ta ni bila vzrok.“ Obligations Act, Art. 149.
[892] Zakon o obveznim odnosima [Obligations Act], Official Gazette of RC Nos. 35/05, 41/08, 125/11, 78/15, 29/18, 126/21, 114/22, 156/22 and 155/23.

employee as the actual tortfeasor, the employer as the presumed tortfeasor and liable party, and the third party is the injured party.[893]

The injured party may seek compensation for the damage from the employer, not from the employee who caused it. However, if the employee intentionally caused damage, as an exception, the injured party can opt to claim damages directly from them.[894] This right is stipulated by Article 1061, Section 2 of the Obligations Act[895] but if the employee caused damage with gross negligence, the injured party does not have the possibility to bring a direct claim.[896]

Furthermore, both the Obligations Act in Article 1061 in Section 3[897] and the Employment Act in Article 109 of the Employment Act stipulate that the employer who has compensated a third party for damage caused by an employee with intent or gross negligence has a recourse claim against the employee.[898] This right is subject to a six-month statute of limitations, which begins from the moment of redress.[899]

In civil litigation, the employee may raise objections concerning the validity of the claim filed by the third party who received compensation from the employer, such as whether the claim is time-barred or the amount is unfounded, as well as objections regarding the employee's liability or a reduction of that liability.[900] However, if the employee's has the status of intervener in the civil proceedings on the employer's side, they may file all claims as a party to the proceedings as long as there is no conflict of interest.[901] At that point, the procedural effect of intervention (intervention effect) takes place, whereby the employee loses the possibility, in a recourse action brought by the employer against him/her, of asserting the same objections that were adjudicated in the previous proceedings in which they were intervener.[902]

[893] V. Gorenc, L. Belanić, H. Momčinović, A. Perkušić, A. Pešutić, Z. Slakoper, M. Vukelić, B. Vukmir (2014): Komentar zakona o obveznim odnosima, Narodne novine, Zagreb, p. 1744.
[894] Petar Klarić and Martin Vedriš, 2009, Građansko pravo, Narodne novine d. d., Zagreb, p. 624.
[895] Obligations Act, Art. 1061, Sec. 2.
[896] Valentino Kuželj, 2024, p. 12.
[897] Obligations Act, Art. 1061, Sec. 3.
[898] Zakon o radu [Employment Act], Official Gazette of RC Nos. 93/14, 127/17, 98/19, 151/22, 46/23 and 64/23.
[899] Obligations Act, Art. 1061, Sec. 4.
[900] Magud Mirjana and Horvat Mataić Vlasta (2016): Problematika naknade štete na radu i u vezi sa radom Pravosudna akademija Zagreb, p. 20.
[901] Art. 208, Zakon o parničnom postupku [Civil Procedure Act], Official Gazette of RC Nos. SL SFRJ 4/77, 36/77, 6/80, 36/80, 43/82, 69/82, 58/84, 74/87, 57/89, 20/90, 27/90, 35/91, i NN 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 96/08, 123/08, 57/11, 148/11, 25/13, 89/14, 70/19, 80/22, 114/22 and 155/23
[902] Problematika, 2016…, p. 21.

However, since Article 109 does not regulate the issue of recourse claims differently as the Obligations Act, it cannot be considered a lex specialis.[903]

The injured party, or it is better to use the term third party, is every legal person who differs from the employer or every natural person who also includes another employee of the same employer with whom the injured party is also employed.[904] Thus, this leads to the question of who can be the subjects of liability. Namely, subjects or parties liable for damage are one of the conditions to establish liability for damage caused by an employee to a third party; thus, there must be parties liable for the damage, the employee's harmful act, the existence of damage, a causal relationship, and illegality.[905]

The parties are the employer and employee, as defined by the Employment Act.[906] In addition, they must be in a legally relevant relationship, established by a labour agreement concluded between them.[907]

Article 4 provides a broad understanding of the term employee. Namely, it also implies categories such as worker, employed person, staff member, civil servant, and similar and all of them are referred to as an employee. The definition is that the employee is a natural person who conducts the tasks for an employer within an employment relationship.[908] They can also be a member of the management board or an executive director, or a natural person who, in another capacity, as well as under a specific statute, is authorised to conduct the employer's business, as an employee[909] but in these situations, the Employment Act regarding the provisions about employment contracts, fixed-term employment, termination, notice periods, and severance pay does not apply.[910] Thus, such aforementioned specific statutes which regulate some issues regarding damage compensation in employment relationships are the Companies Act,[911] the Occupational Health and Safety Act,[912] Anti-Discrimination Act.[913] In addition, it should be noted that Croatia has ratified numerous international conventions of the International Labour

[903] Valentino Kuželj, 2024, Odgovornost radnika za štetu nastalu na radu ili u vezi s radom (poslodavcu i trećoj osobi), Pravo i porezi, p. 17.
[904] Petar Klarić and Martin Vedriš, 2009, p. 624.
[905] Sandra Laleta, 2003, Odgovornost za štetu koju prouzroči radnik na radu i u vezi s radom trećim osobama (usporedba s njemačkim, austrijskim i europskim pravom), Sveučilište u Rijeci, Pravni fakultet, p. 59.
[906] Zakon o radu [Employment Act], Official Gazette of RC Nos. 93/14, 127/17, 98/19, 151/22, 46/23 and 64/23.
[907] V. Gorenc, et. Al. (2014): p. 1744.
[908] Employment Act, Art. 4, Sec. 1.
[909] Employment Act, Art. 4, Sec. 3.
[910] Employment Act, Art. 4, Sec. 3.
[911] Zakon o trgovačkim društvima, Official Gazette of RC, Nos. 111/93, 34/99, 121/99, 52/00, 118/03, 107/07, 146/08, 137/09, 125/11, 152/11, 111/12, 68/13, 110/15, 40/19, 34/22, 114/22, 18/23, 130/23 and 136/24.
[912] Zakon o zaštiti na radu, Official Gazette of RC, Nos. 71/14, 118/14, 154/14, 94/18 and 96/18.
[913] Zakon o suzbijanju diskriminacije, Official Gazette of RC, Nos. 85/08 and 112/12.

Organisation, which constitute part of the internal legal order, as well as the duties based on the Stabilisation and Association Agreement between the Republic of Croatia and the European Communities and their Member States and the Treaty on Accession of the Republic of Croatia to the European to the European Union.[914] Based on these acts, it was necessary to harmonise national legislation with the legislation of the European Union and to specifically regulate the liability for damage arising from an employment relationship.[915]

If a comparison is made between English and Croatian terminology regarding the terms employee and worker, Croatian law does not distinguish between these terms as is the case in English labour law; thus, the conclusion is that employee and worker have the same meaning under both Acts – Obligations and Employment.[916]

However, twenty years ago different terms were used. The archaic term worker was used in Article 170 of the previous Obligations Act; the term employee is used in Article 1061 of the Obligations Act in force. The case law defined further the term work: a legal question was raised before the Supreme Court of Croatia, whether an employer is liable for damage caused to a third party by a person performing a one-time job, and whether such damage is considered that have been caused at work or in work-related situations. The Supreme Court gave an opinion that the tortfeasor was not the worker hired by the employer because the real worker in that case was the waiter who assigned that person to temporarily replace him behind the bar due to a holiday rush on New Year's Eve, having coincidentally come across him at the restaurant. The person who was engaged for momentary assistance reacted inappropriately to an intoxicated guest; he hit him and inflicted serious bodily injuries on him.

In this case, the employer was held liable for their worker, who failed to properly supervise the premises and assigned an unqualified person for assistance. The worker did not act as required under the given circumstances, which constitutes the reason for the employer's liability for the damage caused to third parties by the worker during the performance of his work duties.[917] Thus, the conclusion is that the employer's liability for their employees is based on a formal requirement, namely the employment contract.[918] This opens the next issue of liability when a

[914] Croatia has been a member of the ILO since June 30, 1992. In Trpimir Perkušić, 2021, Odgovornost za štete kod privremenog zapošljavanja, Zbornik radova Pravnog fakulteta u Splitu, pp. 634-635.
[915] Ibid., p. 635.
[916] Valentino Kuželj, 2024, p. 17.
[917] Judgment of the Supreme Court of the RC, Rev 714/05-2 of February 21, 2006. Cited in Valentino Kuželj, 2024, p. 18.
[918] Valentino Kuželj, 2024, p. 18.

temporary agency employee causes damage to a third party.[919] This liability for damage is regulated by Article 51, Section 1 of the Employment Act.[920]

Namely, with the Amendments to the Employment Act of 1995, temporary employment through employment agencies was introduced.[921] In addition, Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work was implemented into Croatian law[922] and the requirements of the 1997 ILO Convention on Private Employment Agencies have also been accepted.[923] This is a tripartite relationship, according to the Employment Act: on one side is the temporary employment agency, on the other is the user to whom the agency assigns an employee for temporary work, and the third party is the assigned employee. Thus, this form of employment provides advantages for employers by eliminating the need to conclude an employment contract, and it also offers the benefit of reducing unemployment and enhancing the mobility and flexibility of employees.[924] Namely, only the user and the agency conclude a contract on the assignment of an employee, while the agency and the employee conclude an employment contract for temporary work; thus, a contract between the user and the employee is not envisaged.[925]

As mentioned before, the Employment Act regulates this issue, according to which the user is obliged to compensate the damage caused by the assigned employee to a third party at work or connected to work, while regarding recourse liability, the user is considered the employer of the assigned employee.[926] Thus, although the specific statute (Employment Act) regulates this issue, it lacks clarity regarding the nature and criteria of liability, therefore the provision of the Obligations Act about the employer's liability for damage caused by the employee is also applied and both acts should be taken into consideration when assessing the prerequisites for establishing this kind of liability.[927]

When comparing the solutions provided by these two acts, the difference lies in the fact that this form of employment is based on an employee's assignment contract concluded between the agency and the user, and on an employment contract for temporary work concluded between

[919] Ibid., p. 18.
[920] Employment Act, Art. 51, Sec. 1.
[921] Trpimir Perkušić (2021): Odgovornost za štete kod privremenog zapošljavanja, *Zbornik radova Pravnog fakulteta u Splitu*, p. 636.
[922] Employment Act, Art. 2, Sec. 1.
[923] Trpimir Perkušić (2021): p. 637.
[924] Ibid., p. 637.
[925] Ibid., p. 637.
[926] Employment Act, Art. 51, Sec. 1.
[927] Trpimir Perkušić (2021): p. 641.

the agency and the employee. In addition, although the formal employer is the agency, it shall not be considered as the liable party. The liable party is the user, as they give instructions and supervises the work of the employee, while the agency does not influence the circumstances that may lead to damage caused to third parties by the employee. This is precisely where the justification lies for the existence of a specific provision on the liability of the user under Article 51, paragraph 1 of the Employment Act.[928] In a situation where the employee caused damage to the user, the agency is liable under the general rules of the obligations law, according to Article 51, paragraph 2 of the Employment Act.[929]

17.2 Liability of a legal person for damage caused by its organ

Article 1062 of the Obligations Act envisages the liability of a legal person for any damage caused by its body (organ) to a third party in the performance of, or in connection with the performance of, its functions.[930] If the damage was caused intentionally or with gross negligence, the legal person has a recourse claim against the tortfeasor.[931] This claim is subject to statute of limitation in duration of six months from the date when legal person redress the damage caused to the third party.[932]

Namely, a legal person is represented by its bodies in accordance with Article 18, Section 5 of the Obligations Act.[933] In legal transactions, they act in the capacity of a legal person, and not as representatives and employees. In relation to third parties, the body is not separate from the legal person, but rather an integral part of it.[934]

According to Section 1, the damage must have been caused in the performance, or in connection with the performance of the functions of the body, and determined on a case-by-case basis.[935]

The qualification of this type of liability as liability for another depends on the provision concerning the right of recourse. This provision emphasises that ultimately, a natural person is liable for the compensation for damage repair costs, even though the damage originated from a

[928] Ibid., p. 643.
[929] Employment Act, Art. 51, Sec. 2.
[930] Obligations Act, Art. 1062, Sect. 1.
[931] Obligations Act, Art. 1062, Sect. 2.
[932] Obligations Act, Art. 1062, Sect. 2.
[933] Obligations Act, Art. 18, Sect. 5.
[934] V. Gorenc, et. al. (2014): p. 1747.
[935] Ibid.

collective organ. It establishes the basis of the liability of a legal person for the actions of another. In the absence of a recourse mechanism against a specific person, the situation would not constitute liability for another; rather, it would simply reflect the liability of the legal person itself. Legally, the actions taken by an organ, such as a committee, are ascribed to the legal person as a whole. In addition, since these organs do not qualify as separate legal subjects, any damage they cause cannot be directly attributed to them but rather to the overarching legal person to which they are affiliated. A genuine case of liability for another requires that the other party involved is recognised as a distinct legal person.[936]

The existence of fault on the part of the legal person itself, as a prerequisite for liability, is assessed based on the fault of a member of the legal person's organ.[937] The minority in the legal theory supports that this is strict liability because the statute does not provide the possibility to prove the absence of fault.[938] However, the majority claims that it is presumed fault-based liability of a legal person because it is liable for the damage caused by its organs as for its own acts.[939] In addition, if the damage is caused by a dangerous thing or dangerous activity, the liability is strict according to the general rule of the law of obligations. The interpretation for this standpoint is that the legal person's body appears as the legal person itself in legal transactions, not as an employee or legal person's representative. A legal person can commit a tort only through its body because it expresses its will through them and bears liability for their acts as if they were its own. Thus, general rules of the law of obligations apply to the exemption of a legal person from liability, and that is the reason why the injured party cannot claim damages directly from the persons acting as the organ.[940] However, in line with the aforementioned, if the tortfeasor caused damage intentionally or with gross negligence, the legal person has a recourse claim.[941]

[936] Petar Klarić and Martin Vedriš, 2009, p. 625.
[937] VSRH, Rev 1996/1982 of 11/02/1987, PSP-34/81, cited in V. Gorenc, et. al. (2014): p. 1748.
[938] Đorđević- Stanković, 417.; Vizner, 730. does not explicitly support strict liability, but rather claim that the presumption of fault cannot be rebutted, and that means the liability is strict. Cited in Silvija Petrić (1991): p. 103.
[939] Silvija Petrić (1991): p. 103.
[940] Ibid., p. 103.
[941] Obligations Act, Art. 1062, Sect. 2.

17.3 State liability for damage caused by public officials

According to the Act on the State Administration System of 2011, the state liability for damage was interpreted widely because state is liable regardless of who caused the damage.[942] It prescribed the liability of the Republic of Croatia for any damage caused to a natural or legal person by unlawful or improper acts of the organs (bodies) of the state administration system, municipalities and legal persons of public law.[943] However, the new Act on the State Administration System of 2019 limited the liability in Article 14.[944] Namely, based on this Act, the state is liable for damage caused to a natural or legal person by state administration's or irregular acts where the liable party is the state, the organ is the tortfeasor of the state administration, and real tortfeasors are civil servants and officials (the employees employed in the state's organs. Municipalities and legal persons of public law are liable by themselves.[945]

Particularly, the Act on Civil Servants and Employees in Local (regional) self-government prescribes the liability of municipalities.[946] Article 71, Section 1 stipulates the civil servant's liability for damage caused to the municipality intentionally or with gross negligence.[947]

Section 2 of the same article stipulates that the damage envisaged in Section 1 is considered as the damages paid by the municipality to the natural or legal person who sustained damage caused by the employee with intent or gross negligence. In addition, as Article 73. prescribes that if the civil servant rejects to pay damages voluntarily, the general rules of the law of obligations apply.[948] If the civil servant acts on the orders of the superior, whom the civil servant has alerted to possible damage, the civil servant will not be liable.[949]

[942] Frane Staničić (2016): „Odgovornost države za štetu nastalu nezakonitim ili nepravilnim radom - problemi u praksi", *Hrvatska pravna revija*, 16 (1), p. 35.
[943] Zakon o sustavu državne uprave [Act on the State Administration System], Official Gazette of RC, Nos. 150/11, 12/13, 93/16 and 104/16, Art. 14.
[944] Zakon o sustavu državne uprave [Act on the State Administration System], Official Gazette of RC Nos. 66/19, and 155/23.
[945] Jelušić, D. (2020) „Novo normativno rješenje pitanja državne odgovornosti za naknadu štete pričinjene u obavljanju poslova državne uprave", *Hrvatska pravna revija*, pp. 12.
[946] Zakon o službenicima i namještenicima u lokalnoj i područnoj (regionalnoj) samoupravi [Act on Civil Servants and Employees in Local and Regional Sef Government], Official Gazette of RC, Nos. 86/08, 61/11, 04/18, 112/19 and 17/25.
[947] Act on Civil Servants and Employees in local and (Regional) Self-government, Art. 71, Sec. 1.
[948] Act on Civil Servants and Employees in local and Regional) Self-government, Art. 73.
[949] Act on Civil Servants and Employees in local and (Regional) Self-government, Art. 77.

The conditions required for establishing the state liability are as follows: an unlawful or improper act of the state administration, resulting damage, and a causal relationship between the damage and these acts.[950]

The tortfeasors are civil servants and employees to whom the Act on Civil Servants applies.[951] A claim cannot be addressed against them in civil litigation, not even in cases of intentional damage, as the state liability is vicarious, rendering the state primary and directly liable.[952]

However, earlier interpretations of the 1978 Obligations Act suggested a different approach, allowing injured parties to bring direct lawsuits against civil servants under Article 170, Section 2.[953] Currently, Article 1061 regulates the employer's liability for damage inflicted by an employee upon a third party.[954] Within this context, the literature has categorised employer liability as fault-based; however, it fundamentally hinges on the fault of the employee.[955]

In addition, according to the opinion of legal scholars, Article 1062 of the Obligations Act, pertaining to the liability of legal persons for the actions of their organs, also applies to the state's liability for damage caused by public officials to third parties.[956]

17.4 Employer's Liability for Damage Caused by the Employee to a Third Party using a dangerous thing or performing a dangerous activity

Under Croatian law, like in Serbian, the Obligations Act does not define the notions of dangerous things and dangerous activities. Rather, it is up to the case law and literature to determine what is considered as that.[957] During the application of the Art. 173 of the previous Obligations Act of 1991 (which was shared in the former Yugoslavia), the courts have held the standpoint that a thing is deemed dangerous (whether movable or immovable) if its existence and position create an increased risk of causing damage. In addition, it is required that such a

[950] Staničić, 2016, p. 36.
[951] Zakon o državnim službenicima [Act on Civil Servants], Official Gazette of RC, Nos. 155/23 and 85/24.
[952] Jug and Orlić Zaninović, 2020, pp. 8-9.
[953] Čuveljak, 2001, pp. 129-130.
[954] Gorenc, 2014, p. 1743.
[955] Baretić in Josipović ed., 2014, p. 173.
[956] Demark, 2023, p. 73.
[957] Ivica Crnić (2018): Zakon obveznim odnosima sa izmjenama iz 2018. i dodatnom sudskom praksom, Organizator, Opsežna sudska praksa, napomene i komentari, detaljno abecedno kazalo pojmova, Zagreb, p. 1571.

thing be subject to special supervision and use.[958] The same applies to dangerous activities. According to case law, a dangerous activity is one which, by the very nature of the manner in which it is performed, poses an increased risk to human health and property. A person who performs a dangerous activity must exercise a higher degree of care.[959] According to the standpoint of the Constitutional Court, the general rules of strict liability apply to all for damage caused by dangerous things and dangerous activities which ordinary courts assess as dangerous.[960] The injured party is not obliged to prove a causal link due to the presumption that the damage was caused by dangerous things or dangerous activities.[961] For example, firefighting activities pose an increased risk to the surrounding environment.[962] The liability of the fire brigade unit is vicarious.[963] In addition, the fire brigade can be considered both an employer and a legal person that is liable for its employee who is a firefighter based on Art. 1061 or 1062 of the Obligations Act. However, in situations when the damage is caused by using a dangerous thin or activities, the liability of fire brigade is strict.[964]

18 Employer's Liability for Damage Caused by the Employee to a Third Party under North Macedonian Law

18.1 General considerations

[958] Decisions of the Supreme Court Revr-730/12 of 16. 4. 2014, Rev-1243/07 of 1.4. 2008., Revr-574/04 of 30.11.2004., Rev-190/07 of 27.3.2007., Rev-845/83 od 3.11.1983. Basic Court in Zagreb Gžr-3276/03 of 27.1.2004., Constitutional Court U-III-1428/2005 of 22.12.2005. Cited in Ivica Crnić 2018, p. 1571.
[959] Decisions of the Supreme Court Revr. 1779/10 of 30. 6. 2015., Revr-96/08 of 15.4.2008. Rev-208/88 of 13.10. 1988. PSP-43/76. Cited in Ivica Crnić 2018, p. 1571.
[960] Decision of the Constitutional Court U-II-1062/2005 of 15.11.2007. Cited in Ivica Crnić 2018, p. 1571.
[961] Maja Bukovac Puvača, Zvonimir Slakoper and Loris Belanić: 2015, Obvezno pravo Posebni dio II. Izvanugovorno obvezni odnosi, Novi Informator, Zagreb, p. 85.
[962] Marin Kundić: 2021, Odgovornost za štetu nastalu u obavljanju vatrogasne djelatnosti, Sigurnost 63 (3) 317 – 322, p. 319.
[963] Ibid., p. 318.
[964] Ibid., p. 318.

In the North Macedonian legal system, the Art. 157 of the Obligations Act of 2001 addresses employer's liability for damage caused by an employee to a third party.[965] The first paragraph of this article prescribes that the employer who employed the employee who caused the damage to a third party during the conduct of work duties or in work-related situations, will be liable unless the employer can prove that the employee acted as it was required under the given circumstances at the moment when the damage was caused.[966] The presumption of fault is rebuttable[967] and liability is not absolute. Thus, this represents a form of employee's fault-based liability.[968] The employer's liability is strict according to the theory.[969]

In addition, Art. 156 Sec. 5 of the Labour Act of 2005 correlates to Art 157 of the Obligations Act.[970] Art. 157 stipulates the employees' liability for damage. Sec. 5 of the same article prescribes that the employer is obliged to pay damages to the injured third party in situations when the employee causes damage to them with intent or gross negligence at work or in work-related situations. However, at the same time, the employee is obliged to pay damages to the employer for that in line with Art. 156 Sec. 5 of the Labour Relations Act.[971] These articles aim to protect the third party who sustained damage through prompt compensation.[972] Art. 157 Sec. 4 also stipulates employer's recourse right for the damages paid, if the employee causes damage with intent or gross negligence.[973] A six-month limitation period shall apply to this right upon payment of the damage.[974] In addition, if the damage is caused with intent by the employee, the

[965] Закон за облигационите односи [Obligations Act] (Official Gazette of NM, Nos. 18/2001, 4/2002, 5/2003, 84/2008, 85/2008, 81/2009, 161/2009, 148/2011, 123/2013, 10/2015, 150/2015, 58/2016, 89/2020, 156/2020, 215/2021, 42/2023 and 154/2023, Art. 157.

[966] „(1) За штета што работникот во работата или во врска со работата ќе му ја причини на трето лице одговара работодавецот кај кој работел работникот во моментот на причинувањето на штетата, освен ако докаже дека работникот во дадените околности постапувал онака како што требало." Art. 157 Sec. 1 of the Obligations Act.

[967] Gale Galev and Dabovik Anastasovska, 2008, 629. Cited in Marija Radevska: Облигациони односи настанати со причинување штета во македонското право, Yearbook 2009, Faculty of Law, Goce Delcev University – Stip, p. 245.

[968] Marija Ampovska and Vojo Belovski: 2015. p. 413. Similar, Marija Radevska: 2009, p. 245.

[969] Marija Ampovska and Vojo Belovski: 2015. p. 413.

[970] Marija Ampovska and Vojo Belovski: The Meaning of the Employers' Liability Provisions for Raising the Level of Workers' Safety, International Journal of Sciences: Basic and Applied Research (IJSBAR) (2015) Volume 19, No 1, p, 413.

[971] „(5) Ако работникот на работа или во врска со работата намерно или од крајно невнимание му предизвика штета на трето лице, работодавачот е должен на тоа лице да му ја надомести штетата, а работникот е должен да ја надомести штетата на работодавачот.„ Закон за работните односи (Labour Relations Act) Official Gazette of NM, Nos. 80/2003 with ammendments.

[972] Marija Ampovska and Vojo Belovski: 2015. p. 413.

[973] „(4) Работодавецот кој на оштетениот ќе му ја надомести штетата што работникот ја причинил намерно или со крајно невнимание, има право од тој работник да бара надомест на платениот износ." Art. 157, Sec. 4 of the Obligations Act.

[974] Art. 157, Sec. 5 of the Obligations Act.

third party can claim damages directly from them according to the Art. 157 Sec. 2 of the Obligations Act.[975]

In case law, there was a judgment of the Supreme Court of the Republic of Macedonia where it has been established in the proceedings that the defendant, while driving a motor vehicle for official purposes, caused a traffic accident due to failure to adjust their speed to the prevailing weather and road conditions (a wet and slippery surface), and was subsequently convicted by a final judgment of a criminal offence committed through negligence, this fact alone does not give rise to a recourse obligation toward the employer.

Given that the damage was not caused intentionally or with gross negligence, but rather as a result of ordinary negligence, the statutory requirements for recourse liability are not fulfilled. Accordingly, the defendant employee is not obliged to reimburse the amount claimed in the present dispute.[976]

When it comes to the notion of the third party, they are any natural or legal person who is not employed by the employer.[977] However, in legal theory, as third party is also considered a person hired by the employer who sustained the damage outside of the work duties or outside of work-related situations.[978] Following the parties to labour relationship, it should be noted that regarding the subjects in Macedonian labour law, it clearly distinguishes the subjects of labour law and the subjects of labour relationships.[979] The former are entitled to regulate and enforce the rights and obligations of the latter.[980] According to legal theory, the classification of subjects of labour law is made on individual, collective, active and passive. Between individual entities (natural and legal persons) is established a labour relationship, and they can be both active and passive subjects of labour law. It depends on their role in the given circumstances.[981] On the other hand, collective subjects are collegial organs such as the management board, board of directors, trade unions, international organisations, i. e.[982]

[975] „(2) Оштетениот има право да бара надомест на штетата и непосредно од работникот ако штетата ја причинил намерно.“ Art. 157 Sec. 2 of the Obligations Act.
[976] Decision of the Supreme Court of the Republic of Macedonia in Review No. 1459/2010 of 2011. Cited in Marija Ampovska and Vojo Belovski: 2015. p. 413.
[977] Vojo Belovski: Damage Compensation: Employee's Responsibility of the Damage and Employer's Responsibility, Balkan Social Science Review, Vol. 4, 2014, 129-157, p. 134.
[978] Osman Cadriu, 1992. Cited in Vojo Belovski: 2014, p. 134.
[979] Andon Majhošev and Vojo Belovski: Трудово право (Labour Law), Универзитет "Гоце Делчев"- Штип Правен факултет, University Goce Delčev, Štip, Faculty of law, 2012, p. 10.
[980] Ibid., p. 10.
[981] Ibid., p. 10.
[982] Ibid. p. 11.

18.2 Liability of a legal person for damage caused by its organ

The statutory wording of this article reads as follows: "A legal person shall be liable for damage caused to a third party by its organ in the course of, or in connection with, the performance of its functions".[983] In the legal literature, this refers to a special form of liability of a legal person or its organ for damage caused by an employee to a third party during the performance of work or functions, or in connection with work.[984] While legal scholars (the majority) think that this is vicarious liability, nevertheless, it is as mentioned special form of liability due to its peculiarities related to damage caused, fault and parties.[985] (In addition, according to Grozdanovska and Efremovski, both the natural and legal person can be vicarious liable due to the failure to exercise due supervision, which is based for example, on the contract or some other decisions of authorities).[986]

In this legal relationship, there are two parties: the tortfeasor and the party who sustained damage, and in this regard, a third (injured) party.[987] The real tortfeasors are the employee and the legal person's organ, and they are characterized by possessing legal capacity, contractual (business) capacity, and delictual (tort) liability capacity.[988] However, a legally considered tortfeasor, and the only one who is actually liable, is a legal person. In reality, a legal person is a fiction, because it is an artificial creation, whose tort liability capacity is derived from the tort liability capacity of the employee and the organs of the legal person.[989] However, if the employee causes damage with intent, they can have the role of the tortfeasor together with the legal person. For example, in the event of a traffic accident, when a driver employed by a legal person causes damage to a third party. In that situation, the legal person is liable because the

[983] „ Правно лице одговара за штета што ќе му ја причини негов орган на трето лице во вршењето или во врска со вршењето на своите функции.". Art. 158, Sec. 1 of the Obligations Act.
[984] Gale Galev and Jadranka Dabovik Anastasovska: Obligaciono pravo, Univerzitet Sv. Kiril i Metodij", Skopje, 2021, p. 581.
[985] Jakšić S., Veselin M., 1960, 324. Cited in Ivana Sazdovska: Одговорност на правното лице и на неговите органи за штета причинета на трето лице – правна уреденост во македонското право и однос со трудовото право, Štip, 217, p. 8.
[986] Marija Grozdanovska and Ivan Efremovski: Obligations, Skopje, 2022. p. 134.
[987] Ivana Sazdovska: 217, p. 12.
[988] Ibid. p. 12.
[989] Ibid., p. 12.

driver was conducting work duties on their behalf. Conversely, if it is proven that the driver caused the damage with intention, the driver will be held liable.[990]

18.3 State liability for damage caused by public officials

The state's liability for damage caused by public officials in North Macedonia's legal system is not envisaged at the constitutional level. Article 8 of the Constitution foresaw the basic human rights and principles of the rule of law.[991] Compensation for damage is provided by Art. 13 regarding unlawful deprivation of liberty, detention, or conviction under a specific statute.[992] While the general rules of tort law apply to this subject matter.[993] Those articles are 141, 142 and 158 of the Obligations Act.[994]

Article 141 stipulates the obligation of anyone who causes damage to a third party by fault to redress the damage unless they can demonstrate that they were not at fault.[995]

18.4 Employer's Liability for Damage Caused by the Employee to a Third Party using a dangerous thing or performing a dangerous activity

Regarding dangerous things and dangerous activities, Art. 159 of the Obligations Act prescribes a presumption that damage originates from a thing, whether movable or immovable, that poses an increased risk of causing damage due to its properties, position, or mere existence. Furthermore, in continuation of the same provision, it is also presumed that the damage

[990] The judgment of the Supreme Court of the Republic of Macedonia, Rev. 576/92 of 29.12.1992. Cited in Ivana Sazdovska: 217, p. 13.
[991] Устав на Република Македонија [Constitution of North Macedonia], Official Gazette of NM, Nos. 52/1991, 1/1992, 31/1998, 91/2001, 84/2003, 107/2005, 3/2009, 49/2011 and 6/2019.
[992] Constitution of North Macedonia, Art. 13.
[993] Babunska, B. (2019) Effective judicial protection and State liability in EU law. Implications for the Macedonian Judiciary.
[994] Закон за облигационите односи [Obligations Act] (Official Gazette of NM, Nos. 18/2001, 4/2002, 5/2003, 84/2008, 85/2008, 81/2009, 161/2009, 148/2011, 123/2013, 10/2015, 150/2015, 58/2016, 89/2020, 156/2020, 215/2021, 42/2023 and 154/2023.
[995] Obligations Act. Art. 141.

originates from an activity whose performance poses a risk of causing damage, unless it emerged due to force majeure, or the cause lies with a third party or the injured party.[996]

The liable person is a possessor of a dangerous thing or a person who performs the dangerous activity.[997] They can release themselves from liability if the damage was caused by factors unrelated to the thing, which cannot be predicted, avoided, or eliminated.[998] Or the damage was caused by the acts of the injured or a third party.[999]

The following case demonstrates a situation where all legal remedies have been exhausted within a country, rendering it necessary to lodge an application before the European Court of Human Rights in Strasbourg.[1000] The facts were that the applicant was a waiter in a Macedonian restaurant. As a guest of the restaurant, instead of being on duty at the police station, an off-duty police officer who was dressed in uniform and in possession of his service firearm, was under the influence of alcohol and fired a shot at the waiter. It struck him in the chest. The injuries he sustained left permanent consequences. In the criminal proceedings, the police officer was convicted of a criminal offence classified as a serious crime against public safety and was sentenced to two years in prison (four years on probation). While in civil proceedings, it was determined that the applicant had sustained damage caused by the acts of the police officer, but since the lawsuit was filed against the Ministry of Foreign Affairs, the court dismissed the lawsuit because it was not to be addressed against the Ministry as a defendant. The court absolved the state of liability under Article 162, Sec. 2 of the Obligations Act, as the owner of the service firearm. The reason for the acquittal was that the court considered the damage was caused exclusively by an unforeseeable act of a police officer whose consequences could neither have been predicted nor prevented, even though they were acting on behalf of the state. In the appeal proceedings, the courts upheld the first-instance decision that there was no causal link between the act and the official duties of the police officer because he did not use the weapon in connection with the performance of his duties, but rather as a guest of the restaurant. However, the court, in addition to the provisions of international law, also assessed

---

[996] „За штетата настаната во врска со предмет, подвижен или недвижен, чија положба, употреба, особина или самото негово постоење претставуваат зголемена опасност од настанување штета за околината (опасен предмет) или дејноста чие вршење претставува зголемена опасност од настанување штета за околината (опасна дејност), се претпоставува дека потекнува од тој предмет, односно таа
дејност, освен ако се докаже дека причината е на страната на оштетениот или трето лице, односно настанала поради виша сила.“ Obligations Act, Art. 159.
[997] Obligations Act, Art. 160.
[998] Obligations Act, 162, Sec. 1.
[999] Obligations Act, 162, Sec. 2.
[1000] Application No. 49382/06, CASE OF SAŠO GORGIEV v. THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA, JUDGMENT STRASBOURG, 19 April 2012, FINAL 19/07/2012.

relevant aforementioned domestic law – Art. 160, 163, Sec 2 of this subject matter. It concluded that the harmful act of the police officer in the restaurant has to be attributed to the defendant state and ordered the state to pay 3.390 euro for material damages and 12.000 euro for non-material damages.

19 Employer's Liability for Damage Caused by the Employee to a Third Party under Montenegrin Law

19.1 General considerations

The issue of the employer's liability for damage caused by the employee to a third party under Montenegrin Law is regulated by the Obligations Act of 2008.[1001] Namely, it is placed under chapter 4 of this statute titled "Liability of a legal person and other legal persons toward third parties".[1002] Art. 164 provided the liability of a legal person or an entrepreneur (the employer) for damage caused by the employee at work or in work-related situations, unless they can prove that the employee conducted work as they should have under the given circumstances.[1003] However, if the employee caused damage with intent, the injured party can claim damages directly from them.[1004] In addition to damage caused intentionally, the employer has recourse right against the employee if they caused damage negligently.[1005] That right shall be subject to a limitation period of six months from the date the damage occurred.[1006] The subsequent Art. 165 stipulates that this rules applies to other employers as well[1007]

The following case illustrates the application of Art. 164 and 165 of the Obligations Act, in addition to the general rule of tort law in Art 148 of the Obligations Act.[1008] The peculiarities

[1001] Obligations Act, Art. 164-166.
[1002] Obligations Act, Chapter 4.
[1003] Obligations Act, Art. 164, Sec. 1.
[1004] Obligations Act, Art. 164, Sec. 2.
[1005] Obligations Act, Art. 164, Sec. 4.
[1006] Obligations Act, Art. 164, Sec. 5.
[1007] Obligations Act, Art. 165, Sec. 1.
[1008] Obligations Act, Art. 148 prescribes the duty of every person to make compensation for damage caused to another due to their fault.

of this case are that, in addition, although the subject matter is damage compensation, family law is involved in this procedure, which renders this case unique.

Namely, the plaintiff was a child from a court-divorced marriage, who, according to the court's decision, was placed in the custody of the mother.[1009] The child's father was obliged by the same judgment to pay child support (alimony) monthly. The established amount was 25% of his income.

The child support was paid by an authorised employee of the legal person employing the child's father, in this case, the legal person itself being the defendant. However, in addition to the basic salary, the child's father received an additional allowance in his capacity as a member of two legal persons, which the authorised employee failed to account for when disbursing the child support. That's why the plaintiff sustained damage (a finance expert assessed the extent of the damage). Namely, the employee of the legal person failed to act in accordance with the judgment, as well as the order for enforcement of this judgment[1010], which is considered an unlawful act by the authorised person. Thus, the court rendered the judgment obliging the legal person to pay damages pursuant to Art. 148, 164 and 165 of the Obligations Act. Based on all the facts set forth herein, the Supreme Court concluded that the lower court ruled and correctly interpreted the provisions of Family law.[1011] Those are Art. 272 and 273 of the Family Act that set criteria for determining child support, meaning that all of the obligor's income is included in alimony.[1012]

Another case pertains to Art. 164 Sec. 1 of the Obligations Act. The court held the employer liable because they failed to prove that the employee had acted as they should have.[1013] In concrete terms, the employer was liable for damage caused to a third party by their employee through the unauthorised withdrawal of money from a third party's current account. The employee was a front desk clerk (counter clerk) who unauthorizedly withdrew a total amount of EUR 21,531.62 from the plaintiff's current account in a period of four years. The plaintiff

[1009] Judgment of the Basic Court in Podgorica, Case No. P. 9312/99, 28.12.1999. (final and binding), cited in Vesna Begović in Dušanka Radović (ed.) Vrhovni sud Crne Gore / the Supreme court of Montenegro, Bilten / Bulletin 2/2015 godina / year, Vesna Medenica, Predsjednik Vrhovnog suda / President of the Supreme Court, Podgorica, 2016, p. 221.
[1010] Rešenje o izvršenju I. No. 3404/06 of 27.11.2006. (Order for enforcement of the judgment), cited in Bulletin 2/2015: 2016, p. 221.
[1011] Judgement of the Supreme Court of Montenegro, Rev. No. 913/15 of 03.11.2015. Cited in Bulletin 2/2015: 2016, p. 221.
[1012] Family Act, Official Gazette RCG, No. 1/2007 and Official Gazette CG, Nos. 53/2016 i 76/2020, Art. 272 and 273.
[1013] Judgement of the Supreme Court of Montenegro, Rev. No. 629/15 od 09.06.2015. in Dušanka Radović, 2015, pp. 107-108.

held that account with the defendant. For this act, the employee was convicted in criminal proceedings for a criminal offense Misuse of official position in economic (business) activities.[1014] In addition, she was obliged by the same judgement to pay damages to a third party in the amount of 16.777,62 euros (claim for patrimonial rights), while for the rest of the compensation of 4.754,00 euros, she was directed to initiate civil proceedings (for that period the criminal offence in question was not yet criminalised). In civil proceedings she claimed the total amount for damage compensation. The Court found that all statutory conditions of the employer's liability pursuant to Art. 164, Sec 1 were met. Those were the existence of damage sustained by a third party, causally linked to the performance of work by an employee of the legal person. In addition, the Supreme Court pointed out to the appellant that, in order to be released from liability, they must prove that the employee as they should have.[1015]

19.2 Liability of a legal person for damage caused by its organ

Art. 166, Sec. 1 of the Obligations Act prescribes the liability of a legal person for damage caused by its organ towards the third party during the performance of their functions or related to it.[1016] Pursuant to Art. 166, Sec. 2, if the tortfeasor caused damage with intent or negligence, the legal person has the right of recourse against them within six months.[1017] However, although the direct liability of the organ is not prescribed by the Obligations Act, the following case demonstrates that a legal person can release itself from liability if the organ acted with intent, based on *lex specialis*.[1018] The facts of the case were that the bankruptcy administrator acted without the prior authorisation of the bankruptcy panel (chamber) and the bankruptcy judge, and sold the land belonging to a third party. Namely, in the bankruptcy proceedings, the claimant's predecessor purchased land from the bankruptcy debtor. Later, it was established that the bankruptcy debtor was not the owner of the land, but was, in fact, owned by third parties.

[1014] This criminal offence (Article 272, paragraph 1 of the Criminal Code of Montenegro) was codified through the amendments to the Criminal Code of Montenegro, promulgated on May 5, 2010. The employee was convicted based on the final judgment of the Basic Court in Pljevlja, case no. K.br.152/13, dated February 7, 2014. In Dušanka Radović, 2015, p. 107.
[1015] Dušanka Radović, 2015, pp. 107-108.
[1016] Obligations Act, Art. 166, Sec. 1.
[1017] Obligations Act, Art. 166, Sec. 2. and 3.
[1018] Judgement of the Supreme Court of Montenegro, Rev. I P. No. 209/18 of 6. February 2019, cited in Dušanka Radović et al. (ed.) (2019): Bulletin 1/2019, the Supreme Court of Montenegro, Podgorica, p. 365.

The court of first instance dismissed the claim for damages for legal defects of the purchased land due to the statute of limitations of one year. The court of the second instance set aside this judgment but also dismissed the claim. However, the reasons were different from the reasons of the first instance court.[1019] Namely, the court of second instance determined that the bankruptcy panel had given consent to the bankruptcy administrator for the sale of the explosives storage facility located on the land, but not permission to sell the land itself. The court dismissed the claim because it should not had been addressed against the defendant. Furthermore, the Art. 166 Sec 1 applies in connection with Art. 61 Sec. 2 of the Law on Compulsory Settlement, Bankruptcy and Liquidation. Based on the former Art. 61, Sec. 2, if the bankruptcy administrator causes damage with intent or gross negligence, they are directly liable to each participant in the bankruptcy proceedings.[1020] Although the plaintiff argued in the proceedings upon request to review that the defendant's liability is strict because they did not exercise control over the bankruptcy administrator, the Supreme Court dismissed the review. That is why the bankruptcy administrator was not given instructions to sell third-party land by the bankruptcy panel (chamber) and the bankruptcy judge. Thus, the legal person cannot be liable for damage caused by their organ to a third party based on Art. 166 Sec. 1.[1021]

19.3 State liability for damage caused by public officials

The Act on State Administration in Art. 8 provides state liability for damage caused by unlawful or irregular acts of its administration organs.[1022]

When it comes to the liability for the damage caused by a civil servant or state employee to a third party, the Act on Civil Servants and State Employees in Art. 114, Sec. 2. foresees the state's liability for them (for damage caused by them at work or in work-related situations).[1023] It should be emphasised, following the previous chapter, that the state may be liable for damage caused by its organ based on Art. 166 Sec 1 of the Obligations Act, which is analysed above.

[1019] Ibid., p. 365.
[1020] Ibid., pp. 365-366.
[1021] Ibid., p. 367.
[1022] Zakon o državnoj upravi [Act on State Administration], Official Gazzete of MN, Nos. 78/2018, 70/2021 and 52/2022, Art. 8.
[1023] Zakon o državnim službenicima i namještenicima [Act on Civil Servants and State Employees], Official Gazette of RMN, Nos. 2/2018, 34/2019 and 8/2021, Art. 114, Sec. 2.

In case law, it could be found that this provision was applied to the state's liability for damage caused by its organ.[1024] The Constitutional Court of Montenegro adjudicated the case. The facts were that the applicant of the constitutional appeal argued that the bankruptcy judge of the Commercial Court had wrongly instructed him to initiate civil litigation, after which he spent €14,400.00 of litigation costs. That instruction was unlawful and unnecessary and caused him damage. The Commercial Court dismissed the claim, finding that the instruction of the bankruptcy judge had also been wrongful. In addition, the Basic Court in Podgorica dismissed the claim for damage compensation[1025], while the High Court in Podgorica upheld the judgment of the first instance and dismissed the appeal as unfounded.[1026] Namely, the appellant, as a bankruptcy creditor, had his claim disputed by the bankruptcy administrator and was referred to initiate proceedings before the Commercial Court. The Commercial Court dismissed the claim, stating that the bankruptcy creditor had been incorrectly referred to initiate litigation instead of the bankruptcy administrator, and that the error was obvious. The Appellate Court reversed the case for retrial, after which the bankruptcy creditor withdrew the lawsuit. The court ordered the bankruptcy creditor to pay the defendant EUR 6,534.00 in costs of the proceedings. In the end, it was decided that each party shall pay its own costs of the proceedings.

Namely, regarding the interpretation of Art. 166 Sec. 1, the lower-instance courts held that the plaintiff did not prove the intent or negligence of the bankruptcy judge (as a state's organ) to cause him damage. The High Court confirmed this standpoint. However, the Constitutional Court did not confirm this standpoint because intent and negligence of a tortfeasor are relevant only for the legal person recourse right against the person who caused the damage intentionally or with gross negligence. For a legal person to be held liable, the intent or negligence of its organ is not of legal relevance. In addition, the Constitutional Court has a standpoint that the courts arbitrarily interpreted the law and "added" intent and negligence as additional conditions for establishing the liability of a legal person for damage caused by its organs in the performance of, or in connection with, the performance of their functions to a third person, although the lawmaker did not prescribe that.[1027]

[1024] Decision of the Constitutional Court of Montenegro, U-III br. 957/25 of 29 September, 2025, p. 3.
[1025] Judgement of the Basic Court in Podgorica, P. br. 3823/19, of 10 March 2022. Cited in U-III br. 957/25, p. 2.
[1026] Judgement of the High Court in Podgorica Gž. br. 4472/22-19, of 4. October 2022, cited in U-III br. 957/25, p. 2.
[1027] U-III br. 957/25, pp. 7-8.

19.4 Employer's Liability for Damage Caused by the Employee to a Third Party using a dangerous thing or performing a dangerous activity

Chapter 5 of the Obligations Act concerns liability for damage caused by using a dangerous thing or performing a dangerous activity. Art. 169 prescribes the liability of the possessor of the dangerous thing and the person who conducts dangerous activities.[1028] A previous section, Art. 167 of the Obligations Act defines dangerous things as movable and immovable, which pose a risk of damage by their characteristics and their use.[1029] In the case law, for example, the court classified the boards that fell off the protective fence as dangerous things.[1030] The defendant was a contractor performing construction work on a residential building. The subject matter of the dispute was a compensation for non-pecuniary damage caused by a board falling from a metal fence onto the plaintiff, while passing by the building, on which occasion she sustained bodily injuries. The defendant was held accountable under strict liability as a possessor of a dangerous thing. They failed to prove that the damage was caused by an external cause or by the actions of the plaintiff herself.[1031] Namely, Art. 172 prescribes the grounds for exemption from liability.[1032] First, as already mentioned, it may be a cause the effect of which stems from outside the thing , which is at the same time as unpredictable, unavoidable or unpreventable.[1033] Secondly, the possessor may be exempted from liability if they succeed in proving that the damage was caused by an act of the injured party or a third party. It means that their act could not have been foreseen, avoided, or prevented.[1034] Partial relief from liability may be granted if the injured party has partially contributed to the damage.[1035]

If a third party contributed to the damage only partially, they will be joint and several liable with the possessor of the thing and will compensate for the damage proportionally to their

[1028] Obligations Act, Art. 169.
[1029] Obligations Act, Art. 167.
[1030] Judgement of the Supreme Court of Montenegro, Rev. No. 186/15 od 18.03.2015. Cited in Vesna Begović in Dušanka Radović (ed.) Vrhovni sud Crne Gore / the Supreme court of Montenegro, Bilten / Bulletin 1/2015 godina / year, Vesna Medenica, Predsjednik Vrhovnog suda / President of the Supreme Court, Podgorica, 2015, p. 106.
[1031] Ibid., p. 106.
[1032] Obligations Act, Art, 172.
[1033] Obligations Act, Art, 172, Sec. 1.
[1034] Obligations Act, Art, 172, Sec. 2.
[1035] Obligations Act, Art, 172, Sec. 3.

contribution.[1036] A third party is not considered as someone who the possessor relied on in using the object.[1037]

20 Employer's Liability for Damage Caused by the Employee to a Third Party under Serbian Law

20.1 General considerations

Under Serbian law, the Obligations Act in Articles 170 and 171 regulates the issue of the employer's liability for damage caused by an employee ("zaposleni", "radnik") to a third party at work and in work-related situations.[1038] An employer ("poslodavac") may not be released from liability merely by demonstrating the absence of their fault.[1039] They assume liability due to their status as an employer. The justification for the employer's liability lies in the fact that the injured party would, in most cases, be unable to claim compensation from the employee directly, and proving their fault would be difficult, as well.[1040]

However, the Employment Act, in Article 163, Section 7, stipulates that if the employer compensates for the damage caused by the employee to a third party at work or in work-related situations, to a third party, either intentionally or with gross negligence, the employee has a duty to reimburse the employer for the full amount paid.[1041] Thus, according to this provision, the relationship between the employer and employee after paying damages compensation by the employer is regulated by the Employment Act.[1042]

[1036] Obligations Act, Art, 172, Sec. 4.
[1037] Obligations Act, Art, 172, Sec. 5.
[1038] Zakon o obligacionim odnosima [Obligations Act], Službeni list SFRJ [Official Gazette of the Socialist Federative Republic of Yugoslavia], Nos. 29/78, 39/85, 45/89 – the decision of the Constitutional Court of Yugoslavia and 57/89, Službeni list SRJ [Official Gazette of the Federative Republic of Yugoslavia], No. 31/93, Službeni list SCG [Official Gazette of the State Union of Serbia and Montenegro], No. 1/2003 – Constitutional Charter and Službeni glasnik RS [Official Gazette of the Republic of Serbia], No. 18/2020).
[1039] Ilija Babić (2015): Odgovornost radnika i poslodavca za štetu koju radnik prouzrokuje trećem licu, Pravna riječ, No. 43/2015, Year XII, p. 45.
[1040] Ibid., p. 53.
[1041] Zakon o radu [Employment Act], Službeni glasnik RS [Official Gazette of the Republic of Serbia], Nos. 24/05, 61/05, 54/09, 32/13, 75/14, 13/17, 113/17 and 95/18.
[1042] Karamarković, 2004, p. 141.

The employer may be a natural (including entrepreneurs) or a legal person (including state institutions), while the employees are always natural persons.[1043] The Employment Act provides the definitions for both, and Article 5 Section 2 prescribes that the employer is a domestic or foreign natural or legal person who employs other persons, or they can also be engaged in work by the employer.[1044] Section 1 defines an employee as a natural person employed by an employer (an employee is in an employment relationship with the employer).[1045]

The employer is liable for the damage caused by their employees, whereby it is legally irrelevant, whether they are engaged based on full-time or part-time employment, fixed-term or employment of indefinite duration. In addition, it is not relevant whether a contract of any kind is concluded between the injured party and the employer.[1046]

The liability of a legal person is twofold: it encompasses liability for damage caused by an employee to a third party and by its organs.[1047] Regarding damage caused by an employee, it is related to the enterprise and other employers that are liable for the damage caused by the employee to a third party.[1048] However, they can be released from liability if they prove that an employee acted as they should have.[1049] The legal standard whether the employee acted as they should have actually serves as a clarification of the general rule that everyone is obliged to compensate for the damage caused by them to another, unless they can prove that the damage was caused without their fault.[1050] This means, if there is no fault on the part of the employee who is directly liable, the employer, who bears indirect liability, is automatically considered not to be at fault either. This situation thus falls within the scope of fault-based liability.[1051]

For example, such a situation would arise during a robbery of a legal person, when the perpetrator (robber) sustained damage, such as torn clothes and a broken wristwatch, caused by a person providing physical security (security guard) for the legal person, while resisting the robbery. In this scenario, the legal person would not be held liable for the material damage sustained. However, if the security guard were to use a weapon and kill the robber, in this situation, the third injured party, then there would be both criminal liability for the offence of murder and civil liability, since the security guard would have failed to act as they should under

[1043] Karanikić Mirić, M. (2023) *Tort law in Serbia,* Kluwer Law International B.V., Alphen aan den Rijn, p. 78.
[1044] Employment Act, Art. 5, Sec. 2.
[1045] Employment Act, Art. 5, Sec. 1.
[1046] Karanikić Mirić, M. (2023), p. 78.
[1047] Oliver Antić, 2011, Obligaciono pravo, Pravni fakultet Beograd, p. 490.
[1048] Obligations Act, Art. 170, Sec. 1 and Art 171, Sec. 1.
[1049] Obligations Act, Art. 170, Sec. 1.
[1050] Obligations Act, Art. 154, Sec. 1. cited in Oliver Antić, p. 490.
[1051] Oliver Antić, p. 490.

the given circumstances. Then, they will bear individual liability for either exceeding the bounds of lawful self-defence or for acting with negligence while the legal person, as the liable person, is obliged to pay compensation for the damage. However, if it is established that the security guard killed the robber with intent due to a prior acquaintance with him/her and an existing conflict between them, the injured party would have the right to seek compensation from both, legal person and the security guard. If a legal person pays damages, and the damage was caused by the guard with intent or negligence, the legal person has the right of recourse against the employee (guard).[1052]

Therefore, the fault of the employee constitutes a condition for establishing the employer's liability, and it is presumed to exist to an increased degree.[1053] But the fault of another is only the condition, not the legal ground for establishing the vicarious liability. Therefore, in those situations, the liability cannot be fault-based. The ground of fault-based liability is only personal fault.[1054]

In a situation where the employer rebuts the presumption of the existence of the employee's fault, arguing that the employee acted as required, they must prove that there was no professional fault (they complied with the high professional standards) because it is not sufficient to establish that the employee's conduct was reasonable and conducted with due diligence.[1055] The fault of the employer, for establishing their liability, is, however, legally irrelevant.[1056] These rules lead further in various literary interpretations, from which Cvetković summarised four.[1057]

The first interpretation is that employer's liability fault-based, according to some scholars and court decisions interpreted by Cvetković.[1058]

[1052] Ibid., p. 490.
[1053] Marija Karanikić Mirić 2016: Objektivna odgovornost za štetu, Službeni glasnik, p. 11.
[1054] L. Bach, 1977, 27, cited in Karanikić Mirić: 2016, p. 11.
[1055] Karanikić Mirić 2016, p. 11.
[1056] Ibid., p. 11.
[1057] Mihajlo Cvetković (2018): Osnov neugovorne odgovornosti poslodavca za štetu koju radnik prouzrokuje trećem licu, *Pravo i privreda,* 56(7-9), p. 473.
[1058] the Judgment of the Appellate court in Niš, No. Gž. 1960/2015 of 24 May 2015, Judgment of the Appellate Court in Belgrade, No. Gž 12342/2010 of 11 April 2012, and the Judgement of the Supreme Court of Serbia, No. Rev. 1900/2005 of 5 October 2005. Cited in Cvetković, 2018, p. 480. Similar in Ilić, M., Dudás, A. (2023) "Employer's Liability for Damage Caused by the Employee to a Third Party under Serbian Law", Acta Universitatis Sapientiae Legal Studies, 2/2023, p. 64.

According to this understanding only the liability for dangerous things and dangerous activities is strict.[1059] The employee is at fault if they did not act as they should have, and in that way, the employee's fault is attributed to the employer.

The employer may be exempt from liability if they prove that the employee acted as they should have. In this case, the fault of the employee and the fault of the employer are considered equal.[1060] The employer is liable because they made a mistake when they chose an employee (*culpa in eligendo*), or when they gave them instructions (*culpa in instruendo*), or failed to supervise them (*culpa in vigilando*).[1061]

The second interpretation considers the employer's liability strict.[1062] They can exempt themselves in cases of force majeure, acts of a third party or the injured party, but cannot be released from liability if they can prove that they were not at fault in the selection and supervision of the employee, nor in giving instructions (*culpa in eligendo*, *culpa in instruendo*, *culpa in vigilando).* The fault of the employee is legally relevant, while the employer's fault is not. The employer may be exempt from liability if they prove that the employee is not at fault.

The third interpretation shifts from strict to fault-based liability. As vicarious liability, it is strict; however, the employer may release themselves from liability if they can prove that the employee acted as required. In that case, it means that if there is no direct fault of the employee, and therefore, the employer's indirect liability is also excluded. It can be concluded that this interpretation also indicates that it is a matter of fault-based liability.[1063] According to Jakov Radišić, the employer is continuously exposed to the risk of damage caused by employees; that is why liability is strict. Nevertheless, the act of causing the damage constitutes a matter of fault-based liability.[1064]

The fourth interpretation given by Cigoj is strict liability of the employer for the conduct of their employee, while the act causing the damage event is fault-based. For the hiring of the employee, the employer's liability is strict, while for causing the damage, they are at fault for their employee.[1065] Cvetković considers this interpretation to be confusing.[1066]

[1059] Georgijev, 1980, 486. Cited in Cvetković, 2018, p. 480.
[1060] Georgijev, 1980, 521-522. Cited in Cvetković, 2018, p. 480.
[1061] Cvetković, 2018, p. 480.
[1062] G. Obradović, 63. Cited in Cvetković, 2018, p. 481.
[1063] O. Antić, 2008, 479. Cited in Cvetković, 2018, p. 481.
[1064] Radišić, 2004, 242. Cited in Cvetković, 2018, p. 481.
[1065] Cvetković 2018: p. 481.
[1066] Ibid. p.482.

It should be noted that at the time when the Obligations Act was enacted in 1978, the term organisation of associated labour was used for the employer.[1067] The majority opinion was that the liability of such organisations was strict because they assume the risk of causing the damage by their employees, but for the mere occurrence of the damage caused by an employee, the liability of the organisations was considered fault-based.[1068]

Furthermore, in addition to the condition that the employer must prove that an employee acted as it was required, the employer must prove to exempt themselves from liability that the damage did not occur at work or in work-related situations. They must convince the court that the harmful act is not connected to the employer's business activities. The court considers that damage is caused at work if it occurs during working hours and while performing tasks assigned to the employee by the employer. In the past, in the case law of Yugoslavia, the employer was not liable if their employee caused damage to a third party at the workplace (on the employer's premises), and if the harmful act was not within the scope of the employee's work duties. However, if the employee used tools or equipment of the employer, there is a sufficient connection between the harmful act and the employer's scope of work. Such a solution should be taken into consideration only if the injured party believes that, at the time, the tortfeasor was acting in the capacity of an employee. If the employer enables the employee to act under the guise of authority, the employer should also bear liability for the employee's actions.[1069]

The employer gains economic profit from the employee's work; they are aware of the risks involved in the work process and is the one who directs and supervises the employee's conduct. The employer also establishes protocols to minimise the risk of damage.[1070] However, when a work tool qualifies as a dangerous thing, the employer is liable for the damage caused by such thing in the capacity of a mere possessor of a thing ("detentor"), regardless of whether the conditions for establishing the employer's liability for damage caused by their employee are met.[1071] Article 170 Section 3 of the Obligations Act explicitly prescribes this rule.[1072] In this event, the general rules of strict liability are applied.

[1067] Slobodan Perović and Dragoljub Stojanović (1978): Komentar zakona o obligacionim odnosima, Kulturni centar Gornji Milanovac, Pravni fakultet Kragujevac, p. 519.
[1068] Cigoj, 1978, 441, Cited in Jakov Radišić (1982): Obligaciono pravo, opšti deo, Savremena administracija, p. 221.
[1069] Marija Karanikić Mirić (2024): Obligaciono pravo, Službeni glasnik, p. 567.
[1070] Ibid., p. 568.
[1071] Ibid., p. 569.
[1072] Obligations Act, Art. 170, Sec. 3.

If the employee intentionally caused the damage, a third party (injured) can make a direct claim against the employee for damages if the employee caused the damage at work or in a work-related situation.[1073] When this occurs, the employee's direct liability exists from the employer's liability. It does not matter if the employer has been held liable for the injuries incurred by the employee or whether the injured party has requested compensation from the employer.[1074] This is the only situation in which gross negligence does not qualify as intent in tort law.[1075]

In addition, a natural person, as a legal person's organ, may be directly liable, if the damage was caused with intent, and exceptionally be economically stronger than the employer. Then the third party may have an interest in claiming damages directly from the natural person . This is the literature's interpretation because in this case, the statute does not foresee that possibility of a direct claim.[1076]

20.2 Liability of a legal person for damage caused by its organ

The organs of legal persons are considered as natural persons through which legal persons conduct their functions and legal affairs.[1077] It can be in the form of a single-member (sole) or collegial organ which involves two or more members (natural or legal persons).[1078] Since the actions of the organ are considered to be the actions of the legal person itself, the legal person is held liable for damage caused to a third party by its organs while performing their functions. That's why legal persons manifest their own will through their organs. It is determined in the articles of incorporation or memorandum of association, or bylaws who will conduct the function of the organ, while the process of registration of a legal person is carried out according to the Act on the Registration Procedure with the Serbian Business Registers Agency, which maintains the register of legal persons.[1079]

Article 172 Section 1 of the Obligations Act envisages the legal person's liability for the damage caused by its organs to third parties.[1080] In line with *ultra vires* theory, liability of a legal person

[1073] Obligations Act, Art. 170, Sec. 2.
[1074] M. Karanikić Mirić (2013), 223. Cited in Pajtić, B., Radovanović, S., Dudaš, A. (2018), p. 504.
[1075] Pajtić, B., Radovanović, S., Dudaš, A. (2018), p. 504.
[1076] Ž. Đorđević, V. Stanković (1987), 417. Cited in Pajtić, B., Radovanović, S., Dudaš, A. (2018), p. 506.
[1077] Ilija Babić (2016): Gradjansko pravo, Knjiga 4 – Obligaciono pravo – opšti deo. Službeni glasnik, p. 336.
[1078] Marija Karanikić Mirić (2024): p. 570.
[1079] Ilija Babić (2016): p. 336.
[1080] Obligations Act, Art. 172., Sec. 1.

is in general limited by its legal capacity and capacity to act, except for its delictual liability. A legal person is liable when its organ commits an unlawful act in conducting its function or related to that, regardless whether the organ caused the damage intentionally or with negligence. The injured party cannot claim damages from the natural person who acts in the capacity of an organ or an employee. In addition, the legal person is liable for its organs regardless of fault for damage caused by dangerous things or dangerous activities.[1081]

If the legal person has paid the compensation to the injured party, it has a recourse claim against the person who caused the damage with intent or gross negligence.[1082] In addition, for damage caused by a collegial organ, the liability of each member of the organ is determined separately.[1083]

This right is time-barred for six months from the day when damages are paid to a third party.[1084]

20.3 State liability for damage caused by public officials

In Serbian law, two main statutes pertain to the conditions of establishing state liability: the Act on State Administration and the Act on Public Servants. The first in Article 5, Section 1 stipulates the state's liability for damage caused to natural or legal persons by unlawful or improper acts of its organs.[1085] Section 2 pertains to the liability of entities exercising public authority for damage caused by unlawful or improper acts to natural or legal persons 'in performing conferred state administrative tasks'.[1086]

Furthermore, Article 124 Section 1 of the Act on Public Servants, regulates the liability of the Republic of Serbia for any damage caused by its civil servants as a result of their unlawful or irregular conduct related to work.[1087] Under Section 2 of the same Article is provided that if a civil servant caused damage intentionally, the injured party may claim damages directly from

[1081] Ilija Babić (2016): p. 336.
[1082] Obligations Act, Art. 172., Sec. 2.
[1083] Ilija Babić (2016): p. 336.
[1084] Obligations Act, Art. 172., Sec. 3.
[1085] Zakon o državnoj upravi [Act on State Administration], Official Gazette of RS, No. 79/05, 101/2007, 95/2010, 99/2014, 47/2018 and 30/2018, Art. 5. Sec. 1.
[1086] Act on the State Administration, Art. 5, Sec. 2.
[1087] Zakon o državnim službenicima [Act on Civil Servants], Official Gazette of RS, No. 79/05, 81/2005, 83/2005, 64/2007, 67/2007, 116/2008, 104/2009, 99/2014, 94/2017, 95/2018, 157/2020, 142/2022 and 13/25., Art. 124. Sec. 1.

them.[1088] In addition, Section 3 stipulates a recourse right of the state if its civil servant caused damage intentionally or with gross negligence.[1089]

This Act regulates the situations where civil servants are hired by the organs of the Republic of Serbia. Concerning civil servants hired at lower levels of state organisation, the Act on the Employees of the Autonomous Provinces and Local Self-governments applies.[1090]

It should be noted that there are various specific statutes which regulate this issue. For instance, the Law on Judges stipulates the state's liability for damage caused by a judge's unlawful or improper conduct.[1091] The Law on Public Prosecution regulates the liability of the Republic of Serbia for damage caused by unlawful or improper actions of a public prosecutor.[1092]

These specific statutes hold priority over general legislative provisions, in line with the principle of *lex specialis derogat legi generali*. The unlawful or improper acts of civil servants serve as a condition of state liability, in addition to the damage and the causal link between the civil servant's conduct (whether act or omission) and the damage.[1093]

However, these conditions fall within the general rules of liability in the law of obligations particularly Article 172 of the Obligations Act, which prescribes the liability of legal persons for damage caused by their organs, and involves legal persons of public law[1094] as well as the rules on employer's liability for the damage caused by the employee to third parties, and there is no difference between employees employed by state or by private employers.[1095]

20.4 Employer's Liability for Damage Caused by the Employee to a Third Party using a dangerous thing or performing a dangerous activity

[1088] Act on Public Servants, Art. 124, Sec. 2.
[1089] Act on Public Servants, Art. 124, Sec. 3.
[1090] Zakon o zaposlenima u autonomnim pokrajinama i jedinicama lokalne samouprave [Act on the Employees of the Autonomous Provinces and Local Self-governments], Službeni glasnik RS [Official Gazette of the Republic of Serbia], No. 21/2016, 113/2017, 95/2018, 114/2021, 113/2017, 95/2018, 86/2019, 157/2020 and 123/2021.
[1091] Zakon o sudijama [Act on Judges], Official Gazette No. 10/2023, Art. 7.
[1092] Zakon o javnom tužilaštvu [Act on Public Prosecution], Official Gazette, No. 10/2023, Article 58.
[1093] Prica, M. (2012) "The state's liability in damages for wrongful administrative action", *Facta Universitatis, Law and Politics*, Vol. 10, No. 1, p. 66.
[1094] Karanikić Mirić, 2023, p. 82.
[1095] Cigoj in Commentary of the Obligations Act (ed. Slobodan Perović), 1995, p. 392.

The Obligations Act of 1978 does not define the concept of dangerous things and dangerous activities.[1096] As early as 1969, Mihajlo Konstantinović, a professor of civil law, in his proposal of the Obligations Act, titled 'Obligations and Contracts – Draft for Code of Contracts and Obligations', set out the criteria of what is considered a dangerous thing.[1097] Based on it, in Art. 136 of the "Draft" is prescribed through the liability of the possessor of a movable or immovable thing, that they will be liable for damage caused by that thing, which position, attributes, or use generate an increased risk of damage.[1098] Art. 173 of the Obligations Act prescribes, in general, strict liability for damage caused by dangerous things or dangerous activities, unless it is proven that the damage is not caused by them.[1099] The subsequent article 174 foresees the liability of the possessor of the dangerous thing and the liability of the person who performs dangerous activities.[1100] Concerning the situations when the employee causes damage while using a dangerous thing or conducting a dangerous activity during work duties, their fault is not of legal relevance. In those situations, the employer's liability is strict.[1101] Thus, in this regard, when strict liability is applied to the employer's liability for others, the employer may release themselves from liability only for specific reasons prescribed by statute and in their capacity as the proprietor of the thing which is dangerous.[1102] Statutory reasons based on Art. 177 Sec 1 of the Obligations Act are that the damage is caused by external causes to the dangerous things or dangerous activities that could not be prevented or avoided.[1103] Next Sec 2 of the Art 177 foresees the reason that the damage can be attributed to the injured party's or a third party's contribution to the damage.[1104] Furthermore, they may be partially released from liability because the injured party partially contributed to the damage.[1105] For the partial contribution of a third party, both are joint and severally liable.[1106] In addition, force majeure and casus are also exculpatory ground depending on certain facts under given circumstances.[1107]

[1096] Milica Ilić, Attila Dudás: Employer's liability for damage caused by the employee to a third party using a hazardous thing or performing a hazardous activity under Serbian law – case study, Publicationes Universitatis Miskolcinensis Sectio Juridica et Politica, Tomus XLIII/1 (2025), pp. 180–199, p. 182.
[1097] Ibid., p. 182.
[1098] Mihailo KONSTANTINOVIĆ: Obligacije i ugovori – Skica za Zakonik o obligacijama i ugovorima [Obligations and Contracts – Draft for a Code on Obligations and Contracts]. Reprinted in the series „Klasici jugoslovenskog prava". Službeni list, Beograd, 1969, [Art. 136 Section 1], 81.
[1099] Obligations Act, Art. 173.
[1100] Obligations Act, Art. 174.
[1101] Milica Ilić, Attila Dudás: 2025, p. 187.
[1102] Antić: op. cit. 2012, 498.
[1103] Obligations Act, Art. 177, Section 1.
[1104] Obligations Act, Art. 177, Section 2.
[1105] Obligations Act, Art. 177, Section 3.
[1106] Obligations Act, Art. 177, Section 4.
[1107] Milica Ilić, Attila Dudás: 2025, pp. 188-189.

21 CONCLUSIONS

A general principle common to all human beings is that everyone is liable for their own fault, but is it always true? The dominant position in literature is that this approach applies in criminal and administrative law, for example. However, when it comes to civil law, the legal solution is different from the solutions regarding as mentioned above in criminal or administrative law. Furthermore, it must be emphasized that the statute cannot predict the legal rule for every situation which can happen in reality. This research demonstrated that in the field of labour relationships, although it is common that the damage arises as a consequence of working processes, the statute also cannot prescribe all the circumstances under which it arises. Therefore, legal literature and case law exist to provide answers to what can furthermore happen in and outside the workplace and how to find the best justly solution for every situation.

The author explored the legal systems of nineteen countries (some were not analysed in all relevant aspects due to a lack of available literature in English and language barriers, and for them, a general overview was provided), with reference to Roman law, without which this endeavour to scrutinise law cannot reach its completeness. What is specific is that the notion of the employer implies natural and legal persons, where the legal person is actually a legal fiction because it does not have its own will as a natural person. But it has its organs that are also human beings who represent the legal person and act on its behalf. Furthermore, the employer can also be the state, for example. The chapters were structured accordingly: the first subchapter provided a general overview of the topic, while the second analysed the liability of a legal person for damage caused by its organ to a third party. The third dealt with the issue of the state's liability for damage caused by public officials. The last considered employer's liability for damage caused by the employee to a third party using a dangerous thing or performing a dangerous activity. The liability is always strict for these activities due to the elevated risk of causing damage that emerges from performing them.

Namely, this topic deals with vicarious liability. It refers to being held liable for a wrongdoing of another person, i.e., the theory of vicarious liability allows someone to be held liable for an act that was not committed by them. For practical reasons, the employer-employee connection is the most significant of these. Only actions taken "in the course of the employee's employment" are subject to employer liability. Consequently, the employee must do something wrong while working; if the employee is not liable, neither is the employer.

In the legal literature, various reasons are provided for why an employer should be liable for damage caused by an employee to a third party or their property while performing work tasks. According to Paula Giliker, the rule of vicarious liability means that someone is liable even though they themselves did do nothing wrong, thus why is comeone liable. But in theory, there is also an interpretation that the employer can be liable for its own fault.

English law is only mentioned at the beginning of this thesis, solely for the purpose of distinguishing which countries adhere to the theoretical concept of strict liability. Those are the English and Romanic legal system, including the former Yugoslav states. On the other hand, fault-based liability is prescribed by statute in Germany, but this does not reflect the actual situation in the case law. Thus, that is why the thesis begins with the two most prominent continental legal systems, in Germany and France, in order to demonstrate the most significant differences in accepting or rejecting the hypothesis of whether employer liability is strict or fault-based. It should be emphasised that the phrase ”at work or related to work situations” from the thesis title represents a boundary to the employer’s strict liability in most legal jurisdictions. Another significance of the study was an endeavour to find the appropriate term regarding parties to an employment relationship. Namely, through the years and the development of this legal institute, the various notions of the contemporary terms “employer” and “employee” were used in the statutes and legal theory. As started from the first representative country, § 831 of the German Civil Code (Bürgerliches Gesetzbuch, BGB) used the term „principal“ and the term “servant” for the employee. In the literature, the terms of “superior” and “subordinate” are also used. In France, these are masters (referred to as maîtres or commettants) and "préposé" for an employee. In the Italian Civil Code, both terms of masters and employers, servants and employees are used concurrently in the same provision on this subject matter. In Romania, it is the principal's liability for the acts of their auxiliaries. In Romanian, terms are “comitentul” and “prepus”, words with a similar root as in French. In Bulgaria, the provision that regulates the employer’s liability for damage caused by an employee is interpreted in literature in English language in a general way, as a person who assigns a task to another person. In Bulgarian, that is the term „възложител“, which can be translated as “principal”. In the Czech Republic, the employer is „zaměstnavatel“. In Austria, the principal is liable for the acts of their assistant (Erfüllungsgehilfen). In Serbia, Croatia, Bosnia and Herzegovina the employer is “poslodavac”, while the employee is “zaposleni” or “radnik”. In addition, it should be noted that, in contrast to the previously mentioned countries, where this issue is regulated by the Civil Code, in

Bulgaria, as well as in the former Yugoslav countries, the Obligations Act, as a single act, provides this kind of liability.

In addition, these terms are usually defined by the Employment Act rather than the Civil Code. Moreover, the peculiarity of these examined various legal systems is that this topic is regulated not only in civil codes, but also by the single obligations acts. As mentioned above, Germany is chosen as a starting point. The reason was to highlight that in this legal system, the employer's vicarious liability is fault-based and prescribed by statute. That seems unusual, because it is usually the case in theory that there are various interpretations of various legal scholars, whether this liability is fault-based or strict. However, culpa (culpa in eligendo, culpa in instruendo and culpa in vigilando) has its origin in the Pandectist School of Law. Namely, in the Germanic legal family, the principle no liability without fault was a moral basis in tort law, and according to Gemeines Recht, it had to be applied to vicarious liability as well. Although the German Civil Code accepted this doctrine as a rule incorporated in provision § 831, literature did not share this view and left space for special laws to prescribe strict liability. But a verbatim reading of § 831, especially the second sentence, implies a reason for exoneration from liability if the employer can prove that they provided the necessary tools for conducting the work, exercised due care in selecting process of the employee, and supervised them. Another reason is that even with the exercise of such reasonable care, the damage could not be avoided. Thus, in Germany, what is peculiar compared to other legal jurisdictions is that the employer's liability is based on the employer's own fault with respect to an inappropriate selection or supervision of their employees. However, it presents a variant and is not absolute, because the standpoint of the literature is that an employer's liability is strict for damage caused by an employee whose fault is legally relevant. Here lies the reason why this liability is considered indirect (vicarious); because the employer is liable for the employee's fault, which, in fact, the employee attributed (transferred) to the employer. Moreover, in comparative law, such as in the Hungarian legal system, according to the interpretation of the old Civil Code of 1959, if the principal could prove that they did not negligently select, instruct and supervise the agent, they could exempt themselves from liability. Namely, this rule was a characteristic of the socialist model of organising society. That is why the principal and agent acted in the capacity of socialist organisations. However, today this rule is also prescribed by law in provision 6:542§ of the Hungarian Civil Code in force, on the joint and several liability of the principal and agent to a third party if the agent caused the damage in that capacity of agent. In the second sentence is prescribed that the principal can be released from liability if they prove that they were not at

fault for selecting, instructing and supervising the agent. However, although this traditional principle of *culpa in eligendo vel in vigilando* exists, in the form of presumed fault of the employer, it can be concluded that it is no longer the predominant prerequisite of liability.

Furthermore, in the German legal system, in the case law, there were situations when the employee was directly liable because the employer was insolvent, or they caused the damage with intent, or negligence. However, some legal scholars such as Denecke thought that only when an employee causes damage with intent or gross negligence should be directly liable, and that was the justification for the application of the general Constitutional provision (Art. 34 of the German Constitution), which refers to the liability of employees employed in the public sphere, also to the employees employed in the private sector. In addition, the employer and the employee can be jointly and severally liable. Both have recourse claim proportionate to the extent of their liability. The rules of internal damage settlement apply to their mutual claims. In the Slovak legal literature, this issue of the direct liability of an employee remains open. This is because the general provision in Art. 420 regulating it in paragraph 2 is interpreted together with the first and third paragraphs, and therefore, no final standpoint by the legal scholars has been taken. Sec. 1 is about the liability of everyone who causes damage, while Sec. 3 stipulates the right to be released from liability if the evidence exists. Specifically, there is an interpretation in the legal theory that if one of the conditions for establishing the employer's liability is missing, in that situation the employee will be directly liable; however, the above-mentioned has opened the door to broad interpretation.

Regarding French law, what is specific when it comes to Art. 1242 alinéa 5 of the Civil Code (the main provision of this subject matter), in addition to that, it prescribes employers' or masters' liability for damage caused by their employees or servants to a third party, „in the functions for which they have been employed" is its application to various situations which are not grounded on an employer-employee relationship. These situations can involve free or friendly service given to others. An employment agreement between the employee and the employer is not required. To establish the employer's liability, the fault of the employee is relevant, and the damage was caused „in the functions for which they have been employed", while in Germany, the damage should be caused when the employee acts within the 'course of employment. Furthermore, in French law, the fault of the employer is irrelevant. However, in theory, on the employer's liability can be applied Art. 1240 on the general tort regime, if they do not give proper instructions to the employee or fail to supervise them, as in German law. Another similarity with the German law is the possibility for the injured parties to opt who to

claim damages from. However, if the claim was to be addressed against the employee, they would not have the right of recourse against the employer. In Germany, the employee has this right. Thus, this solution for the French employee to pay the full amount of damages is unfair, according to many authors. In addition, according to theory and jurisprudence, it is unfair that a third party bear the consequences of an employee's financial inability to compensate for damage, and that is why a strict liability regime is a concept of guarantee.

In Austria, the liability of the principal is strict when the person who caused the damage is incompetent, while fault-based if they are aware that they engaged a person who acts in a dangerous way.

The fault of the assistant is a precondition for the principal's liability, and their fault is considered as the principal's own fault. The injured party may choose whether to sue the employer or the employee. If the employer compensates for the damage, they have a right of recourse against the employee for the full amount of the damage if it was caused intentionally, while in cases of negligence, the amount may be reduced. If the employee caused the damage by slight negligence, they may be fully exempt from liability to pay compensation. This is stipulated under special law, Dienstnehmerhaftpflichtgesetz (DHG; Employee Liability Act).

In Italian law, there are conflicting views regarding the employer's liability as to whether it is fault-based or strict. Some authors think that this liability is fault-based, as in Germany, for *culpa in vigilando, culpa in eligendo and culpa in instruendo.*

Others argue that the employer's liability is independent of fault, while a third group considers it to be strict. What is specific is that the organs of a legal person, such as directors, can be directly liable for damage caused with both intent and negligence, based on Art. 2395 of the Civil Code. In addition, the legal person will also be liable. The same applies to aiders and abettors according to the rules on liability for negligence, which means joint and several liability.

In Romanian law, the employee's fault is not a prerequisite for establishing the employer's liability according to legal theory. The condition is that the damage was caused by the employee's act connected with work duties or assigned functions. However, if the employee caused the damage with intent, the employer has the right to recourse against them if the employer paid damages. Moreover, the employer is obliged to prove the employee's fault. In case law, it can be found that the injured party sued both the employee and the employer.

In Bulgaria, the employer has the possibility to involve the employee in proceedings in the capacity of an intervenor. That is, in situations when the civil proceeding is commenced only against the employer, because in judicial practice, the injured party can claim damages against both the employer and the employee. In the Czech Republic, according to the former Czech Civil Code, direct claims against agents were not prescribed. If the agent acted with negligence, they were obliged to pay 4.5 months' average gross salary to the principal, except in situations when they acted with intent or under the influence of alcohol or drugs. Legal theory interprets that, based on the Civil Code in force, a direct claim against the agent by the injured party is possible.

Concerning the successor states of the former Yugoslavia, as mentioned above, the Obligations Act of 1978 is their common historical legacy that foresaw this subject matter. What is common for all of these countries is that their Obligations Acts in force prescribe employer's liability for damage caused by an employee to a third party at work or in work-related situations, unless they can prove that the employee acted as it was required.

The prevailing opinion in the literature is that the employer's liability is strict, and the employer's fault is not legally relevant, while the employee's is.

The employer is economically stronger than the employee, and the injured party can secure better compensation for damage. However, in the event where the employee acted with intent, the injured party may claim damages directly from them. It should be noted that in Serbia there are also some authors, such as Cvetković, who support the rule that the employer is liable for inappropriate selection of an employee (*culpa in eligendo*), or wrongful instructions of them (*culpa in instruendo*), or wrongful supervision of them (*culpa in vigilando*). However, according to the second theoretical interpretation, the employer cannot release themselves from liability if they prove these conditions. The employer's liability is considered strict, and only if they prove force majeure, acts of a third party or the injured party can be exempted from liability.

Furthermore, the employer's liability is also strict based on the third interpretation, and they are obliged to prove that the employee acted as required in order to be released from liability. Slovenian professor Cigoj gave the fourth interpretation. Namely, in Slovenia, it is also not relevant if the employer manages to prove that they are not at fault for *culpa in eligendo, custodiendo*, and *inspeciendo*. Cigoj's interpretation of the the employer's vicarious liability for their employees is strict. That is why they bear the risk associated with the acts of their

employees. However, when it comes to the liability of the legal person for its organs, it is not vicarious liability. That is why the organ is considered part of a legal person, and the liability should be established for one's own acts because a legal person expresses its will through the organs. However, if a member of the organ acted with due diligence, and if the legal person proves it, it can be released from liability, thus this rule is analogous to the rule on the employer's liability for the employee. Moreover, it should emphasise that in North Macedonia, the liability of a legal person or its organ is a special form of liability for damage caused by an employee to a third party, and the majority of scholars have the standpoint that it is vicarious liability.

The state can also be in the role of the employer and liable for damage caused by its civil servants (public officials). The focus was on the fact that the damage was caused by their unlawful or irregular acts. is regulated by administrative law. Furthermore, administrative law and tort law are both applied and cannot exist independently, because when it comes to public officials, administrative law is applied; however, since the final goal is compensation for damage, in that case, it falls under tort law. Moreover, it should be emphasized that the Constitution is the foundational and initial legal act that regulates this issue. In theory, the state's liability is strict. Strict liability is also foreseen for the employer's liability for damage caused by the employee to a third party using a dangerous thing or performing a dangerous activity. That is why there exists an elevated risk of causing damage by these activities. In addition, dangerous things, by their very existence and position, also create an elevated risk of causing damage.

In addition, it is worth mentioning that various theories are incorporated in this thesis. For example, in Germany emerged the 'result theory' (Erfolgstheorie) and the 'conduct theory' (Handlungstheorie) in the interpretation of § 831 BGB. As the title of the former theory suggests, what can be expected from the 'result theory', that is the result. Thus, the result is unlawfulness (Rechtswidrigkeit), a violation of a protected right. The latter, 'conduct theory', means that the proper conduct is violated. In the Romanian law various legal theories also exist, including economic theory. The designation itself suggests economic dependence of the employee on the employer. Furthermore, similar to the German and French law, the employer shall not be liable if they can prove that the injured party knew that the acts of the employee that caused damage to them were not connected with the duties or functions entrusted to them. In addition, it should emphasise that in Romania, the employee's fault is not a prerequisite for establishing the employer's liability.

In the end, the author is expected to propose de *lege ferenda* solutions. Thus, the Draft Common Frame of Reference (DCFR) is a good example to express personal opinion. Taking into account that we live in an age of new technologies that erase borders between states in the virtual sense, this draft law represents an attempt to erase those borders in the legal system of all European states as well. Although the Draft Common Frame of Reference is not a legally binding act, it presents an attempt to first harmonise legal terminology (given example of the term "accountability" concerning this topic, which uses the term "liability"). The internet has provided equal opportunities for everyone to find a job, thus nowadays, there are many platform workers who work from home. It is particularly challenging when they live in one country and work in another. Therefore, the existence of uniform law is necessary in order to eliminate all legal uncertainties that arise in the interpretation of the law, particularly regarding this topic when damage occurs. If all European countries were to adopt these provisions into their legal systems, it would be much easier to reach a constructive solution.

Let us consider, by way of example, institutes from Roman law that still bear Latin names and remain in use today. Do the solutions proposed in this Draft represent a modern analogy to Roman law? After this, does history repeat itself?

22 BIBLIOGRAPHY

1. Antanaitis Martynas: Ar lietuvoje galima tiesioginė darbuotojo deliktinė atsakomybė?, Vytauto didžiojo universitetas, Kaunas, (Is direct tort liability of an employee possible in Lithuania?, Vytautas Magnus University).
2. Amato Cristina and Comandé Giovanni in Casals Miquel Martin (ed.) (2019): The Borderlines of Tort Law: Interactions with Contract Law, Intersentia.
3. Ampovska Marija and Belovski Vojo: The Meaning of the Employers' Liability Provisions for Raising the Level of Workers Safety, International Journal of Sciences: Basic and Applied Research (IJSBAR) (2015) Volume 19, No 1, pp 410-417.
4. Ampovska Marija: Накнада штете у случају професионалне одговорности у правним професијама у складу са прописима Републике Македоније. (Compensation of damage in case of professional liability in legal professions under the law of the Republic of Macedonia) Issue: 81/2018, Зборник радова Правног факултета у Нишу, pp. 283-301.
5. Antić Oliver (2011) *Obligaciono pravo*, 6th edn. Beograd: Pravni fakultet Univerziteta u Beogradu.
6. Berkes Lilla in Giacinto della Cananea, Roberto Caranta (eds.) (2020): Tort Liability of Public Authorities in European Laws, Oxford University Press.
7. Bagińska Ewa and Tulibacka Magdalena in Roger Blanpain, Frank Hendrickx, Britt Weyts (eds) (2022): *Tort Law in Poland*, Kluwer Law International B.V., Alphen aan den Rijn.
8. Bagińska Ewa (2005) "State Liability in a Comparative Perspective." Boletim da Faculdade de Direito da Universidade de Coimbra.
9. Bell John, André Janssen, and Basil S Markesinis, With a Foreword by Professor Sir, ed. (2019): Markesinis's German Law of Torts: A Comparative Treatise. Oxford: Hart Publishing, Bloomsbury Collections.
10. Bell John, Book Review, JETL 1/2011.
11. Belovski Vojo: Damage Compensation: Employee's Responsibility of the Damage and Employer's Responsibility, Balkan Social Science Review, Vol. 4, 2014, 129-157.

12. Belickas Mindaugas: Ar įstatyminis reikalavimas darbdaviui atlyginti žalą, atsiradusią döl darbuotojo kaltös, nepažeidžia nukentöjusiojo ir darbuotojo teisių?, Vytauto didžiojo universitetas, Kaunas, 2009

13. Babić Ilija (2015): Odgovornost radnika i poslodavca za štetu koju radnik prouzrokuje trećem licu, Pravna riječ, No. 43/2015, Year XII.

14. Babić Ilija (2016): *Gradjansko pravo*, Knjiga 4 – Obligaciono pravo – opšti deo. Službeni glasnik.

15. Belickas Mindaugas: Ar įstatyminis reikalavimas darbdaviui atlyginti žalą, atsiradusią döl darbuotojo kaltös, nepažeidžia nukentöjusiojo ir darbuotojo teisių?, Vytauto didžiojo universitetas, (Does the statutory obligation of the employer to compensate for damage caused by the employee's fault violate the rights of the injured party and the employee? Vytautas Magnus University), Kaunas, 2009.

16. Barry, D. (1970). Governmental Tort Liability in the Soviet Union, Bulgaria, Czechoslovakia, Hungary, Poland, Romania and Yugoslavia. Leyden, Sijthoff.

17. Baran, K. (ed) (2022) Kodeks Pracy. Komentarz (Labour Code. Commentary), Vol. 2. Articles 94-304(5), 6th ed, WKP. Available at: https%3A%2F%2Fsip.lex.pl%2F

18. Busnelli, D., F. and Giovanni Comande in Helmut Koziol (ed.) Unification of tort law: wrongfulness, Italy 'Wrongfulness' in the Italian legal system, 1998, The Hague: Kluwer Law International.

19. Busnelli, Donato, Busnelli: Elena Bargelli and Giovanni Comandé in J. Spier (ed.) Unification of tort law: Liability for damage caused by others, 2003, The Hague: Kluwer Law International

20. Badowiec, R. (2017) 'Odpowiedzialność za szkodę wyrządzoną osobie trzeciej przy wykonywaniu obowiązków pracowniczych – uwagi na tle art. 120 k.p.' [Liability for damage caused to a third party while performing employee duties - comments in the context of Art. 120 kp], "Młody Jurysta" Journal of Students and Doctoral Students of the Faculty of Law and Administration of Cardinal Stefan Wyszyński University , (4), Warsaw, Available at: https://czasopisma.uksw.edu.pl/index.php/mj/article/view/1278

21. Balwicka-Szczyrba M., Sylwestrzak A. (eds.) (2023) Civil Code. Commentary updated, LEX/el. 2023. Available at: https%3A%2F%2Fsip.lex.pl%2F

22. B. Bernhard and S. Martin in Ernst Karner (ed) (2021): „Tortious and Contractual Liability“, Chinese and European Perspectives, Jan Sramek Verlag.

23. Babunska, B. (2019) Effective judicial protection and State liability in EU law. Implications for the Macedonian Judiciary.

24. Bernhard BURTSCHER and Martin SPITZER in Ernst Karner (ed) • Tortious and Contractual Liability, Wien 2021, Jan Sramek Verlag KG.

25. Bernhard A. Koch: Austrian Cases on Medical Liability, European Journal of Health Law, June 2003, Vol. 10, No. 2 (June 2003), Brill, pp. 91-114.

26. Bukovac Puvača Maja, Zvonimir Slakoper and Loris Belanić: 2015, Obvezno pravo Posebni dio II. Izvanugovorno obvezni odnosi, Novi Informator, Zagreb.

27. Begović Vesna in Dušanka Radović (ed.) Vrhovni sud Crne Gore / the Supreme court of Montenegro, Bilten / Bulletin 2/2015 godina / year, Vesna Medenica, Predsjednik Vrhovnog suda / President of the Supreme Court, Podgorica, 2016

28. Cagliari, P.: „La responsabilità del preponente ex art. 2049 c.c“ („The liability of the principal under Article 2049 of the Civil Code“) www.eclegal.it, access 24.05.2025

29. Chaba D. (2020) „Public officials' liability: a case study on Poland“, International Review of Administrative Sciences, 86(1).

30. Ciochină-Barbu Ioan (2015): „The principals' liability for their agents in regulating the New Civil Code“, Acta Universitatis George Bacovia. Juridica - Volume 4. Issue 2.

31. Cvetković Mihajlo (2018) 'Osnov neugovorne odgovornosti poslodavca za štetu koju radnik prouzrokuje trećem licu', Pravo i privreda, 56(7-9).

32. Cigoj Stojan in Commentary of the Obligations Act (ed. Slobodan Perović), 1995.

33. Comandé, Giovanni and Nocco, Luca in Ken Oliphant: The Borderlines of Tort Law, Interactions with Contract Law, Intersentia, 2019.

34. Crnić Ivica (2018): Zakon obveznim odnosima sa izmjenama iz 2018. i dodatnom sudskom praksom, Organizator, Opsežna sudska praksa, napomene i komentari, detaljno abecedno kazalo pojmova, Zagreb.

35. Čuveljak, J. (2001) “Odgovornost države za štetu nastalu fizičkim i pravnim osobama obavljanjem službe ili druge djelatnosti državnih organa i drugih javnopravnih osoba”, Hrvatska javna uprava 3(1).

36. Du Plessis Paul J. (2020): Borkowski's Textbook on Roman Law, Oxford University Press.

37. Dieter Gaul (1964): „Die Haftung des Arbeitnehmers bei schadengeneigter Arbeit in Literatur und Rechtsprechung“, Arbeit und Recht, Bund-Verlag GmbH, Vol. 12, No. 9, pp. 260-265.

38. Dobešová Lenka and Hurdík Jan (2020): Tort Law in the Czech Republic, Kluwer Law International B.V., Alphen aan den Rijn.

39. Deviller Jacqueline Morand (1995): Cours de droit administratif, Cours – Thémes de réflexion Commentaries d’arret avec corrigés, Montchrestien.

40. Demark, A. (2023) „Odgovornost države za štetu kao ostvarenje načela odgovornosti uprave“, Zbornik radova "13. Međunarodna konferencija Razvoj javne uprave", Sudarević Ž., Gongeta S., Stojanović S. eds. Veleučilište „Lavoslav Ružička“, Vukovar.

41. Dobešová Lenka and Hurdík Jan (2020): Tort Law in the Czech Republic, Kluwer Law International B.V., Alphen aan den Rijn.

42. Dörre-Kolasa, D., in Baran K., Ćwi-ertniak B., Góral Z., Lekston M., Walczak K., (eds) (2016) Liability for damage caused to a third party, Outline of Polish Labour Sistem. Warsaw: Wolters Kluwer SA.

43. D. Jadek Pensa in Miha Juhart, Nina Plavšak (eds): (2003) Obligacijski zakonik (OZ) (splošni del) s komentajrem, 1. knjiga (1 do 189. člen), Založba, Ljubljana.

44. Fuglinszky Ádám (2014): Risks and Side Effects: Five Questions on the ‘New’ Hungarian Tort Law, ELTE Law Journal, ELTE Eötvös University Press.

45. Fuglinszky Ádám in Attila Harmathy (ed.) (2019): Introduction to Hungarian law, Kluwer Law International B.V.

46. Flume W Johannes: Strict Liability in Austrian and German Law, JETL 2021; 12(3): 205–220

47. Fagnano Gabriele in Alexander Loos (ed.) Directors’ Liability, Kluwer Law International, Alphen aan den Rijn, The Netherlands.

48. Ferrarini Guido and Giudici Paolo (2019) The Protection of Minority Investors and the Compensation of Their Losses, Cambridge University Press.

49. Grabenwarter Christoph, Schauer Martin (eds.) (2015): Introduction to the Law of Austria, Kluwer Law International BV, The Netherlands.

50. Giliker Paula (2011) „Vicarious liability or liability for the acts of others in tort: comparative perspective“, Journal of European Tort Law, 2(1).

51. Giliker Paula (2018): Comparative Law and Legal Culture: Placing Vicarious Liability in Comparative Perspective, The Chinese Journal of Comparative Law Vol. 6 No. 2 pp. 265-293.

52. Georgijević Goran (2025): Civil liability of principal for the acts of agent–a comparison between France and Mauritius, Anali Pravnog fakulteta u Beogradu.

53. Gorenc V., Belanić L, Momčinović H, Perkušić A. Pešutić, Z. Slakoper, M. Vukelić, B. Vukmir (2014): Komentar zakona o obveznim odnosima, Narodne novine, Zagreb.

54. Grech Alfred: 1973, The ‘ratio' behind article 2049 of the Italian civil code, Għaqda Studenti tal-Liġi.

55. Giacinto della Cananea and Roberto Caranta (eds.): Tort Liability of Public Authorities in European Laws, 2020.

56. Gale Galev and Jadranka Dabovik Anastasovska: Obligaciono pravo, Univerzitet Sv. Kiril i Metodij, Skopje, 2021.

57. Grozdanovska Marija and Efremovski Ivan: Obligations, Skopje, 2022.

58. Galand-Carval Suzanne in J. Spier (ed.) Unification of Tort Law: Liability for Damage Caused by Others (2003)

59. Harmathy Attila and Németh Ágnes (eds.) (1990) Questions of civil codifications, Institute for Legal and Administrative Sciences of the Hungarian Academy of Sciences, Budapest.

60. Hubner Leonhard and Kaller Luca in Ekaterina Aristova and Uglješa Grušić eds. (2022): Civil remedies and human rights in flux, Key Legal Developments in Selected Jurisdictions, Hart Publishing.

61. Henrietta Hanyu (2015): Munkajogi kárfelelősség a gyakorlatban, Wolters Kluwer, Budapest.

62. Hajdú József (2024): Labour Law in Hungary, Kluwer Law International BV, The Netherlands.

63. Hedley Christ in Rainer Arnold (ed.) (2016): Europenization through private law instruments, Universitatsverlag Regensburg.

64. Ilić Milica, Dudás Attila: Employer's liability for damage caused by the employee to a third party using a hazardous thing or performing a hazardous activity under Serbian law – case study, Publicationes Universitatis Miskolcinensis Sectio Juridica et Politica, Tomus XLIII/1 (2025), pp. 180–199.

65. Ilić Milica (2025): Employer's Liability for Damage Caused by the Employee to a Third Party under German, French, and Romanian law, *Zbornik radova Pravnog fakulteta u Bihaću.*

66. Ilić Milica (2025): Employer's Liability for Damage Caused by the Employee to a Third Party under Polish Law, *Studia Iurisprudentiae Doctorandorum Miskolciensium*.

67. Jaworski Bartłomiej (2019): The case of Blanco: Epoch-making ruling vs. general law doctrine. The public–private divide in historical context, Studenckie Prace Prawnicze, Administratywistyczne i Ekonomiczne.

68. Jugastru Călina (2013): Damage in the Context of the Liability for the Actions of Others, Jurnalul de Studii Juridice, 3-4.

69. Jelušić, D. (2020) „Novo normativno rješenje pitanja državne odgovornosti za naknadu štete pričinjene u obavljanju poslova državne uprave", Hrvatska pravna revija.

70. Jug, J. Orlić Zaninović, S. (2020) Odgovornost države za štetu učinjenu od tijela državne uprave, Priručnik za polaznike/ce, Pravosudna akademija, Zagreb.

71. Josipović Tatjana (ed.) (2014) Introduction to the Law of Croatia, Kluwer Law International, Alphen aan den Rijn, The Netherlands.

72. Jadek Pensa Dunja (2003a): '4. odsek: Odgovornost za delavce' in Juhart, M., Plavšak, N. (eds.) Obligacijski zakonik (OZ) (splošni del) s komentarjem, Ljubljana: GV Založba.

73. Jadek Pensa Dunja (2004): Odškodninska odgovornost delodajalcev za delavce, Delavci in delodajalci, 2-3/IV.

74. Jasion M. (2017) ‘Risk of compensation in the light of harm to a third party by an employee’, Scientific Journal of Bielsko-Biała School of Finance and Law, 4(2017).

75. Jānis Kārkliņš, Vadim Mantrov, Lauris Raņačs: Tort Law in Latvia, Kluwer Law International, Alphen aan den Rijn, the Netherlands, 2022.

76. Ineta Tare: Labour Law in Latvia, Kluwer Law International, Alphen aan den Rijn, the Netherlands, 2020.

77. Kārkliņš Jānis, Mantrovs Vadim and Rasnačs Lauris (2022): Tort Law in Latvia, Kluwer Law International B.V., Alphen aan den Rijn.

78. Kärt Meri: 2024, Tööandja deliktiõiguslik vastutus töötaja põhjustatud kahju eest (The Employer’s Liability in Tort for Damage Caused by an Employee), Tartu ülikool õigusteaduskond, Eraõiguse osakond.

79. Kask Annika: Ülesande andja vastutus toimingu tegija delikti eest, Tartu ülikool õigusteaduskond, Eraõiguse osakond,Tallinn, 2024. Liability of the principal for the torts committed by the agent, University of Tartu, Faculty of Law, Department of Private Law.

80. Karsini Vanessa Soerjaman (2013): Employers’ liability for damage caused by his employee, A comparative study: Germany and the Netherlands, University of Tilburg

81. Kundić Marin: 2021, Odgovornost za štetu nastalu u obavljanju vatrogasne djelatnosti, Sigurnost 63 (3) 317 – 322,

82. Karanikić Mirić Marija (2023): Tort law in Serbia, Kluwer Law International B.V., Alphen aan den Rijn.

83. Karanikić Mirić Marija (2016) Objektivna odgovornost za štetu, Belgrade: Službeni glasnik.

84. Karanikić Mirić Marija (2024): Obligaciono pravo, Službeni glasnik.

85. Karamarković, L. (2004) Rasprave iz ugovornog, odštetnog i procesnog prava, 3rd. edn. Beograd: Glosarijum.

86. Klarić Petar and Vedriš Martin (2009) Građansko pravo, Narodne novine d. d., Zagreb.

87. Kuželj Valentino (2024) Odgovornost radnika za štetu nastalu na radu ili u vezi s radom (poslodavcu i trećoj osobi), Pravo i porezi.

88. Koch Harald in Joachim Zekoll and Gerhard Wagner (eds.) (2019): Introduction to German Law, Kluwer Law International B.V, Alphen aan den Rijn The Netherlands.

89. Koch B., A.: Austrian Cases on Medical Liability, European Journal of Health Law, June 2003, Vol. 10, No. 2, Brill, pp. 91-114.

90. Koziol, H. in J. Spier (ed.) Unification of tort law: causation, 1994, The Hague: Kluwer Law International.

91. Koziol. H. in Helmut Koziol (ed.) Unification of tort law: wrongfulness, 1998, The Hague: Kluwer Law International.

92. Koziol, K. in P. Widmer (ed.) Unification of tort law: Fault, 2005, The Hague: Kluwer Law International,

93. Koch and H. Koziol (Eds.) Unification of Tort Law: Strict Liability, Kluwer Law International, 2002.

94. Koziol, H. Österreichisches Haftpflichtrecht, Vienna: Manz, 1997.

95. Konstantinović Mihailo: Obligacije i ugovori – Skica za Zakonik o obligacijama i ugovorima [Obligations and Contracts – Draft for a Code on Obligations and Contracts]. Reprinted in the series „Klasici jugoslovenskog prava“. Službeni list, Beograd, 1969.

96. Knetsch Jonas (2021): Tort Law in France, Kluwer Law International BV, The Netherlands.

97. Laleta Sandra (2003) Odgovornost za štetu koju prouzroči radnik na radu i u vezi s radom trećim osobama (usporedba s njemačkim, austrijskim i europskim pravom), Sveučilište u Rijeci, Pravni fakultet.

98. Laleta, S: Neka pitanja odgovornosti za štetu koju prouzroči posloprimac... Zb. Prav. fak. Sveuč. Rij. (1991) v. 27, br. 2, 1005-1031 (2006), pp. 1005-1006.

99. Lahe Janno: Meaning of Fault with regard to Liability for Damage Caused by the Unlawful Action of Another Person, Juridica International XI/2006

100. Lahe Janno: The Concept of Fault of the Tortfeasor in Estonian Tort Law: A Comparative Perspective, Review of Central and East European Law 38 (2013) 141-170

101. Lovetinsky Vojtech (2017): "Liability for Agents in Czech Tort Law: A Step in the Right Direction," Common Law Review.

102. Magi, Elena: Responsabilità ex art. 2049 c.c. e obbligo di sicurezza nella fattispecie del distacco, Diritto della Sicurezza sul Lavoro, 2-2018

103. Možina Damjan (2021): Fault, Presumption of Fault, and Wrongfulness in the Yugoslav Obligations Act, De Gruyter.

104. Morait Branko: 1999, Obligaciono pravo, Banja Luka, Knjiga druga.

105. Meškić, Z, Čolaković, M. (2014): "Odgovornost države za štetu uzrokovanu pogrešnom presudom – praksa Vrhovnog suda Federacije Bosne i Hercegovine u svjetlu Suda Evropske unije", Sveske za javno pravo 16.

106. Magud Mirjana, Horvat Mataić Vlasta (2016): Problematika naknade štete na radu i u vezi sa radom, Pravosudna akademija Zagreb.

107. Magnus Ulrich in Ken Oliphant (ed) (2017): „The Liability of Public Authorities in Comparative Perspective“, Intersentia.

108. Magnus Ulrich and Seher Gerhard in P. Widmer: 2005, Unification ofTort Law: Fault, Kluwer Law International.

109. Moréteau Olivier in Helmut Koziol (ed) (2015): „Basic Questions of Tort Law from a Comparative Perspective, Jan Sramek Verlag KG Wien.

110. Manea Laura (2018): "Constants of tort liability's", Bulletin of the Transilvania University of Braşov, Series VII: Social Sciences and Law, Vol. 11 (60) No. 2.

111. Mežnar Špela (2004): Odgovornost delodajalcev v obligacijskem pravu, Pravnik, Ljubljana.

112. Majhošev Andon and Belovski Vojo: Трудово право (Labour Law), Универзитет “Гоце Делчев“- Штип Правен факултет, (University Goce Delčev, Štip, Faculty of law), 2012.

113. Machnikowski P. (2019) „Compensation for Accidents in Poland“, Otago Law Review, 16 (1).

114. Mackiewicz, M. (2020) "The Condition of Fault in Private Enforcement of Competition Law- A Comparative Analysis of U.S. v. Polish and European Approach", Yearbook of Antitrust and Regulatory Studies, 13(21).

115. Moras-Olaś, K. (2016) ‘Guilt of the employee and the liability for the damage inflicted on a third party – some remarks with regard to the Polish labour code regulations’, Roczniki Administracji i Prawa: teorija i praktyka, XVI(2).

116. Markesinis S Basil, Bell John, Janssen André: 2019, Markesinis’s German Law of Torts A Comparative Treatise, Hart.

117. Melzer, N.: 2023, Labour law in Austria, Kluwer Law International, Alphen aan den Rijn, The Netherlands.

118. Muszalski W., Walczak K. (eds.) (2021) Kodeks Pracy. Komentarz (Labour Code. Commentary), Wydawnictwo C.H. Beck, (13) Warsaw. Available at : https://www.ksiegarnia.beck.pl/22146-kodeks-pracy-komentarz-wojciech-muszalski-dagger

119. Malaurie Philippe, Aynès Laurent and Stoffel-Munck Philippe (2011): Droit Civil, Les obligations, Defrenois

120. Menyhárd Attila in Helmut Koziol (ed) (2015): Basic Questions of Tort Law from a Comparative Perspective, Jan Sramek Verlag.

121. Perroud Thomas in Giacinto della Cananea, Roberto Caranta (eds.) (2020): Tort Liability of Public Authorities in European Laws, Oxford University Press.

122. Perović, S., Stojanović, D. (eds.) (1978) Komentar Zakona o obligacionim odnosima, Kragujevac: Pravni fakultet.

123. Perović Slobodan (2012): Novi razvoj u oblasti građanskog prava u zemljama Jugoistočne Evrope, Forum za građansko pravo za jugoistočnu Evropu, Knjiga II, Skoplje.

124. Perović Slobodan (2012): Novi razvoj u oblasti građanskog prava u zemljama Jugoistočne Evrope, Forum za građansko pravo za jugoistočnu Evropu, Knjiga II, Skoplje.

125. Prica, M. (2012) “The state's liability in damages for wrongful administrative action”, Facta Universitatis, Law and Politics, Vol. 10, No. 1.

126. Perkušić Trpimir (2021) Odgovornost za štete kod privremenog zapošljavanja, Zbornik radova Pravnog fakulteta u Splitu.

127. Petrić Silvija (1991): Odgovornost države za štetu, Zbornik Pravnog fakulteta Sveučilišta u Rijeci.

128. Pribula László (2019): Practical Problems Concerning the Introduction of a New Legal Institution – Tort in Hungarian Civil Law, Studia Iuridica Cassoviensia.

129. Petrašević Tunjica and Krmek Mato (2017): The non-contractual liability of the EU – case study of šumelj case, EU and comparative law issues and challenges, University Josip Juraj Strossmayer of Osijek, Faculty of Law Osijek.

130. P. B. Mignault (1910): The Modern Conception of Civil Responsibility, Journal of the Society of Comparative Legislation, Vol. 11, No. 1, pp. 102-113, Cambridge University Press on behalf of the British Institute of International and Comparative Law.

131. Pusztahelyi Réka (2025): Analysis of the Changing Position of the Strict Liability Rule for Highly Dangerous Activities under the Civil Code of Hungary 2013, European Review of Private Law 1 & 2-2025 [387–406], Kluwer Law International BV, The Netherlands.

132. Radišić, J. (1982): Obligaciono pravo, opšti deo, Savremena administracija.

133. Radevska Marija: Облигациони односи настанати со причинување штета во македонското право, Yearbook 2009, Faculty of Law, Goce Delcev University – Stip.

134. Răzvan Anghel (2023). Considerations regarding the inclusion in working time of periods during which the worker participates in team building activities. Revista de Drept Social, 4. https://nbn-resolving.org/urn:nbn:de:0168-ssoar-91061-8

135. Rivera César Julio: The Scope and Structure of Civil Codes, Ius Gentium: Comparative Perspectives on Law and Justice, Vol. 32, Springer, 2013

136. Rieckers Oliver, Gerdemann Simon, and Seidel Andreas: 2023, Tort Law in Germany, Kluwer Law International BV, The Netherlands

137. Renault-Brahinsky Corinne: Droit des obligations, Gualino éditeur.

138. Rossi Filippo (2003): Tort Liability of Financial Regulators, A Comparative Study of Italian and English Law in a European Context, European Business Law Reviewv, 14, Issue 6, pp. 643-671.

139. Sazdovska Ivana: Одговорност на правното лице и на неговите органи за штета причинета на трето лице – правна уреденост во македонското право и однос со

трудовото право, (Liability of the Legal Person and Its Organs for Damage Caused to a Third Party – Legal Regulation in Macedonian Law and Its Relation to Labor Law), Štip.

140. Sewerynski, M. (1997a) "Varieties in Employment Status and Related Issues in Polish Labour Law." Comparative Labor Law Journal, 18(4).

141. Sewerynski, M. (2004b) "Toward a New Codification of Polish Labor Law", Comparative Labor Law & Policy Journal, 26(1).

142. Spier, J. (ed) (2003) Unification of Tort Law: Liability for Damage Caused by Others, Kluwer Law International.

143. Szpunar, A. (1967) "The Law of Tort in the Polish Civil Code", International and Comparative Law Quarterly, 16(1).

144. Spindler Gerald, Rieckers Oliver (2019): Tort Law in Germany, Kluwer Law International B.V., Alphen aan den Rijn.

145. Soerjaman Karsini Vanessa (2013): Employers' liability for damage caused by his employee, A comparative study: Germany and the Netherlands, International European Labour Law, University of Tilburg.

146. Steiner Eva (2018): French Law: A Comparative Approach (2nd edn), Oxford University Press.

147. Stefan Storr, Kathrin Bayer, Daniela Bereiter, and Luca Mischensky in Giacinto della Cananea and Roberto Caranta (eds.): Tort Liability of Public Authorities in European Laws, 2020.

148. Samec, N. Berghaus, A. Bitrakov Drnovšek, K. (2024) Tort Law in Slovenia, Kluwer Law International, Alphen aan den Rijn, the Netherlands.

149. Staničić Frane (2016): „Odgovornost države za štetu nastalu nezakonitim ili nepravilnim radom - problemi u praksi", Hrvatska pravna revija, 16 (1).

150. Sõritsa Dina and Lahe Janno: The Possibility of Compensation for Damages in Cases of Wrongful Conception, Wrongful Birth and Wrongful Life. An Estonian Perspective, European Journal of Health Law, 2014, Vol. 21, No. 2, Brill,

151. Sipka Péter (2021): A munkáltatói kárfelelősség elmélete és gyakorlata, HVGorac, Budapest.

152. Scognamiglio, Claudio (ed): 2024, Enciclopedia de diritto, I Tematici, VII Responsabilita civile, Giuffre Francais Lefebvre S.p.A., Milano.

153. Scotti, Elisa: Liability of Public Administration in Italy: Considerations on Recent Changes, International Journal of Public Administration, 34: 104–109, 2011.

154. Salvatore Cardillo and Hans-Bernd Schäfer: A Unique Liability Regime for Hazardous Activities in a Civil Law Country The Enhanced Level of Due Care and Presumption of Negligence in Article 2050 of the Italian Civil Code, 2022.

155. Slakoper Zvonimir and Tot Ivan (2022): The Law of Obligations in Central and Southeast Europe, Recodification and Recent Developments, Routledge, Taylor & Francis Group, London and New York.

156. Štefko Martin (2022): Liability of the Employer for Injury Caused to a Third Party in His or Her Workplace, Societas et Iurisprudentia, 3 (10).

157. Toma-Dăuceanu Laura, Ilies¸ Neamt Ioan in Roger Blanpain, Frank Hendrickx, Britt Weyts (eds.) (2022): Tort law in Romania, Kluwer Law International B.V., Alphen aan den Rijn.

158. Tichý Luboš (2016) in Ken Oliphant (ed.) The Liability of Public Authorities in Comparative Perspective, Intersentia.

159. Tsoneva Silvia: Отговорностнавъзложителянаработа, приилипоповодизвършва-ненаработата, английскоделиктноправо, българскоделиктноправо (Damage Caused by Another in the Course of his Employment under the English and Bulgarian Tort Law), Годишник на департамент „Право“ на НБУ, 2019.

160. T. Treu: Labour Law in Italy, Alphen aan den Rijn, the Netherlands, 2023.

161. Tare Ineta: Labour Law in Latvia, Kluwer Law International, Alphen aan den Rijn, the Netherlands, 2020

162. Tsiaklagkanou Dimitra (2023): French Tort Law Reform: A Rapprochement to Other Legal Systems?, Journal of International Business and Law.

163. Van Dam Cees (2013): European Tort Law, Oxford University Press.

164. Vassil Mrachkov: Labour Law in Bulgaria, Kluwer Law International, Alphen aan den Rijn, The Netherlands, 2020.

165. Veniamin Virgil in Barry, Donald D.; et al. (1970): Governmental Tort Liability in the Soviet Union, Bulgaria, Czechoslovakia, Hungary, Poland, Romania and Yugoslavia.

166. Vornicu Roxana (2020): in Giacinto della Cananea, Roberto Caranta (eds.): Tort Liability of Public Authorities in European Laws, Oxford University Press.

167. Vukotić Miloš (2017): „Social Policy in Serbian Tort Law: The case of vicarious liability for Employees“, Pomniki prawa na przestrzeni wieków, Księgarnia Akademicka, Kraków.

168. Vojnović D. Sava: 2025, Legal liability and free will, University of Belgrade Faculty of Law, Belgrade

169. Vartolomei Brîndușa: 2014, The subordination of the employee to the employer – the fundamental legal characteristic of the individual employment contract and its consequences on labor law, Perspectives of Business Law Journal.

170. von Ira Schelp (2003): Die Haftungsbelastung des Arbeitnehmers bei Schädigung Dritter, eine rechtsvergleichende Untersuchung, mit dem Regelungsentwurf für ein europäisches Modellgesetz (Employee Liability for Damage to Third Parties: A Comparative Legal Analysis with the Draft of a European Model Law), Juristische Fakultät der Humboldt-Universität zu Berlin

171. von Bar Christian, Eric Clive and Hans Schulte-Nölke et al. Principles, Definitions and Model Rules of European Private Law, Draft Common Frame of Reference (DCFR), [Interim Edition, to be completed].

172. von Bar Christian et al. Principles, Definitions and Model Rules of European Private Law, Draft Common Frame of Reference (DCFR), 2009, Sellier. European Law Publishers GmbH, Munich.

173. Wagner Gerhard (2011): in Towards a European Civil Code, eds. (Arthur S. Hartkamp, Martijn W. Hesselink, Ewoud H. Hondius, Chantal Mak, C. Edgar du Perron), Kluwer Law International, Alphen aan den Rijn.

174. Wagner, W. J. (1972) "Recent Developments in State Tort Liability in Poland", American Journal of Comparative Law, 20(2), Spring.

175. Waltermann Raimund in Ken Oliphant and Gerhard Wagner (eds.) 2012: Employers' Liability and Workers' Compensation, Tort and Insurance Law, Walter de Gruyter GmbH, Berlin/Boston.

176. Walter van Gerven, Jeremy Lever, and Pierre Larouche: 2000, Common law of Europe casebooks, Tort law, Hart Publishing, Oxford and Portland, Oregon.

177. Weiss Manfred, Schmidt Marlene, and Hlava Daniel (2019): Labour Law and Industrial Relations in Germany, Kluwer Law International B.V.

178. Wollenschläger Ferdinand and Stapf Johannes (2020): „Tort liability of public authorities in European laws“, Giacinto Della Cananea and Roberto Caranta (Eds), Oxford University Press.

179. Wolak, G. (2015) „Odpowiedzialność pracownika za szkodę wyrządzoną osobie trzeciej przy wykonywaniu obowiązków pracowniczych“(Employee's liability for damage to a third party while performing employee duties) Praca i Zabezpieczenie Społeczne, 01(2015), Warszawa.

180. Zimerman, Reinhard (1992): The Law of Obligations, Roman Foundations of the Civilian Tradition, Juta & Co, Ltd, PO, Kenwyn.

181. Zweigert, Konrad, Kötz Hein (1998): Introduction to comparative law, Clarendon, Press, Oxford.

182. Wacke, Andreas: (1992): "The Employee's Limited Liability in German Law and Its Development Compared with Roman Law." Journal of South African Law 1992, no. 3, 369-380.

Related Publications of the Author

Ilić, M., Dudás, A. (2023) “Employer’s Liability for Damage Caused by the Employee to a Third Party under Serbian Law”, *Acta Universitatis Sapientiae Legal Studies*, 2/2023, pp. 59–73.

Ilić, M., Dudás, A. (2025) “Employer’s liability for damage caused by the employee to a third party using a hazardous thing or performing a hazardous activity under Serbian law – case study”, *Publicationes Universitatis Miskolcinensis Sectio Juridica et Politica*, Tomus XLIII/1, pp. 180–199.

Ilić, M. (2025) „Employer's Liability for Damage Caused by the Employee to a Third Party under German, French, and Romanian law“, *Zbornik radova Pravnog fakulteta u Bihaću*, pp. 238-265.

Ilić, M. (2025) „Employer's Liability for Damage Caused by the Employee to a Third Party under Polish Law“, *Studia Iurisprudentiae Doctorandorum Miskolciensium*, Tomus 30 2025/2, pp. 167-182.

Ilić, M. (2025) “Historical Aspects of Employer’s Liability for Damage Caused by an Employee to a Third Party at Work or in Work-Related Situations under Serbian Law”, *Revista Română de Istoria Dreptului/Romanian Journal of Legal History*, 5/2025, pp. 21–35.

Ilić, M., Dudás, A. (2025) “State Liability for Damage Caused to a Third Party by Civil Servants in Performing their Duties under the Laws of Successor States of the Former Yugoslavia”, Central European Academy of UM (under publication).

Ilić, M. (2025) “AI in the workplace and its impact on employees' rights: Historical perspectives, applications of AI, and liability”, Proceedings/Selected Paper, Pavol Jozef Šafárik University in Košice – Slovakia (under publication).

Statement

In accordance with the provisions of the Regulation on the Use of Artificial Intelligence of University of Miskolc and the Guidelines for the Use of Artificial Intelligence of the Deák Ferenc Doctoral School of Law, I, undersigned ...Milica Ilić..... (name), declare that I **have used** / have not used artificial intelligence in my doctoral dissertation and thesis booklets.

In the case of the use of artificial intelligence (hereinafter: AI), I declare the following:
1. The name of the AI tool used: Grammarly and ChatGPT
2. The URL and the version number of the AI tool used: https://chatgpt.com/?utm_source=chatgpt.com,GPT-5.3-mini; https://coda.grammarly.com/d/Untitled-doc_d7zNKCu5diR/Untitled-page_suAiR2EH#_luHlJiq8
3. The exact date of production of the generated content (year, month, day): October '23-May '2026.
4. The purpose and extent of use (describing in detail which part of the dissertation and to what extent the use of AI affects, and for which sub-task the AI was used):
I used Artificial intelligence to check the correctness of the language and for translation. In addition, some sources, such as articles and judgments, I found with the help of GPT: Kärt Meri: 2024, Tööandja deliktiõiguslik vastutus töötaja põhjustatud kahju eest, Kask Annika: Ülesande andja vastutus toimingu tegija delikti eest, Tartu ülikool õigusteaduskond, Eraõiguse osakond,Tallinn, 2024; Case of Iliya Petrov vs Bulgaria, Application No. 19202/03, Judgement of the Supreme Court in Poland No. IV CSK 647/15 of June 10, 2016. Furthermore, I used GPT to translate the literature in foreign languages: Estonian, Lithuanian, Latvian, Bulgarian, Slovakian and Hungarian.

I acknowledge that according to the Guidelines for the Use of Artificial Intelligence of the Deák Ferenc Doctoral School of Law, *„The use of AI is prohibited for the formulation of theses, research results, conclusions, inferences and analyses. Any thesis or paper prepared in this way is not admissible."*

Miskolc, 2026.10.05.

.....
signature