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

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CHAPTER 1: A SHORT SUMMARY OF THE RESEARCH OBJECTIVES SET

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 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 Europe (alternative: Central and South-East Europe). Due to language barriers and a lack of English literature, some of them have not been 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 from a historical perspective of this subject matter that is founded on the Roman legacy. Accordingly, this is a legal institution of vicarious liability that is rooted in Roman law. In addition, modern legal systems are outlined in general terms. The fundamental question underpinning the author's analysis is whether

employers are subject to fault-based or strict liability across different legal systems in this work. The research examined whether this sort of liability is prescribed by statute or whether this is the standpoint in legal scholarship.

One subheading is devoted to the issue of the Draft Common Frame of Reference (DCFR). This project attempts to systematise European private law and should serve as a role model for national legislators in European countries. This is particularly relevant given that the DCFR seeks to establish a uniform legal terminology in English across different branches of private law.

The system of presentation is that the main text pertains to the separate chapters for each selected country, with four main subchapters: *General Considerations, Liability of a Legal Person for Damage Caused by Its Organ, State Liability for Damage Caused by Civil Servants, and Employer's Liability for Damage Caused by the Employee to a Third Party Using a Dangerous Thing or Performing a Dangerous Activity*.

CHAPTER 2: A SHORT DESCRIPTION OF THE ANALYSES AND EXPERIMENTS CONDUCTED, THE METHODOLOGY OF DATA COLLECTION AND THE EXPLORATION AND APPLICATION OF RESOURCES

In this dissertation, firstly, the comparative method (analysis) is used, which involves a comparison of the various legal regimes of Central and Eastern European (alternative: Central and South-East European) countries. These countries are divided into two groups: the legislation of European countries with a more developed legal tradition in this field, such as Germany, France, Austria and Italy; and the legislation of CEE countries, such as Bulgaria, the Czech Republic, Hungary, Poland, Romania, Slovakia, and the former Yugoslav states.

Secondly, the analytical methodologies selected include normative, comparative, and case study methods. In addition, a research hypothesis is defined.

The introductory part is dedicated to the research questions identified by the candidate that she follows throughout the dissertation. Those are:

1. Which act regulates this institute?

2. What are the conditions for establishing the employer's liability?

3. Does the injured party have the right to demand compensation directly from the employee if he caused the damage intentionally?

4. How is liability for damage caused by dangerous things and dangerous activities regulated?

5. Does the employer have a recourse right against the employee, and within what time frame?

6. How is the state’s liability for its employees regulated?

The comparative method plays the dominant role in this thesis's methodological approach from the outset. The dissertation makes a substantial and original contribution to legal scholarship by providing an extensive comparative analysis of nineteen national legal systems, bringing together a wealth of legislative solutions, doctrinal perspectives, and legal approaches within a single comprehensive study. This broad comparative perspective offers valuable insights into both the commonalities and differences among the legal systems examined and significantly enriches the understanding of an employer's liability for damage caused by an employee to a third party.

Namely, this type of employer liability is a form of liability for others, or so-called vicarious liability, and a form of non-contractual liability (*ex delicto*). According to the theoretical interpretation of most legal orders, considered strict. One of the research tasks was to examine, in a whole text, the relevance of the employee's fault for establishing the employer's liability. The

candidate answered this question for each legal system. She started her research from a historical perspective.

Firstly, from classical Roman law, in which period vicarious liability has its origin. Namely, in that period the *paterfamilias* was liable for torts committed by his slaves and children under his power. His liability was strict, based on the principle of noxality. This principle was abandoned in post-classical Roman law because the institution of slavery was abandoned.

In modern legal systems, the German Civil Code and the French Civil Code were the starting point for analysis. Namely, according to the theory, two models of employer liability exist: the employer should be liable regardless of fault, since it bears the risk of damage; therefore, its liability is strict. This model is accepted in French literature. In addition, fault-based liability is another model accepted in German literature. Furthermore, the candidate has analysed the same issue from the perspective of the positive law of other selected countries.

The Draft Common Frame of Reference (DCFR) holds a prominent place in the dissertation, especially in the conclusion, where the *de lege ferenda* proposal is a valuable contribution. Although the DCFR is a project, it contains principles, definitions and model rules.
Furthermore, the dissertation is based on comprehensive and reliable data. These are books, articles, court decisions, statutes, commentaries.

CHAPTER 3: A SHORT SUMMARY OF THE SCIENTIFIC RESULTS, THEIR UTILISATION AND OPPORTUNITIES FOR UTILISATION

This research demonstrates that in the field of labour relationships, although it is common that 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 both in and outside the workplace and how to find the best justly solution for every situation.

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 nothing wrong, thus explaining why someone is held 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 systems, 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. That is the reason why this 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 terms regarding the parties to an employment relationship. Namely, through the years and the development of this legal institute, 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) uses 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, and 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, the 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 the English language literature 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, and 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 special act, provides this kind of liability. It should be noted that in Bulgaria the title of the special statute governing obligations is the Act on Obligations and Contracts, whereas in Serbia it is referred to simply as the Obligations Act.

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, enabling the injured party to secure better compensation for damage. However, in the event where the employee acted with intent, the injured party may claim damages directly from them. This is a notable exception to the principle *culpa lata dolo equiparatur* in the Serbian tort law tradition, in which gross negligence is not equated with intent. In addition, 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 the inappropriate selection of an employee (*culpa in*

eligendo), wrongful instructions (*culpa in instruendo*), or wrongful supervision (*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 they be exempted from liability.

Furthermore, the employer's liability is also strict based on a third interpretation, under which they are obliged to prove that the employee acted as required in order to be released from liability. Slovenian professor Cigoj gave a 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 employer's vicarious liability for their employees is strict because they bear the risk associated with the acts of their employees. However, regarding the liability of the legal person for its organs, it is not vicarious liability. Namely, the organ is considered part of a legal person, and liability should be established for one's own acts because a legal person

expresses its will through its 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 be emphasised 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 take 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. Furthermore, administrative law and tort law are both applied and cannot exist independently, because as regards public officials, administrative law is applied; however, since the final goal is compensation for damage, 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 the legal literature, 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 because 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 the "result theory" (*Erfolgstheorie)* and the "conduct theory" (*Handlungstheorie*) emerged 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 proper conduct is violated. In Romanian law, various legal theories also exist, including economic theory. The designation itself suggests the economic dependence of the employee on the employer. Furthermore, similar to 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 be emphasised 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 a 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 represents an attempt to erase those borders in the legal system of all European states as well. In addition, DCFR presents an attempt to first harmonise legal terminology (given the example of the term "accountability" concerning this topic, which uses the term "liability"). Moreover, 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?

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. (2026) “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.

Ilić, M., Dudás, A. (2027) “Employee’s Direct Liability for Damage caused to a Third Party in Selected CEE Countries, with Special Emphasis on the Successor States of the Former Yugoslavia,” Central European Journal of Comparative Law (CEJCL) (under publication).