



The Meaning of the Employers' Liability Provisions for Raising the Level of Workers Safety

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Abstract

In the legislation of Republic of Macedonia the workers protection during work is regulated with the Law on safety and health during work. This law provides a large number of obligations for the employer and the employee. General obligation of the employer is to ensure the safety and health of its employees in every aspect related to work. Failure to follow the provisions of this law is the basis for employer's liability when an employee suffers an injury in the workplace. The provisions of employer's liability and their significance for raising the level of security and safety represent the central focus of the analysis in this paper.

Keywords: fault liability; strict liability; employer; employee; injury; compensation; damage; fault.

1. Introduction

In Macedonia, statistically speaking, according to the annual reports of the Macedonian Occupational Safety and Health association (in the text referred as MZZPR) [1] through the years the number of accidents resulting in death or injury at work declined. According to the Macedonian Association of Occupational Safety rate of deaths at work for 2013 year in Macedonia is 4.08, or in another way told, in every 100,000 employees die 4 employees which is a decrease compared to 2012, when it was 6.8.

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Although Republic of Macedonia shows notable decline in the rate, given for comparison the UK, where the rate is only 0.5, we can conclude that Macedonia still has a fairly high rate of fatal accidents at work. In terms of injuries at work, the rate for 2013 was 10.2, indicating that in every 100,000 employees, 10 employees were hurt which is also declining compared to last year, when the rate of accidents at work amounted to 17.2. Just for illustration we would like to give notice that in 2012 the total number of accidents was 161, in which 116 were injuries during work, and 45 of them resulted with death [2] and in 2013, 98 accidents during work were recorded and 28 of them resulted with death.[3]

2. Legal framework of employer's liability for the damage suffered by his employee at work in Republic of Macedonia

2.1. Legal framework in Law on safety and health at work

The Law on safety and health at work [4] is a legal instrument which aims to achieve the objective of reducing and lead to a minimum number of accidents at work. This Law regulates the rights and obligations of the employer and the employee in the area of safety and health at work. Before this Law was enacted, very small number of provisions regarding protection at work was included:

- in the Labor Law of Republic of Macedonia from 1993 [5], to be more precise the provisions from article 55 to article 69 and
- In the Law on safety at work from 1998 [6] which is withdrawn with the adoption of the Law on safety and health at work.

Today, the failure of the employer to fulfill the obligations provided with the Law for safety and health at work is the legal basis for employer's liability for damage suffered at work by the employee. On the other hand, failure of the employee to fulfill the obligations that are provided for him by this Law is the legal base for exclusion of the employer's liability or reducing the employer's liability. In case of reducing the employer's liability the court takes into account the contribution of the employee who is injured and reduces the employer's liability accordingly. For example, the court has decided that :*"the plaintiff (employee) has contribution in acquiring injuries and his contribution is 50% from the total amount of damage, and his contribution consists in the fact that the plaintiff knew what could happen with additional load because he had had back pain and before, and the injury happened because of his negligence"* [7] This is in accordance with article 181 from the Law on obligations [8] which says: *" The injured person who had contributed to the occurrence of the damage or to be greater than it would have been without the contribution, has the right of proportionally reduced compensation. In case when it is impossible to determine which part of the damage is caused by the act of the injured person, the court shall award compensation taking into account the circumstances of the case. "*

The general duty of the employer provided in the Law on safety and health at work is to: *" ... ensure the safety and health at work form his employees from every aspect related to the work. In the scoop of his obligations, the employer must take measures needed for the safety and health at work, including protection from occupational risks providing information and training and providing appropriate organization and necessary resources."* Furthermore, the employer is obligated to maintain the operational tools in good condition, to check

the condition and the safety at work with periodic check – up, and to put into use only operational tool which are reviewed and examined for safety functioning, and many other obligations provided for the employer with this Law.

On the other hand, the basic obligation of the employees, provided with article 41 in the Law on safety and health at work is: *"...to meet the provided measures for the right use of the operational tools (mechanization, tools, hazardous substances, transportation equipment and other means for production, and they are forbidden to exclude, modify or remove the protective equipment mode. The employees are obligated to meet the provided measures for safety and health at work and to use the proper equipment for personal protection and after the use to put it back in the proper place, as well as to take medical examination provided with this law and other legislation in this area. If the employee doesn't act as provided with the provision from point 2 in the article, it is considered that he has jeopardize his own life and health, as well as the life and health of the other employees."*

2.2. Legal framework provided with the Labor Law

The employer's liability for the damage suffered on behalf the employee at work is regulated with the provisions of the Labor Law from 2005 [9] in article 159:

- *"If a damage is caused to the employee at work, or about work, the employer is liable to compensate the damage according to the general rules of civil liability for compensation of damage.*
- *The liability of the employer concerns, also, the damage that the employer has caused with the breach of the employees rights originating from the employment relationship."*

This provision have came in the place of the provisions from the Labor Law from 1993, article 109 which had provided that: *" If the employee suffered damage at work or about work, the employer is liable to compensate the damage according to the basic principles in civil liability. If within 15 days from the finality of the decision the employer and the employee don't come to an agreement for the compensation of damage, the employee has the right to claim compensation of damage before the competent court."* These provisions didn't include the workers who didn't have employment contract, but were engaged by some employer and are performing certain tasks. Because of the absence of the formal relationship employer – employee, in case of a damage suffered at work, this provisions in the Labor Law from 1993 couldn't be applied, but anyway, the application of the basic principles of the Law on obligations wasn't excluded.

2.3. Legal framework in the Law on obligations

The provisions in the Labor Law as *lex specialis* in this case point the basic rules in liability for damage which are contained in the Law on obligation from 2001. The Law on obligations is *lex generalis* for the civil liability of the employer for damage suffered by his employee. There are no separate provisions in the Law on obligations for the employer's liability for damage suffered by this employee at work. The Law on obligations contains only provisions for the employer's third party liability for the damage caused by the employee or its' bodies in performing their tasks. We would like to point that this is a completely different institute. This kind of

employers' liability is regulated in article 157 and 158 in the Law on obligations. In accordance with this provisions is article 156 (5) from the Labor Law from 2005. The goal of these provisions is to protect third party and to provide smooth and rapid compensation in case they suffered damage caused by an employee or body of the legal person in performing their tasks. The employers' liability in this case is strict liability, and it is provided by article 157[1] from Law on obligations: "*For the damage that the employee has caused at work or about work to a third party is liable the employer in which the employee was working at the time of causing the damage, except in case the employer will prove that the employee has actually performed as he should have,* " and in article 158 [1] it is provided that: "*The legal person is liable for the damage caused by one of his bodies to a third party in performing or about performing his functions. "Additional protection and relief in realization of the rights of the damaged person is the provision that provides for the damaged person the right to claim compensation directly from the employee, in case he caused the damage intentionally [10].* Having in mind that the employee's liability in this case is based on fault (fault liability), the employer who has compensated the damage to third parties has the right of recourse from the employee (Art. 157[4] from the Law on obligations).

For the damage caused by employee where the fault of the employee does not exist, the employee can't be liable, and in addition to this we cite the next judgment of the Supreme Court of Republic of Macedonia[11]: "*When it is proved that the sued person caused damage to third party driving motor vehicle for official purposes and causing a car accident because of inappropriate speed under the weather conditions and the conditions of the road, wet and slippery road, for which he was convicted with verdict for crime committed with negligence, the employee who is sued has no obligation to pay the amount that is subject of this dispute as a recourse, because he didn't caused the damage intentionally or by gross negligence.* "

3. Basis of liability of the employer to the employee for damage caused at work

Section headings should be left justified, with the first letter capitalized and numbered consecutively, starting with the Introduction. Sub-section headings should be in capital and lower-case italic letters, numbered 1.1, 1.2, etc, and left justified, with second and subsequent lines indented. Provided with the basic rules for compensation of damage in Macedonian law, the liability of the employer for the damage suffered by his employee at work or about work can be:

- Fault liability – based on the fault of the employer. The fault of the employer consists intentional or because of negligence failure to fulfill the obligations provided with the Law on safety and health at worker other legal act in terms of providing work conditions or fulfilling other acts related with the working process and
- Strict liability – the basis of employers' liability is not his fault, but the fact that he has in his property dangerous object or he is performing dangerous activity, in terms of article 160 from the Law on obligations.

In certain cases, according to the case law in Republic of Macedonia, established with judgment of the Supreme Court in Republic of Macedonia, the employers' liability can be fault liability and strict liability in the same time [12]: "*The damage is caused to the plaintiff with breach of health, and for the occurrence of the damage there is fault and strict liability of the sued. The metal ladder 3 meters high on which was the plaintiff in order to perform his work task- setting cable is not a dangerous item on its own, in terms of article 150 of The Law on*

obligations. But, in this case, the worker could perform the task exclusively with claiming the 3 meters high scale, with unsecured quality and failure to take other measures for the stability of the scale, so it is dangerous item, and performing activity at 3 meters height is dangerous activity. Because of this, the sued will be liable for the occurred damage with the fall of the worker under these circumstances, in terms of article 159 and 160 of the Law on obligations.“ We would like to mention that in case of damage compensation caused at work where the injured person is worker who doesn't have employment contract with the employer, the case law notes application only of the rules for strict liability, which is in accordance with a Decision of the Supreme Court of Republic of Macedonia [13] which says: „ If the employment isn't based in terms of article 13(1) from the Labor Law, the plaintiff doesn't have character of employee nor the sued has a character of an employer, and this is the reason why article 159(1) isn't applicable. The basis of liability can be found within the scope of strict liability – that is existence of dangerous item or activity which produce increased danger for damage to the environment regardless the fault of the person who causes damage. According to the case law, in these cases the employers' liability is based on article 160 of the Law on obligations which provides that: *“The person who owns the dangerous item is liable for the damage caused by it and the person who performs dangerous activity is liable for the damage that comes from it.”* The question that could be asked here is: Are the workers in the grey zone that is the workers who don't have employment contracts with their employer protected enough with the provisions in the positive law and the case law, and is their protection at least on the same level as the protection for the employees that have employment contracts. Having in mind the fact that the case law doesn't know cases of fault liability of the employer, we can conclude that the employers liability doesn't exists in case when the item or the activity which caused the damage to the worker can't be classified as dangerous item or activity. On the other hand, the fact that article 159 from the positive Labor Law is inapplicable points to the conclusion that these workers don't have the same level of protection that the employees have, but it is lower.

4. Employees right to compensation

Provided with the general rules of the civil liability, when the damage is suffered by the employee in an accident that happened at work, in case all the assumptions for employers' damage liability are fulfilled, the employee has the right of all damage compensation – including material and non-material damage. The non –material damage is a subject of compensation as provided with the new article for personal rights protection in the amendments of the Law on obligations [14], provided that: *“ Every physical and legal person, in addition to the property protection, has the right of personal rights protection, in accordance with law. In terms of this Law personal rights are the right to life, physical and mental health, honor, reputation, dignity, personal name, privacy of personal and family life, freedom, intellectual creativity and other personal rights. The legal persons have all the listed rights, except those which are related to the biological being of the physical person, and specially the right of good reputation, name or firm, trade secret, freedom of entrepreneurship and other personal rights of these persons. “*

Finally the judge is the one person that will determine if there is right to compensation of non-material damage in case of damage suffered y the employee at work. In terms of article 189 from the amendments of the Law on obligation [15] it is provided that: *“ In case of personal rights injury, the court, if it finds that the meaning of the injury and the circumstances of the case justify that, will provide equitable money compensation, regardless if*

there is compensation of material damage or not. In the process of deciding on request for equitable money compensation the court will take into account the strength and duration of the injury which caused the physical and mental pain and fear as well as the aim of the compensation, but and for the fact if the compensation is opposing to the aspirations which aren't in connection with its' nature and social goal. For the injury of the reputation and other personal rights of the legal persons, the court, if it finds that the meaning of the injury and the circumstances of the case justify that, will provide equitable money compensation, regardless if there is compensation of material damage or not. In addition to this rules, in some cases, when there is different regulation found in another law, the provision of that law are applicable also.“ In the case law the non-material compensation is awarded for suffered fear, physical and mental pain and mental pain for reduced life activity, and the suffered material damage is composed with material costs related to the medical treatment.

In some cases the employee can accomplished compensation of the same damage on several grounds. In addition is an example from Macedonian case law that shows the way this case is [16] and provides that the plaintiff who suffered serious bodily injury during the performance of his work tasks, in case of proved fault on behalf the employer because he failed to take all the measures for employees' protection has the right of compensation of material and non-material damage in terms of article 200 of the Law on obligations regardless the fact that the employee has received compensation on grounds of collective insurance.

5. Concluding remarks

The legislation that regulates the relationships between the employer and the employee, among which are also the obligations that rise out of damage suffered by the employee at work, at first is looked up in the Labor Law , as *lex specialis* regarding this question. The labor law provides employers' liability for the damage suffered by his employee at work or about work, and the obligation for the employer to compensate this damage. But, for the questions about the basis of liability, the kind of damage that is subject of compensation, as well as other questions in case of employer's liability, the labor law directs us to the application of the basic rules of civil liability consisted in the law on obligations. This way the employment relationship between the employer and the employee, in case of suffered damage y the employee at work or about work, transforms into obligation. In the legal system of Republic of Macedonia there are no special rules for employers' liability for the damage suffered by his employee at work. There is separate regulation only for the employers' liability to third party for damage caused by his employee at work or about work. This employers' third party liability is strict liability. On the other hand, the employers' liability to the employee can be fault liability or strict liability, and the employee doesn't have any advantages based on the existing employment relationship. The non-existence of special rules in this case doesn't help the employee in accomplishing damage compensation. The improvement of the legal position of the employee is achieved with the amendments of the non-material regulation which now are defined as personal rights injury, and the court may decide to compensate non-material damage regardless the existence of material damage. Our view is that the improving of the legal position of the employee will be of influence for the employer. In case of improving the rules of liability it is expected that the employer will act more conscientiously and more responsibly in the area of preventing the work accidents. However the rules on the liability of the employer affect the employer and the prevention of cases of accidents at work only indirectly, by secondary repression of the employer or by a pressure of shade. However, most direct way to influence the

employer are the provisions of the Law on Safety and Health at work because they are predicting specific goals and obligations of the employer whose fulfillment would lead to a direct reduction of accidents at work. By developing a good concept for prevention at work within the provisions of the Law on Safety and Health at Work and effective system of control in the application of these provisions and the preventive punishment in case of violation can lead to achieving reduction of the number of accidents at work. On the other hand, the provisions of the liability of the employer are applicable only after the accident has happened and their primary role is rehabilitation of caused damage in terms of restitution in integrum to the extent that it is possible to achieve with material fees, and only secondary, their function is to achieve repression and to act preventively in the area of occurrence of accidents in the workplace.

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