SOLIDARITY LIABILITY IN THE EVENT OF WORK-RELATED ACCIDENTS

Dragoş-Lucian Rădulescu¹, Delia Marinescu²

¹Petroleum - Gas University of Ploiesti, Bd. Bucharest, no. 39, Ploiesti, Romania

e-mail: dragosradulescu@hotmail.com

²Titu Maiorescu University Bucharest, Romania

e-mail: delia.marinescu@ymail.com

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Abstract

The patrimonial liability is the most common form of liability, being attracted in case of non-compliance with the legal norms, in order to protect the social values indispensable for the normal functioning of a company. Legal employment relationships are one of the most common areas in which joint and several liability is applied, namely in the case of work accidents resulting in personal injury to employees, which can cause them including permanent disabilities and can be caused by deficiencies in specific equipment used, as well as the lack of effective training in the field of labour protection. Establishing guilt and attracting civil liability is done in relation to the concrete conditions of the accident, the duties of employees according to job descriptions, but also the concrete actions they performed during the program or in connection with work duties. The article presents the applicability of the legal norms in the matter of civil liability to a practical case in which the courts have held joint and several liability of employees and employers in case of accidents at work, referring to the legal conditions to be met, with implications in criminal law.

Keywords: legal liability; solidarity; work accident; crime; illicit deed

1. Introduction

Fundamental institution of civil law¹, civil liability is one of the most complex notions of law through its multiple applicability in all branches of law, its role intervening at the time of violation of legal rules, as a sanction for the perpetrator and in favor of the victim for the main purpose of compensation for the damage suffered, with a view to protecting its rights.

Legal liability is based on the idea of creating a society created on the basis of a system of values that generates progress² and to have a role of discipline, of civilization of human behavior in society³, being related to the patrimony of the person responsible for

¹ Adam, Ioan, *Drept civil. Obligațiile. Faptul juridic în reglementarea NCC*, Editura CH Beck, București, 2013, p.118.

² Szekely, Cătălina, *Civil Society – An alternative to social justice?*, articol publicat în Jus et Civitas – A journal of Social and Legal Studie, vol II, Issue 1, no.1/2015, p. 31.

³ Cristea, Simona, *Teoria generală a dreptului*, Ediția 4, Editura CH Beck, București, 2020, p. 187.

the prejudicial illicit deed⁴, who has to bear the consequences of infringing certain rules of conduct, the conduct of which is regarded as reprehensible by the other members of society⁵.

In the field of labor law, the protection of health and safety at work are basic principles, their observance being the essence of employment relationships and multiple practical situations that may occur in the event of their violation, some with very serious consequences on the bodily integrity of the injured person. effects that may persist throughout its life.

Although the rule is to prevent and take all measures by the employer to reduce the risks related to accidents at work, taking into account the consequences they may have, in practice there is a large number of situations in which employees suffer injuries during work. service activity, which are due either to a single favorable factor or to a complex of circumstances which, in fact, are consequences of non-compliance with several measures, the most relevant being inadequate vocational training and lack of thorough training in the field of occupational safety. by the employer⁶, who may be liable as a legal person, since he is liable for obligations in his own name and with his own⁷, as well as by other employees.

In these circumstances, the production of an illegal act, consisting in harming an employee, attracts the liability of the employer, either as a defendant - legal person or as a civilly liable party on the civil side, but may also attract joint and several liability of other employees for their own actions. depending on the samples administered, the technical tests having an important relevance.

The facts situation

Through the Indictment of the Prosecutor's Office attached to the Court, several employees of company X were sent to court under the aspect of committing the offenses of bodily injury through fault, prev. of art. 196 para. (2), (3) C pen and forgery in documents under private signature, prev. of art. 290 para. (1) C. pen., Holding in essence that the injured person, while on duty, as an unskilled worker and performing activities to start an installation, was the victim of an explosion, followed by the detachment of a part , he suffered an accident resulting in the amputation of his right leg.

At the same time, it was mentioned that the company in which the illicit act took place was in insolvency proceedings, being confirmed a reorganization plan, for the purpose of financial recovery, which determined the limitation of investments in new equipment, the old ones not being replaced over time. normal operation, without proper maintenance.

⁴ Boroi, Gabriel, Stănciulescu, Liviu, *Instituții de drept civil în reglementarea noului Cod Civil*, Editura Hamangiu, București, 2012, p. 238.

⁵ Boilă, Lacrima, Rodica, *Răspunderea civilă obiectivă*, Ediția 2, Editura CH Beck, București, 2014, p. 115.

⁶ Vieriu, Eufemia, *Reflecții și considerații în legătură cu accidente de muncă*, Revista Universul Juridic , nr. 5, mai 2019, p. 38 (35-51).

⁷ Ungureanu, Ovidiu, Munteanu, Cornelia, *Drept Civil. Persoanele în reglementarea noului Cod Civil*, Ediția a 2-2-a revăzută și adăugită, Editura Hamangiu, București, 2013, p. 307.

In addition, it was shown that at the company level, in order to make products at the level of market requirements, it was decided to purchase an installation used by another company, but without command and control equipment, the respective components to be made internally. Practically, prior to the commissioning of the new facility, the company did not use similar equipment, having no staff with experience in the field, being hired one of the defendants on the grounds that he had previously worked in the field.

From the analysis of the job description of the injured person, it was proved that she was employed with an employment contract as an unskilled worker in a different section than the one where the accidental work took place, and subsequently, she would have been trained working, participating in the service of the installation together with the other workers, being transferred to work on the respective equipment.

Although it was well-known at the employer's level that the installation had malfunctions, prior to the time of posting the injured person to this job, as other employees had previously faced similar situations that were brought to the attention of management, no steps were taken at the unit level. to remedy the situation.

The injured person stated that on the day of the incident before the accident, he tried to start the installation several times, but the watch flame went out, being advised by phone by one of the defendants to leave it on for 5 minutes and then to he tries to restart it.

It was also stated that the defendants in question were responsible for the proper functioning of the equipment, apparatus and machinery, having responsibilities related to their use, informing those responsible for the defects, as well as ensuring the training needs of employees and continuing education, mentioning - that the coordinating engineer of all production sections was responsible for identifying the training needs of the staff, continuous training and compliance with safety rules, who could not submit data on the duration of operation of the installation or overhauls, finding that it it was in fact defective, having exceeded the operating norm.

On the other hand, another defendant was also charged with forgery of documents under private signature, in the sense that he personally signed the training file instead of the injured person, forging his signature and claiming that the victim had been instructed the day before. of the work event directly by him since at that time there were no profile schools.

The report of the investigation of the crime scene proved that the injured person was found with his feet trapped under the installation, this being in a horizontal position and not in the normal vertical position, and the extrajudicial expertise report proved the cause of the accident, respectively the formation in the installation of a gas mixture, and against the background of an incorrect direction of the wake flame, the explosion took place.

In front of the court, the defendants admitted the deed and took advantage of the provisions of art. 374 para. 4 of the Code of Criminal Procedure, accepting the legal classification of the indictment, thus applying the procedure of acknowledging the accusation. As a result, according to art. 6 paragraph 1 of the European Convention on Human Rights on fair trial and art. 3 lit. d of the European Convention, which calls into

question the rights of accused persons, the declaration of recognition of the accusation will lead to the impossibility of the defendants, who have assimilated the evidence administered during the criminal investigation, to later claim the violation of the right to defense⁸.

The causal link

General condition of civil liability⁹, the causal relationship presupposes the existence of a link between the illicit act produced and the damage caused to the victim.

In the present case, the main cause of the accident was related to poor labor management, namely the use of an unapproved, reused and unmaintained facility, which was served by an unqualified and incorrectly trained employee, provided that the employer did not care and did not order measures to carry out the production process in safe conditions.

In this sense, although the installation did not initially have event warning systems, later they were not installed, and in these conditions it was not readjusted to another technology.

The evidence showed that the situation was well known to the defendants, who intuited the risks to which the injured person could be exposed due to lack of qualification and exceeding the service life of the installation. The defendants did not comply with their duties related to the provision of equipment to provide safety at work for employees and did not communicate to the employer the deficiencies found, in addition not supervising the participants in the workplace, the violation of obligations being assimilated to commission offenses by omission, although it was well known that the installation was somewhat rudimentary.

The elements presented above denote the existence of the direct causal link between the act of the defendants and the injury suffered by the injured person.

In this sense, related to the offenses of non-compliance with occupational safety and health measures, contained in art. 38 para. (1) and (4) and art. 37 para. (1) and (3) of Law no. 319/2006, we can appreciate that they are limited to the material element of the crimes in question, being in direct causal connection with the injury of the victim. The doctrine requires that, in the case of omissive offenses, they become imputable if the performance of the duties in the job description by the perpetrator could lead to the avoidance of the result, without requiring that the removal effect was certain.

Basically, the defendants had control over the source of danger, but did not order those reasonable measures that would have eliminated the risk of an accident at work, which allows the retention of a causal complex, in the sense that several cases compete to produce the result, they forming an indivisible unit¹⁰, taking into account the fact that

⁸ Brandstetter v. Austria - ECHR judgment of 28 August 1991, available online at <https://www.legal-tools.org/doc/deb99c/pdf/>, accessed 20.05.2021

⁹ Adam, Ioan, *Tratat de drept civil. Obligațiile. Volumul II. Responsabilitatea civilă extracontractuală. Faptul juridic civil*, Editura CH Beck, București, 2021, p. 403

¹⁰ Gorun, Diana, *Răspunderea civilă în procesul penal*, Ediția a II-a revizuită și adăugită, Editura Pro Universitaria, București, 2017, p. 37.

one of the defendants falsely signed the report next to the name of the injured person, but also the individual training file on safety and health at work, in order to prove the existence of training at work.

Aspects regarding the illicit deed

In the present case, it started from the analysis of the material element of the constitutive content in the case of culpable bodily injury offenses which consists in the failure of the defendants to take reasonable measures in accordance with their duties, this omission causing the accident.

Thus, in the case of the defendant who held the position of technical director, the wrongfully retained deed consisted in the lack of steps necessary for the safe operation of the installation, from the point of view of occupational health, non-communication to the employer compliance with security regulations.

On the other hand, the act of the defendant who had the position of engineer was the lack of steps necessary to determine the safety of operation of work equipment, but also the non-communication of the deficiencies found by the employer, although they were notorious. Also, the defendant did not inform about the lack of protection systems and did not control the participants at the respective workplace, so that by observing the security norms, the activity would be carried out in optimal conditions.

From the point of view of the immediate consequence, it was related to the amputation of the victim's right leg, the causal link arising from the actual commission of the acts.

With reference to the crime of forgery of documents under private signature, the material element is represented by the false signing of a report, next to the name of the injured person, but also the individual training sheet on safety and health at work, the immediate consequence being of a state of danger related to the public trust on such documents, the causal link resulting from the materiality of the act of a dangerous crime.

In this sense, the crime is committed in a continuous form, as a unit of active and passive subject, provided that the documents were falsified by the defendant based on the same criminal resolution, each constituting elements of the crime of forgery of documents under private signature.

We also find the subjective side of the crime as a direct intention, the defendant foreseeing the result of his deed and following its occurrence, in order to accredit the certainty that the injured person was trained only one day before the accident.

Solving the criminal and civil side

When individualizing the applied punishments, the provisions of art. 52 Penal Code, the general criteria of individualization from art. 72, paragraph 1 of the Penal Code, the punishment limits provided in art. 196 para. 1, art. 337 and art. 338 para. 1 C .pen., Reduced under the conditions of art. 396 para. 10 C .pr.pen., The social danger, the person of the offender and the circumstances of committing the deeds.

The offenses of bodily injury through guilt were committed by the defendants, having an increased gravity in relation to the protected social value, bodily integrity and health of the person, the application of a punishment thus becoming necessary.

In this sense, in order to fulfill the educational character of the punishment, it must be proportional to the deed, respectively the prison, the crime aiming at the bodily integrity of the victim, the defendants not taking reasonable measures in order to eliminate the state of danger.

Thus, on the one hand, it was held that the defendants did not take steps to ensure the safety of work equipment, with respect to occupational safety and health and did not prove that they would have notified the employer of potential deficiencies in the protection systems. controlled the employees participating in the production activity of the respective machine that accidentally produced, these attributions being expressly provided in the job description.

On the other hand, the coordinating engineer was not involved in making the work equipment safe for the injured person, did not notify the employer of the deficiencies found and did not supervise the participants in the work process and their level of training.

On the civil side, at the request of the injured person, the court may award material damages and moral damages, an expression of the illicit violation of a subjective right¹¹, in order to cover the expenses occasioned by the drug treatment, trips to the doctor, performing tests, but also as a difference between the disability pension and the salary he would have had in the absence of accident at work, according to the provisions of art.1381 Civil Code which requires that any act of man, which causes another a certain harm, compels the one from whose fault it was caused, to repair it. The future damage is also considered certain, not yet produced, but it is certain that it will occur in the future.

With regard to non-pecuniary damage, it is assessed by the court in relation to the suffering likely to be caused by the defendants' actions, with the aim of compensating the victim for the psychological trauma suffered and the post-traumatic sequelae which limit participation. subsequent to social life.

However, the idea of full reparation of non-pecuniary damage is approximate, the damages being non-pecuniary and difficult to assess in money, analyzing the age of the injured person, but also the fact that he is subsequently classified as permanently disabled with total incapacity for work, the amount of compensation it will also be analyzed in relation to the fact that the defendants have support to the victim, financially and morally, for the period after the accident.

We can appreciate that no distinction is made regarding the patrimonial or non-patrimonial nature of the damage, in the conditions in which both constitute structural elements of the tortious civil liability, being repaired both the current certain damage and the future one.

¹¹ Stătescu, Constantin, Bîrsan, Corneliu, *Tratat de drept civil. Teoria generală a obligațiilor*, Editura Academiei Republicii Socialiste România, București, 1981, p. 163.

In the case, it results from the evidence that the victim's damage is a direct effect of the defendants' deeds, thus being present the direct causal link, according to the provisions of art. 1373 C.civ. regarding the liability of the principals for the officers and the company exercising the direction, supervision and control over them will be liable, provided that the defendants have committed the acts in the exercise of their duties in its interest.

Conclusions

In order to attract criminal liability in case of illicit deeds deriving from work accidents, the existence of the first violations of the criminal law, the existence of similar violations, as well as the appearance of a special situation of accidental, exceptional character will be taken into account.

In the present case, the solidarity was attracted by the fact that it could not be determined that only by the act of one of the defendants the illicit act occurred consisting in the irreversible bodily injury of the injured person, but a set of factors that acted at the same time. resulted in a violation of social values.

As it resulted from the administered technical evidence, respectively the specialized expertise ordered in the criminal investigation phase and not contested by the defendants, they are guilty of committing the crimes for which they were sent to court, without the possibility of establishing a higher percentage of the fault of one of them, which determined the joint and several liability for the illicit deed, the employer being obliged to repair the damage as a civilly liable person.

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Răspunderea solidară în cazul accidentelor de muncă

Rezumat

Răspunderea patrimonială este cea mai des întâlnită formă de răspundere, fiind atrasă în cazul nerespectării normelor juridice, cu scopul protecției valorilor sociale indispensabile pentru normal funcționarea unei societăți. Raporturile juridice de muncă constituie unul dintre cele mai frecvente domenii în care este aplicată răspunderea solidară, respective în cazul accidentelor de muncă soldate cu vătămarea corporală a angajaților ce le poate produce acestora, inclusiv infirmități permanente și care pot fi cauzate atât de deficiențe ale aparaturii specifice utilizate, cât și de lipsa unei instruiți eficiente în domeniul protecției muncii. Stabilirea vinovăției și atragerea răspunderii civile se realizează raportat la condițiile concrete ale producerii accidentului, la atribuțiile angajaților potrivit fișelor postului, dar și la acțiunile concrete pe care aceștia le-au derulat în timpul programului sau în legătură cu sarcinile de serviciu. Articolul prezintă aplicabilitatea normelor legale din materialul răspunderii civile la un caz practic în care instanțele de judecată au reținut răspundere solidară a angajaților și a angajatorilor în cazul accidentelor de muncă, făcând trimitere la condițiile legale care trebuie îndeplinite, cu implicații în domeniul dreptului penal.