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LIABILITY FOR DAMAGE ARISING FROM THE EMPLOYMENT RELATIONSHIP - COMPARATIVE ASPECTS

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Abstract

Liability for damage arising from the employment relationship is a type of liability for damage caused by actions of another. In such cases, the person who caused the damage is not liable, but the person who gave the order to perform the work is liable. However, in order for this type of liability to come to expression, the damage must have been caused without the fault of employee. This type of liability is characterized by three separate subtypes as follows: 1. the employer's liability for damage caused by his employee to another person, 2. the employer's liability for the damage caused to employee at work, and 3. Liability of legal person for damage caused by its own bodies. Each subtype has its own conditions, which must be fulfilled together in order to express the liability for the damage caused. Albania, Kosovo, France and Germany have regulated this type of liability by legal norms, and they also possess an abundant court practice. Except for Kosovo, which has regulated this type of liability by the Law on Obligations, all the aforementioned countries have regulated this type of liability by their civil codes.

Keywords: Damage, Liability, employee, employment relationship.

UNDERSTANDING LIABILITY FOR DAMAGE ARISING FROM THE EMPLOYMENT RELATIONSHIP

This type of liability is also part of liability arising from the damage caused by actions of others. In such cases, the damage must have been caused during the employment relationship or related to employment relationship. There are several subtypes of liability that characterize the liability for damage caused by employment relationship or related to employment relationship.

In these cases, for this type of liability to come to expression, the employment relationship must be established beforehand. The authors Giliker and Légier have emphasized that the employer exercises a power of direction, supervision and control over employee, and in this manner is established the relationship from which derives also the liability for damage caused. (Giliker 2010, 58, Légier, 2008, 149).

Concerning liability for the damage caused by employment relationship, we are mentioning its subtypes that make this liability quite complex and characteristic as follows:

- The employer's liability for damage caused by his employee to the third person,
- The employer's liability for damage caused to employee in employment relationship,
- The liability of legal person for its own bodies (Alishani, 2002, 494-500).

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The liability of employer for damage suffered by employee at work is a type of liability with a specific character and has indisputable importance in the labor relations between employer and employee. We say it contains a specific character due to the fact that this type of liability enters in a special way in liability derived from the employment relationship, bearing in mind the employer's obligation to establish protective measures at work. Having in mind the employer's obligations to provide to employee with protective measures at work in order to protect his health and bodily integrity, we consider it important to handle the employer's liability for damage suffered by employee at work as a type of liability and which arises from the employment relationship. In order for the employer's liability for damage caused by his employee to a third party to be expressed, certain conditions must be fulfilled, without the existence of which the entities cannot be considered liable for this type of liability.

The conditions that must be fulfilled in such cases are as following:

1. To cause damage,
2. Damage caused by employee,
3. To cause damage at work or in relation to work,
4. To cause damage by performing work for enterprise, and
5. The damage should not be caused intentionally or through the fault of employee (Alishani, 2002, 495).

In order for the employer's liability to exist for damage caused to employee at work, certain conditions must be fulfilled. The conditions that must be met in order to express this liability are as following:

1. Causing damage,
2. Damage should be caused to employee,
3. Damage to be caused by conducting the company's activity,
4. Damage to be caused during working hours,
5. Damage must not have been caused by fault or negligence of employee (Alishani, 2002, 499).

In order to express the liability of legal person for its own bodies, several conditions must be fulfilled. The conditions that must be met in this case are the following:

1. To cause damage,
2. Damage to be caused by the individual or collegial body of legal person,
3. Damage to be caused by performing the function or in connection with performance of legal person function,
4. Damage to be caused by legal person body,

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5. Damage caused by legal person body to other employees of this legal person or to third parties (Alishani, 2002, 501).

The conditions abovementioned must be fulfilled cumulatively in order to express the liability for damage deriving from the employment relationship. Regardless of circumstances, if these conditions are not met cumulatively, then the liability of legal person for damage caused by its own bodies shall not be expressed.

LEGAL REGULATION REGARDING LIABILITY FOR DAMAGE ARISING FROM THE EMPLOYMENT RELATIONSHIP

Liability for damage arising from the employment relationship is quite well covered by legal regulations. In this regard, we should mention that Albania (by Civil Code), Kosovo (by the Law on the Relationship of Obligations), France (by Civil Code) and Germany (by Civil Code) have clearly and in detail stipulated the cases and liabilities for damage arising from the employment relationship.

The case of Albania

The Republic of Albania has regulated the liability for damage arising from the employment relationship by Civil Code provisions (CCA). The stipulation of this matter is part of the group of provisions which are systematized in the framework of obligations arising from infliction of damage (CCA, Title IV). Regarding this matter, the legal regulation of Albania has stipulated the liability of employer for damage caused to third parties by employees who are in his service during the exercise of duties entrusted to him (CCA, §618). Through this provision, it becomes clear that the employer is liable for damage that his employees cause to a third person.

Even in the case of Albania, as a condition is taken the time during which the employee has been acting in the interest of employer and following orders given by him. However, in addition to stipulating the liability of employer to be liable for damage that his employee has caused to a third person, the Republic of Albania by these provisions did not determine in which cases the employer can be released from the liability when it comes to compensation of damage. In this regard, it is worth emphasizing that Albania differs from the other countries that have been mentioned so far because it doesn't contain such definition, which we encounter in the case of Kosovo, therefore having this in mind we can state that Albania has deficiencies in terms of definition of cases by means of which the employer can be released from liability for damage that his employee has caused to a third person.

In order for the employer's liability to come to expression, it is necessary for employee to have had a legal relationship with employer. We say legal relationship because in such cases the employee must have been in a labor relationship with the employer by contract or any administrative act or any other form from which the legal relationship between employer and employee can be proven (Tutulani - Semini, 2006, 259). This matter is of essential importance for determining the employer's liability, because if damage is caused by an employee who has been working for the benefit of another person without having a contract or any other act but only follows his instructions, he shall be liable for damage caused by himself (CCA, §619). In

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addition to these cases, this liability also applies to the legal person, whose organs have caused damage to a third person (CCA, §618). In other words, the legal person is liable for damage caused by its organs during the time when they perform their duties for its benefit. These duties must be defined by an internal normative act.

In this case of liability, it has not been stipulated in which cases the employer or legal person can be released from liability for damage that employee or his body has caused to a third person. The absence of such determination results in the impossibility of employer or legal person to prove their innocence for damage caused by fault or negligence of employee or his body.

The case of Kosovo

The Republic of Kosovo has regulated the liability for damage arising from the employment relationship with the Law on Obligations Relations (LOR). Kosovo by the LOR in subsection 4, has stipulated the liability of employer for employees. Through these provisions, has been made a detailed determination of employer's liability cases for damage caused by his employees, as well as other cases that result in liability for damage arising from the employment relationship. Under provisions of the LOR, the legal or physical person with whom the employee worked at the time of causing the damage is liable for the damage caused to the third person by employee during work or in relation to work (LOR, §154.1). In such cases, the employer is liable because he was the supervisor of employee who caused the damage.

This provision is also expressed when the employee causes damage to another employee of the same employer under the same circumstances in the work process or related to work (Dauti, 2016, 191). The liability of employer in such cases exists because it made the wrong choice of employee **culpa in eligendo**, or because employer did not exercise adequate supervision over the work entrusted to employee **culpa incipiendo** or because employer did not give proper instructions to employee or by not qualifying the employee for the certain work **culpa in instruendo** (Dauti, 2016, 191). Hence, in these cases, if for such reasons the employee causes damage to a third person during the work process or in relation to work, the employer is liable for employee.

We emphasize that the damage must be caused during the work process or related to work, because it may occur that the damage is not caused during the work process and outside the working hours, but it can be the activity related to work and for the benefit of employer and for this reason, the employer is considered liable when the damage is caused by his employee related to work process. From the definition in this provision, it is noticed that the damage must be caused to the third person. Regarding this issue, explanations have been given that any person other than the employee who caused the damage and the employer can be considered a third person (Dauti & Berisha & Vokshi & Aliu, 2013, 189 - 190).

We think that in the first case of authors' treatment who have emphasized that the liability of employer comes as a result of the wrong choice of employee **(Culpa in eligendo)** is not sustainable. We state this by bearing in mind the fact that one of the conditions under which

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the employer's liability is expressed it is the employee's innocence in causing the damage. In this regard, the question follows according to which:

If damage is caused without the fault of employee, then how shall the term "Culpa in eligendo" be expressed?

We consider that in this case of liability we have nothing to do with **Culpa in Eligendo** because in this case the innocence of employee avoids the idea of wrong choice of employee.

Also, this designation (which in our opinion is completely wrong in this case of liability), has the possibility of bringing consequences for employees in the employment relationship because in most cases those without fault cause damage to others during performance of their work duties or related to work, their employment relationship shall be terminated by employer. This is the second reason we think this designation is misleading and inappropriate in this type of liability. The name **culpa in eligendo** can be expressed only in cases where the employee has caused damage through fault, however in this case the employer's liability shall not be expressed because the employee shall be liable for damage caused by his own fault.

In the content of provision 152 of the LOR, is foreseen the possibility of excluding the employer's liability in case he acted as was necessary in the concrete circumstances. This can be expressed if damage has been caused by fault or negligence of employee. In such cases, even despite the employer's action to prevent damage or avoid any risk of causing damage, if employee has acted by fault or gross negligence and damage has been caused to the third parties, therefore he is personally liable for the damage caused. The injured party may request directly the compensation of damage from the employee if he caused the damage intentionally (LOR, §152.2). The legislator has left the possibility for each person who makes compensation for damage for which he is not liable, to request the return of the amount paid from employee who caused the damage by intent or gross negligence (LOR, 152.3).

Through this provision, the interest of innocent party who made the compensation for damage is protected, despite the fact that he was not liable for making the compensation for that damage, and in such cases, they are left with the possibility of requesting the return of the amount paid. The legislator in Kosovo has stipulated the deadline by means of which the right to request return of amount that was paid by the party that was not liable for causing damage expires six (6) months after the payment of compensation (LOR, §152.4).

In addition to these cases, the Kosovo legislator has also determined the liability of legal person for damage caused by its body. In cases where the functioning of legal person is done through its bodies and in case of causing damage to a third person during the exercise of function or in relation to exercise of function, the legal person is liable (LOR, §153.1). Considering that all the activity of legal person is conducted through its bodies, then it is logical that legal person shall be liable in cases where its bodies cause damage to a third person. This liability comes into expression only if legal person bodies have not caused the damage through fault or gross negligence, because in such cases they shall be liable for the damage caused. If legal person bodies cause damage to the third person through fault or gross negligence and if legal person has made compensation for damage, then he has the right to request the return of compensation

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from his bodies because he was not liable for the damage caused (LOR, §153.2). Even in such cases, similar to the case above, the statute limitation for the compensation request is within six (6) months from the payment of compensation for damages (LOR, §153.3).

The importance and complexity of employment relationship has led to the continuous use of different approaches in this field for the benefit of regulating and improving working conditions and establishing safety at work. These efforts are made in order to preserve the physical and moral integrity of employee at work, which is ensured through protection at work (Bujupi - Ismajli, 2007, 185). In order for safety at work to be as well organized as possible, the legislators in Kosovo have determined the legal obligations when it comes to provision of protective measures at work. Protection and safety at work are stipulated by the Labor Law provisions (LL) but also by the Law on Safety and Health at Work (LSHW). Legislators in Kosovo through the Labor Law have defined provisions that guarantee employees the right to safety at work and health protection as well as a suitable work environment (LP, §42). On this basis, employers are obliged to provide their employees with protective measures and a suitable environment at work in order to ensure the protection of life and health of employees (LP, §42.2).

Through the special law on safety at work have been stipulated, the obligations of employer to ensure protective measures at work by establishing safety at work, the protection of employees' health and the environment of employees (LSHW, 5 and 6). However, if employee suffers an injury at work, then the employer is obliged to cover all the expenses for the treatment of the injured at work and occupational diseases (LSHW, §5 and 6). Regardless the manner of injury, the employer must be liable unless the employee was injured through his fault or gross negligence. Based on these legal definitions, we can conclude that Kosovo has quite well covered the employer's liability for damage caused by his employee to the third person.

The case of France

France has regulated the liability for damage arising from the employment relationship by the Civil Code provisions (FCC). According to the Civil Code provisions, the owners or those who order the works are liable for the damage caused by their employees in the functions for which they ordered them (FCC, §1384.5). Based on this provision, employers are liable, but liable are also those who ordered works that must be carried out through employees. Even in the case of France, the essential condition is considered to be the time during which the employee has been performing the function for commissioned work. In other words, the employer exercises over the employees a power of direction, supervision and control, and from this arises his obligation to be liable for damage caused by employee while performing work for the benefit of employer (Légier, 2008, 149). In order to be valid, such relationship must have been established through contract or another act based on which the relationship between employer or client and employer becomes formal.

Regarding this type of liability, the author Paula Giliker (2010) has dealt clearly with cases of liability beyond the employment contract. She has emphasized that the use of general terminologies such as actions of doctors (commettan/préposé) as well as matters of business

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and delegated agent (geschaftsherr/Verrichtungsgehilfe) has led to liability beyond the employment contract in the exercise of certain actions (Giliker, 2010, 106). As an example, is mentioned the case when a nurse asked a volunteer assistant to help her to carry out an order with her car even though she knew that he does not have a driver's license. She would be liable based on Article 1384.5 because she had given orders to the volunteer to fulfill the task even though it was done without payment and in a temporary period of time.

The reason for existence of this type of liability was the fact that nurse gave orders to volunteer in order to perform the task given by her, so for this reason in this case the liability is expressed based on article 1384.5 according to which the employer or client is liable for damage caused by his employee (Giliker, 2010, 106). The French author Gerard Légier (2008) has emphasized that the advantage of victims in such cases of liability lies in the fact that the owner or client of works has more possibilities of payment than the servant or employee because his liability is covered by insurance (Légier, 2008, 149).

This type of liability shall be expressed if there is one employer but there may also be cases when there are many employers, or in other cases the employee may have been transferred to another employer. In such situations, several facts should be taken into account. If an employee has been transferred to another entrepreneur, the situation must be carefully analyzed under whose orders the employee was at the time of causing the damage, this is done in order to identify the person giving the order who shall be liable, whereas in the other case, when there are many employers, then in case of damage caused by their employee, they must respond jointly (Légier, 2008, 149).

The French legal regulation has defined this type of liability quite clearly by expressly presenting the liability of employer or client for damage caused by his employee while performing the function for which he was ordered. This has to do with the normal conditions for which the employer or client must be liable, whereas if during the damage caused by employee there are elements that indicate that he abused the task he was assigned to, he must be liable for damage he caused. These matters have been carefully addressed and studied by the Plenary Assembly but also by the Criminal Chamber of the Court of Cassation in France.

In the end, it should be emphasized that this type of liability is expressed only if employee has not exceeded the authorizations given by employer, otherwise if employee exceeds the authorizations given by employer, he must be liable for damage caused.

The case of Germany

Germany has regulated the employer's liability for damage caused from employee to a third party by the German Civil Code provisions (GCC). It is worth emphasizing that Germany, by the civil code provisions, has defined the liability of employer for damage caused by his employee, but has also stipulated the liability of legal person for its own bodies. According to this definition, a person who ordered another person to perform a certain task is liable for damage he caused to a third person (GCC, §831).

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In such cases, this liability exists based on two conditions: 1. The employee, through his illegal act and without fault, has caused damage to the third person and 2. The employer has no opportunity to prove that he supervised or provided with the necessary means the employee or, in other words, did not organize the work correctly (Fromont, 2009, 45). This definition protects the interest of employee who, during the exercise of duty given by employer, caused damage to a third person without his fault. In such cases, the liability passes to the side of employer when the employee acted within his scope but the damage has been caused to the third person without his fault.

Even in this case, similar to the case of France, the employer must have failed in his supervision and control in the work process. This leads to the liability of employer, for damage that employee has caused to a third person while performing the tasks given by employer. However, based on these provisions, the employer is not in all cases liable for damage caused by his employee to the third person. The employer shall be released from liability for damage caused by his employee if he has exercised care towards the employee adequately or if the damage would have been caused despite the exercise of care by employer (GCC, §831). Hence, in case the employer manages to prove that he has exercised adequate care, but the damage has been caused without his fault, he shall be released from liability and the employee who caused it shall be liable for the damage. Also, the same situation shall be if the damage has been caused despite the adequate care exercised by employer. Unlike the first case, in this case there are uncertainties because it is not clearly defined who shall be liable for the damage caused in this manner.

The author Fromont in his treatments has mentioned the two basic conditions in the case of Germany in terms of determining the employer's liability for damage that his employee has caused to the third person. He emphasized that the main conditions in this type of liability are the innocence of employee and the omissions of employer in the care and supervision of employees, as well as equipping them with adequate tools for work or not organizing the work correctly (Fromont, 2009, 45).

Germany, in addition to the liability of employer for damage caused by his employee to the third party, has also determined the liability of legal person for damage caused to the third person by its bodies. According to the provisions of the GCC, the legal person or organization is liable for the damage that its body has caused to the third person (GCC, §31). The liability of legal person is expressed because it carries out its activity through bodies which can be individual or collective. The damage must have been committed within the scope of employment, during the actions to perform the tasks given and for the benefit of legal person (Hylton, 2016, 185). The liability of legal person or association is expressed because it has given certain tasks to the body which, during its actions to perform the given tasks, has caused damage to the third person (GCC, §31).

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CASE LAW REGARDING LIABILITY FOR DAMAGE ARISING FROM THE EMPLOYMENT RELATIONSHIP

Concerning the liability for damage deriving from the employment relationship, the case law of several countries that we have dealt with in this scientific paper has paid special attention to the resolution of cases for the compensation of damage. It is worth to emphasize that the competent courts of various countries that we have managed to secure cases from case law, have render their decisions regarding these cases and have decided based on evidence and facts that have been presented by the parties.

The case of Albania

The judicial system of the Republic of Albania has paid special attention to cases of causing damage arising from the employment relationship.

In the first case, the Court of the Pogradec Judicial District has rendered the decision no. (103)-70 dated January 30, 2013, by means of which decided the obligation of employer to compensate the employee for damage suffered due to unlawful dismissal from work and non-compliance with the procedures related to this matter.

In this case, the employer's body dismissed the employee by not respecting the procedures established by law. In this regard, the employee went to court, which, based on the analysis of case and evaluation of facts, rendered a decision by which it forced the employer to compensate the employee for damage he suffered in this case due to the legal violations he committed. It is worth emphasizing that the employee who was dismissed from his job by not respecting the legal procedures from employer's body, has suffered material damage and therefore the court has decided that the employer is liable for compensating the damage because the employer body did not respect the legal provisions regulating this matter.

This decision has also been upheld by the highest instances in the hierarchy of the judicial system in Albania. It is worth noting that the Court of Appeal in Korça, by decision no. 247 dated April 29, 2013 left in effect decision no. 70 dated January 31, 2013 of the District Court in Pogradec. In the end, the case reached the Supreme Court, which completely similar to other courts, by the decision no. 376 dated September 15, 2015 upheld the Court of Appeal decision in Korça, which had previously upheld the decision of the first instance court who established the obligation of employer to compensate the damage caused to the employee due to the dismissal from work by not respecting the legal procedures from which the employee suffered damage.

From the circumstances of case, it can be noticed that the employer and the employee signed a contract in 2011, in which were determined the duties and responsibilities of the employee, as well as the working hours and the deadline of contract. Also, the employee has been performing his activity for the benefit and interest of employer, therefore the case in question is about the liability of legal person due to the damage caused by his body.

A similar action was undertaken in the other case by the Lushnjë Judicial District Court by decision no. 343 dated March 23, 2012. In this case, the court decided the obligation of

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employer to compensate the employee due to the material damage suffered because of unlawful dismissal from work.

In this case too, similar to the case above, the circumstances of case are the same because there is a contract concluded between the employer and the employee in 2009, based on which have been stipulated the duties and responsibilities related to work.

The case has also reached the highest levels of the judiciary in Albania, but also the Court of Appeal by decision no. 319, dated May 7, 2013 as well as the Supreme Court by decision no. 377, dated September 17, 2015, with various small changes, but not changing the essence of case in the trial, have forced the employer to compensate the employee for damage caused by unlawful dismissal.

In the end, even in this case, the liability for damage deriving from the employment relationship has been expressed because the employer unlawfully fired the employee by causing him material damage and due to this the courts have forced the employer to compensate the employee based on the aforementioned decisions.

The case of Kosovo

The Basic Court of Peja by the Judgment C.no.779/10 has decided to compensate the employee due to the damage suffered in the employment relationship.

In this case, employee XX in 2010 suffered injuries at work while conducting work for the company. Concerning this issue, employee XX addressed to the Basic Court of Peja by submission requesting compensation for damage suffered at work as a result of the omissions made by the employer for not providing the means of protection at work.

The court, after reviewing the case and analyzing the evidence, has decided to accept the request of employee XX as grounded, and in this case has forced the company YY to pay the employee a certain amount of money due to injury at workplace.

In its reasoning, the court emphasized that the YY enterprise was obliged to provide all employees with protective equipment at work so that they are safe from injury during the performance of their work relationship. Another reason that prompted the court to render this decision was the fact that the employment relationship was bound by a contract between the employer and the employee and that the employee's injury occurred during working hours at the workplace.

In the other case, the Basic Court of Prizren by Judgment no. C.NR 407/13 has decided to compel the legal person to compensate the damage caused to its employee due to the unlawful termination of employment relationship.

In this case, the legal person body rendered a decision by means of which fired the employee.

Regarding this matter, after the presentation of case in court proceedings, the Basic Court of Prizren has decided to annul the decision of legal person for dismissal of employee due to the finding of his unlawfulness. Likewise, the court has decided the obligation for legal person to compensate the unlawfully fired employee because he suffered moral and material damage.

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Similarly, as in this case, it was also decided by the Judgment no. C.NR. 280/12 based on which the Basic Court of Peja obliged the employer to compensate the employee due to the material damage caused by employment relationship.

In this case, the management body of employer "Chief Executive Officer" has reduced the employee's rank without any reason defined by law, resulting in a reduction of the employee's income which was defined by contract. Regarding this issue, the Court rendered a judgment based on which it annulled the Chief Executive Officer decision as unlawful and forced the employer to compensate the employee for damage suffered by the unlawful action of employer's body.

In this case too, similar to the two cases abovementioned, the existence of concluded contract between the employee and the employer is considered as a decisive factor. Likewise, all the circumstances that occurred in this case were related to the employment relationship, therefore has been expressed the employer's liability for damage that resulted from the employment relationship.

In the other case, the Basic Court of Prizren by judgment no. 34/13 dated December 16, 2014 has decided to annul the decision of employer HH for dismissal of employee and rendered the decision to return him to work. It has also decided that the employer shall pay a certain amount of money as compensation for the material and non-material damage that the employee has suffered in this case. From the analysis of case, it is noted that the employer and the employee have concluded a contract based on which the mutual duties and obligations related to the employment relationship have been determined.

In the meantime, the employer's body dismissed the employee. Regarding this issue, the court, after analyzing all the facts, considered that the dismissal decision is unlawful, by annulling it and ordering the employer to return the employee to work. It has also decided that the employer should pay to employee a sum of money as compensation for the moral and material damage suffered in this case. From the circumstances of case, it can be noted that there was a legal relationship between employee and employer. There have also been work activities that benefited the employer.

The case of France

The Court of Appeal in Lyon, by decision no. 10-28492, of December 3, 2009, made the insurance company "Ados" liable, which had an insurance contract with the "Customer" restaurant, because a child has been injured in the playground that was reserved exclusively for restaurant customers. In this case, the court had decided the liability due to the absence of supervisor of the playground where the minor child had fallen and suffered injuries. In this regard, Ados was obliged to pay the damage for the injury that the child had suffered in the playground at the "Customer" restaurant. In the second case, the Plenary Assembly of the Court of Cassation by the "Costedoat" decision of February 25, 2000 (V. 2000. note, Brun Grands Arréts, no. 217), decided on the employer's liability for damage caused by its employee. In the clarifications given regarding this matter, the Court has emphasized that the employee who does not exceed the limit of duty by means of which he was charged by employer is not liable

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for the damage caused. On this basis, each employee, when acting within the framework of authorizations given by employer, shall not be liable in case of causing damage to another person.

In the other case, the Plenary Assembly of the Court of Cassation with the "Cousin" decision of December 14, 2001 (V. 2002. 1230, Julien's note), decided on the liability derived from the employment relationship, but in this case, unlike in the abovementioned case, the liability of employer has been established since he has exceeded the framework of work duties for which he was charged by employer. According to this decision, the employee who was convicted for intentionally committing a misdemeanor, even if he committed it by the employer's order, he shall be liable for the damage caused by himself (Légier, 2008, 153). Hence, based on this opinion, the court has clearly determined that the employee is not liable for the damage caused only when he acted within his framework. A more detailed explanation can be found in the other decision of the Plenary Assembly of the Court of Cassation dated May 18, 1988 (V. 1988, 513, note Larroumet) according to which the release from the employer's liability is related to three main conditions which are the absence of authorization, the purpose that is not related to the work task as well as the action outside the framework of the work tasks. In other words, the employer shall be released from liability for the damage caused by his employee if the employee acted outside the scope of task for which he was hired, acted without authorization and for purposes not related to his task (Légier, 2008, 151).

The case of Germany

The Federal Supreme Court of Germany by decision of January 26, 1995 (BGH, January 26, 1995, NJW-RR1995, 659), had established the liability of employer for damage caused by the employees. In this case, the employees during the reconstruction of a stadium had damaged the roof of stadium, and after three days the roof of stadium collapsed, causing considerable damage to the stadium. In this case, the court decided for the liability of employer due to the omissions made by his employees during the performance of these works.

In the other case, the Supreme Court of Germany by decision of September 20, 1966 (BGH, September 20, 1966, Vers R 1966, 1074), decided on the liability of employer for damage caused by his employee during the performance of employment relationship. In this case, the driver of excavator while performing the work had caused damage to a third person and in this case the Supreme Court had decided concerning the liability of employer for the damage caused by his employee. The court here had assessed the causal link between the action that caused damage and the duty given by employer. This was the reason based on which the court decided about the liability of employer for the damage caused by his employee.

CONCLUSIONS

From the analyses made in this scientific paper, it is noted that the liability for damage caused by employment relationship is one of the types of liability for damage caused by actions of another. The characteristic of liability for damage caused during the employment relationship is the existence of its three types. The types of liability arising from the employment

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relationship are divided into the employer's liability for damage caused by his employee to a third party, the employer's liability for damage caused to the employee during the performance of his work duties, as well as the liability of legal person for damage caused by his bodies. In such cases, it is important to emphasize the fact that this type of liability is expressed only if damage is caused without the fault of employee, on the contrary, if damage is caused by the fault of employee, then the liability is expressed according to the fault.

The research conducted in this scientific paper has identified that this matter has been also regulated by legal acts according to which the countries that are mentioned in this paper have paid attention regarding the definition of this matter by the laws of obligations or by their civil codes.

Concerning this matter, we can emphasize that Kosovo, based on the Law on Obligations, has expressly determined that the employer is liable for damage that his employee has caused to the third person. This legal definition incorporates the first two types of liability that have been addressed by theorists in this field. We say that it covers the first two types because initially the employer must be liable for damage that his employee has caused to the third person based on the conditions and circumstances defined by law, whereas for the second case of liability we say that this rule applies because the third person can be the other employee in the same enterprise to whom is caused damage, hence we consider that these two types of liability are covered by the legal definition according to which the employer must be liable for damage that his employee causes to the third person.

The liability of employer for damage caused by his employee to the third person may not always be enforceable. If employee causes damage to a third person through fault or gross negligence, he must be liable for compensation of damage. Having this in mind it can be concluded that the legal regulation as the main condition for this type of liability identifies the innocence of employee when the employer must be liable and the guilt or gross negligence of employee when he must be liable by himself for the damage caused.

In addition to this liability, Kosovo, by the Law on Obligations Relations, has also defined the liability of legal person for its bodies. According to this definition, the legal person is liable for damage that his bodies cause to the other person. In such cases, the bodies can be individual or collegial, depending on the organization of legal person.

Albania has regulated this type of liability by civil code provisions. From the reviews that have been made to the provisions of the Civil Code of Albania, we can conclude that Albania has in principle regulated this type of liability similarly to Kosovo. It is worth emphasizing that in this case the employer is liable for damage that his employee has caused to another person during the time he was at work performing the duties given by employer. However, unlike Kosovo, Albania, by civil code provisions, has not expressly defined in which cases the employer can be released from liability for damage that his employee has caused to another person. This fact brings unfavorable situations for the employer because it is impossible for employer to present the facts to prove his innocence, if damage has been caused by fault or gross negligence of employee.

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France has regulated this type of liability by civil code provisions. According to these provisions, employers or clients are liable for damages caused to their employees. Regarding this type of liability, France has similarities with the countries aforementioned, as far as the definition of the employer's liability is concerned. Similarities are also identified in the circumstances under which the employer becomes liable for damage caused by his employee. Even in the case of France, for this type of liability to be valid, the employer must have concluded a contract with the employee or some other act that indicates their legal relationship. Regarding this element, there is similarity in all the legal systems that we have mentioned in this part.

However, some authors in their treatments have emphasized that in such cases it may even come to the extent of exceeding the employment contract concerning the liability for damage derived from the employment relationship. We emphasize that Giliker (2010) has addressed various very convincing cases according to which a person can perform voluntary actions or in other words follow the orders given by another person to perform work for his benefit and if it happens that damage is caused in such situations, then the person who gave the orders shall be responsible according to the French Civil Code provisions 1384.5. If we carefully analyze this opinion of Giliker, we can state that what he has emphasized is very reasonable, because even in this case we are dealing with giving orders to perform certain work tasks for the benefit of person who gave orders and little importance there is whether there was an employment contract or not because in such circumstances the existence of a contract is completely impossible when it is well known that such actions are conducted instantly and are not foreseen earlier. In such cases is essential the compensation of damage to the injured party.

For this type of liability, France, based on the decision of the Plenary Assembly, has foreseen cases where the employer can be released from liability for compensation of damage. According to this decision, the employer shall be released from liability if employee has caused the damage by acting outside the scope of his job for which he was hired or without authorization and for a purpose that is not related to his duty. Based on this, the employer shall be released from liability and in such cases the employee shall be obliged to be liable by himself for damage caused because he acted outside of work duty and outside the authorization given to him by his employer.

These determinations in the French legal regulations make this type of liability similar to its regulation in the countries aforementioned, but to the French this matter is more detailed considering the fact of its definition and specification in the decisions of the Plenary Assembly or the Court of Cassation.

Germany, has regulated by Civil Code provisions the liability for damage arising from the employment relationship. It is worth emphasizing that the Germans have stipulated the liability of employer for damage that his employee causes to the third person. Likewise, by civil code provisions, has been regulated the liability of legal person for its own bodies.

The employer's liability for damage that his employee has caused to another person is expressed if he ordered the employee to perform work for his benefit and interest. The employer in this

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case is in the role of order giver but also in the role of supervisor because the work process is conducted for his benefit. Similar to the case of France, even here this liability depends on two conditions that relate to the employee's innocence in causing damage and the employer's inability to present evidence that exercised adequate supervision in the work process. From the existence of these two conditions, have been identified cases, which subject is liable in which case. We say this because the employee's innocence leads to the employer's liability for damage caused, whereas when the employer manages to prove that he has organized the work process correctly and has adequately supervised the work process, the employee shall be liable for the damage it caused. Hence, from this point of view, the first condition goes in favor of employee and the second condition goes in favor of employer if he manages to prove his innocence.

By civil code provisions, Germany has also defined the liability of legal person for damage caused by its own bodies. In this case, if legal person bodies, whether individual or collegial, during their activity cause damage to a third person, the legal person must be held liable because the activity of its bodies is conducted for the benefit of its interest.

Observing this from a comparative point of view, Germany has a similar legal regulation to all the legal systems we have mentioned so far because it similarly regulates the liability for damage arising from the employment relationship.

In the end, we must emphasize that the legal systems having been mentioned in the treatment of this liability have almost similar definition because they all have stipulated the liability for damage arising from the employment relationship. However, differences are observed in the definitions by normative provisions of types of this liability. We state this because Kosovo, Albania and Germany have a completely similar definition of this liability, hence they have defined the employer's liability for damage caused by his employee but also the liability of legal person for its own bodies, whereas France has defined expressly only the liability of employer for damage caused by his employee.

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