

LABOUR LAW APPROACH OF COMPENSATION, WITH SPECIAL ATTENTION TO THE DAMAGE TO EMPLOYEES' HEALTH

BORS, Szilvia*

In my dissertation my goal is to provide the narrowest legal interpretation of compensation applicable in the case of the violation of employees' physical integrity, health and personal rights¹. My starting point is that respecting human dignity is such a principle which is only ensured by minimum requirements. Social expectations and needs work and prevail via legal norms. One of the legally formed requirements is employers' duty of care. In its frames employers have to ensure the occupational safety and health requirements for employees in consideration of the nature of the work. In the case of the violation of life, physical integrity and health connected to it, there is also a legal norm to be applied as a legal consequence: it is called the compensation. However, sanctions applied for employers only reach their aim, fulfil their function if they meet the social expectation laid against them. Employers have the duty of care within which they are obliged to make rational steps towards avoiding the predictable violation of employees' life, physical integrity, health and personal rights². Lord REED remind us of that this aim appears "when the parliament accepts legislation establishing labour law... this is not only done to provide advantages to certain employees but because they decided that prevailing these rights is in the public interest"³. This also reflects that because of the economic dependence and organizational risk distribution it is the employee who needs more protection due to its subordination against the employer.

Hence, in my dissertation I aim at providing comprehensive research of the basic questions, theoretical bases and practical forms of protection against the violation of life, physical integrity and personal rights by employers. Having regard to the above mentioned and that as far as I am concerned, non-pecuniary loss' most serious consequences are the violation the right to life, physical integrity and health. However,

*Judge (Győr Regional Court)

¹ Three levels of interpretation: (1) a „largissimo sensu”, that is, understanding the subject or phenomenon formed by humans; (2) „sensu largo”, that is, the interpretation of written or spoken language's manifestation; (3) „sensu stricto”, that is, revealing the text's meaning. WRÓBLEWSKI, Jerzy: Legal reasoning in legal interpretation. In: *Logique et Analyse*. Peeters Publishers, Vol. 1696/45., p. 4.

² KISS, György: Az új Ptk. és a munkajogi szabályozás, különös tekintettel az egyéni munkaszerződésekre. In: PLOETZ, Manfred – TÓTH, Hilda (eds.) *A munkajog és a polgári jog kodifikációs és funkcionális összefüggései*. Novotni Kiadó, Miskolc, 2001. p. 233.

³ COLLINS, Hugh – EWING, Keith – MCCOLGAN, Aileen: *Labour Law*. Cambridge University Press, Cambridge, 2019. XXIV.



due to its lengths, in my dissertation I do not deal with violated employees' right to material compensation and the need towards compensation by deceased employees' family. Timeliness of my dissertation has also been strengthened by the world pandemic emerging in 2019, since COVID-19 has changed the content of the obligation to ensure the occupational safety and health requirements regardless of whether employees return to their place of work, or carry out their tasks in another place but their previous place of employment. The obligation to provide occupational safety and health requirements is such an employer obligation which, following the second-generation fundamental right of the employee⁴ has been formed as its opposite.⁵ It means ensuring such circumstances which fulfilment provides a guarantee to fully preserve employees' health and safety during the whole period of work. According to WHO, the phrase 'health' means employees physical, spiritual; and social state of well-being, as well as their mental and emotional health. Safety means a state free from harm or threat, where physical and psychological aspects also have to be considered. It depends on two separate activities: risk measurement and risk analysis. The aim is that work tasks are carried out safely, this is part of the operational process both on the level of the individual and the organization⁶ Providing occupational safety and health requirements means to ensure safe environment, safe tools and safe procedures at workplaces⁷.

Every workplace has its own dangers, even those which are not always so obvious. However, seemingly harmless working conditions and circumstances may also lead to serious disadvantages. According to the justification of Act XCIII/1993 on Occupational Safety and Health, healthy working does not cause occupational disease, in case of safe working the physical and psychological effect does not cause accidents.⁸ Access to safe and healthy work environment shall not influenced by employers' inappropriate management.⁹ Life, physical integrity and personal rights are almost important social and individual values, they are the manifestation of human existence.¹⁰ Society's expectation is that the community shall imply every possible measure that is necessary to ensure the smooth operation of people. Individuals are values, they are the keepers of the possibility of personal fulfilment. Ultimately, with the allocation of responsibility, the

⁴ Article 3 of the European Social Charter contains the right to safe and healthy work

⁵ Paragraph (1) of article 31 of the European Social Charter (2016/C 202/02)

⁶ HOLLNAGEL, E., WOODS, D. & LEVESON, N.: Resilience Engineering concepts, Burlington, Ashgate, 2006. p. 2. <https://erikhollnagel.com/onewebmedia/Prologue.pdf> (date of download: 10. 12. 2021.)

⁷ The expression of work conditions has to be interpreted based on article 156 of 2012/C 326/01 of the consolidated version of the Treaty of the European Union and the Treaty on the Functioning of the European Union (furthermore referred to as TFEU) according to the explanation of the Charter of Fundamental Rights of the European Union.

⁸ BOLTON, Sharon C.: Dignity at Work: Why it Matters.

<https://strathprints.strath.ac.uk/13309/6/strathprints013309.pdf> (date of download:10.12. 2021.)

⁹ 1073/B/2006. decision of the Constitutional Court

¹⁰ BDT 2021. 4386.

justification of interest (besides ethical, moral and social disapproval) is assisted by lawmakers with the prospect of applying sanctions. Compensation for damage is the sanction of the infringement of personality rights (iniuria)¹¹. Its highlighted function is compensation. Its aim is the increased respect towards personal rights and human dignity¹². The protection of life, physical integrity and health can be derived from employers' obligation to provide occupational safety and health requirements and social rights of employees. The sanction of non-pecuniary loss consists of legal provisions of law and amount, as well as significant guidelines of jurisprudence.

Based on the above, I am going to discuss the following four hypotheses in my dissertation:

H1) Functions of compensation emerging in labour law are not identical and are not as serious compared to their function in civil law

H2) The legal system of conditions of labour law compensation is the lack of casual relationship with labour relation, the illicit behaviour of the employer, the violation of personal rights and circumstances excluding the reason for exemption

H3) The application of the legal institution of labour compensation reaches its compensatory and preventive function if and when the degree of sanction equals the social value judgement.

H4) The amount of the legal institutions also affects the legal basis of compensation.

In order to confirm or reject the hypotheses, I researched the below contents: (1) the fundamental law approach of human dignity and the right to life, physical integrity and personal rights, the social right of occupational health and safety is the obligation of employers to provide safe and healthy work environment both in the European Union and in Hungary, (2) the formation of the legal institution of compensation, legal basis and amount analysis of compensation applicable in labour law based on legislation and judicial practice, the processing of questionnaire connected to compensation and statistical data of court proceedings. In my dissertation I would like to present that the above hypotheses justify the necessity to apply compensation of due legal basis and degree.

Methods of collection

The aim of my dissertation is to present the legal institution of compensation being present in labour law and being justified by employees in case of the violation of life, physical integrity and health between 15th March 2014 and 15th September 2021 with the comparison of civil law compensation and the system of labour law liability. Based

¹¹ SMIED, Orsolya: A nem vagyoni kártérítés joggyakorlatának elemzése a magyar jogszabályok és a BGB alapján figyelemmel a jogintézmény fejlődésére. Jogi Fórum. 2001. p. 5

¹² ARANY, Tóth Mariann: A munkavállalók emberi méltóságának védelme. Miskolci Jogi Szemle. 2011/1. p. 41.

on these in my dissertation I will be able to demonstrate the legal system of conditions of employees' need towards compensation and the totality of factors influencing the degree of sanctions, which will clearly show the place of labour law compensation in the liability system. The results of the research are also compared with legal practice in my dissertation, which will reflect the real emergence of the legal institution. In order to obtain the targeted results of my dissertation, I endeavoured to the comparative overview of civil law and labour law, following the changes of non-pecuniary loss, their reasons and the legal institution's changing importance. I believe that before presenting the detailed rules, it is necessary to present the framework itself (right to and sources of non-pecuniary loss) as well as the change of law enforcement practice. After presenting the wider rules of the right of non-pecuniary loss I am going to narrow my research to labour law regulations. In its frames I am going to deal with employees whose rights have been violated, to be more precise, regarding the area of life, physical integrity and personal rights.

The subject and aim of the research strictly determine those methods which can be applied in my dissertation. The variety of research methods makes it possible that different methods help one another and the researcher in the process of learning. The subject of the research, as well as its research area and environment determine which set of methods help achieve the research area and environment determine which set of methods help achieve the researcher and the science the most optimal result¹³. According to STOKES, we differentiate between two basic research methods: the quantitative and the qualitative one¹⁴. I applied the method of quantitative research in my dissertation. Iván FALUS also differentiates between two big research groups, naming the exploratory methods (document analysis, observation, oral questioning, written questioning, method of sociometry, measurement of knowledge and psychological research procedures) and processing methods (statistical methods, quality analysis and procedures of meta pedagogy). From these I used the method of document analysis.

The objective side of the method of law and political sciences means the recognized legalities, while its subjective side means the investigation of the phenomenon based on legality, as well as their transformation¹⁵. The methods' three levels are the basic method, the general method and the specific research method. Methodological clarity is based on the basic and general method, the complexity of the methodology is based on the relationship between general and specific, the whole and part. Basic methods are the materialistic dialectic and the functional method. General methods are the historical-genetic, the systems theory and the comparative method. Specific research methods are

¹³ BABBIE, Earl: A társadalomtudományi kutatás gyakorlata. Balassi Kiadó, Budapest, 2003. p. 127

¹⁴ BONCZ, Imre: Kutatásmódszertani alapismeretek. Pécs, 2015.

https://www.etk.pte.hu/protected/OktatasiAnyagok/%21Palyazati/sport/Kutatasmodszer_tan_e.pdf (date of download: 30. 11.2018.)

¹⁵ SZILÁGYI, Péter: Jogi alaptan. ELTE Eötvös Kiadó, Budapest, 2014.

the followings: polemic-critical, concept analyser-logical, dogmatic, sociological, statistical and psychological. Based on the above, in my dissertation I aim at investigating with which aim, what harms, how, to what degree are sanctioned when the need for compensation is being justified with regards to the event that harmed employees' human right, constitutional right, fundamental right (protection of life, physical integrity, health) and occurred in connection with the employment relationship¹⁶. How and to what extent (with regards to legal basis or amount) certain (employee, employer) factual elements influence this. My research also covers the topic of the presentation of the historical development of non-pecuniary loss, at the moment called compensation, in a way that I would like to investigate what kind of aim it has in different periods, what the function of the legal institution is, so what the legal institution means in certain periods: private law penal measure, consolation prize, sentimental compensation, lump sum, prevention, compensation. What kind of harms are evaluated in the legal institution, having regard to that disappointment, annoyance, spiritual pain, grief can be evaluated these days. As the liability of the perpetrator stands in criminal law in the case of the thin skull rule, does it also reflect in the field of labour law? If employers are responsible for the invisible and intangible employee physical ability, can it be established in the case of mental, spiritual sensitiveness as well? If not, what is the reason? Can the irretrievable be restored? I would also like to examine court practice, analysing connections in a way that how employers' liability is established, whether liability is influenced by other variables, whether the given geographical environment or the employers' competitiveness and employee qualification has any significant role. Afterwards I would like to find the answer to how the degree of compensation is determined, what role does subjectivity, individual sensitivity and discretion play. Whether the degree of the ruled amount is affected by the growing acknowledgement of fundamental rights, is the decision on the degree influenced, can it be influenced by the employers' performance, economic importance, the number of employees or technical level. Whether can such objective corner points be determined from which practice does not deviate, which are independent from the political, social and economic environment. Based on the above-mentioned aims, one of the research strategies that I would like to apply is the qualitative research method, more precisely, research without intervention¹⁷.

The usage of the materialistic dialectic method makes me able to determine and analyse the major changes with regards to the historical improvement of compensation. In frames of the general method I would like to discover – if possible – general legalities with the methodology of comparison relying on dogmatic or even psychological methods, therefore, logically analysing and systemizing the relationship of norm texts and concepts

¹⁶ SZIGETI, Péter: Társadalomkutatás – Mi végre? UNIVERSITAS-GYŐR Nonprofit Kft., Győr, 2011. p. 87.

¹⁷ HORNYACSEK, Júlia: A tudományos kutatás elmélete és módszertana. University of Public Service, Faculty of Military Sciences and Officer Training, Budapest, 2014. pp. 45-49.

being their core element, not ignoring the determination of significant facts and their social relationship that are important with regards to the legal institution.

In my research the independent variable (the reason) is the harm of life, physical integrity and health, the dependent variable (cause) is the non-pecuniary loss, while the control variable – among others may be – on the side of the employer: economic importance, level of technology, attitude of leadership, on the side of employees: qualification, age, marital status, geographical environment, which, as a rule of thumb cannot (shall not) influence the degree of compensation with which a given harm can be fulfilled. According to my point of view, among the qualitative research methods, the research applying the method of intervention does not lead to relevant results in this research area as nonverbal tools do not play a role in the determination and occurrence of harm and compensation, in the relationship between them, or in the control factors either, hence, interview, deep interview and professional interview are omitted here. As far as I am concerned the polemic-critical and concept analysing logical method do not bring me closer to achieve my above-mentioned goal either, as not the inner inconsistency, the logical inconsistency is the way towards answering the above asked questions. Besides the above, during the preparation of my dissertation one of the forms of empirical research, the descriptive method, has played a significant role, as researches of descriptive nature „can be very useful in the case of practical oriented researches, as they are able to provide a comprehensive picture regarding certain problematic areas, hence facilitating the foundation of necessary reforms”¹⁸ I also applied the qualitative method of empirical research which also includes field study, so that the researcher is integrated in the subject of the research as a so called observer, is integrated into the participants of the legal case and to the given social environment in which it all happens, also, the researcher „has to thoroughly study all those documents which play a role in the process.”¹⁹ I also used the research method of quantitative study including more sampling techniques, too.

In the case of quantitative data it is important that they are reliable. They are considered as reliable if „the repeated procedure brings the same results”²⁰. In my dissertation I would like to provide a comprehensive picture of those major changes that happened in the last couple of years and affect the institution of compensation. Therefore, at the beginning of the dissertation I am going to provide a labour law dogmatic overview of the protection of life, physical integrity and health, followed by their regulation. I am also going to provide an international outlook with regards to certain European states.

The dissertation also contains general considerations established by ILO, the European Court of Justice and the European Court of Human Rights, and provides a domestic historical overview. This is followed by the analysis of the system of legal

¹⁸ JAKAB, András – MENYHÁRD, Attila: A jog tudománya. HVG-ORAC, Budapest, 2015. p. 119.

¹⁹ JAKAB – MENYHÁRD op.cit.: (2015) p. 121

²⁰ JAKAB – MENYHÁRD op.cit.: (2015) p. 122.

conditions for labour law and the factors of amounts. Finally, I highlight the problems that occur during law enforcement. Summary is closed with my final thought which include conclusions and evaluations coming from the practice.

Therefore, my primary research method is the analysis of legislation's texts – Fundamental Law of Hungary, the Civil Code, and the Labour Code – of which I primarily have special literature in Hungarian. The centre of the research is the modification of the sources of law. Accordingly, during the processing there is more highlight on the temporal method of comparison of law than the territorial one, which – according to what has been already mentioned – I apply at the identification of the models. Besides field study – which necessity with regards to my dissertation has already been mentioned above – I would also like to apply the other typical form of “non-intrusive qualitative, discursive methods”, namely, the content analysis, since “the operation of the legal system mostly depends on literacy”²¹. In my dissertation I aim at the comparison of the Civil Code's and the Labour Code's regulations as well as the old and the new regulations, therefore, the focus of the research of the compensation wished to justified by the employees is on the changes of functions. After finishing an empirical-like study we can only give an adequate answer to a central question if the researcher gathers relevant information and knowledge through as many examples as possible – in our case, with court decisions.²² Based on all this, besides the processing of cases connected to compensation in the labour law area of the database of the Curia of Hungary, my dissertation also contains their caseload statistical data, as well as the statistical analysis of answers given to the questionnaire of social expectation with regards to compensation, completed by randomly chosen individuals.

Among the qualitative nature research methods, I would like to determine circumstances affecting the amount of compensation, the forint value of the deal with the help of written document analysis that is, inner analysis of court decisions. Based on the quantitative research method with using the electronic database I narrowed the judicial case law to labour law and civil law decisions, more precisely to decisions made by the highest court and more significant courts of second instance in the topic of the violation of life, physical integrity, health and personal rights that is, my aim is the collection, analysis of the chosen decisions based on the stratified sampling, followed by their general determination in the light of the factors.

²¹ JAKAB – MENYHÁRD op.cit.: (2015) p. 128.

²² MÁTYUS, András: A sérelemdíj funkció-analízise. In: Debreceni Jogi Műhely 2020. (XVII.) 3-4. Debreceni Egyetem Állam- és Jogtudományi Kar, Debrecen DOI 10.24169/DJM/2020/3-4/9. p. 114.

Brief summary of the scientific results

In reality, right to life, physical integrity and health coming from human dignity protects the health of humans as legal subjects throughout its different dimensions. Nowadays the right to health also means bodily-physical, mental-spiritual and social health as well. The compensation of the non-pecuniary loss occurred with the violation of the above-named personal rights greatly divides the labour law regulation of European states these days. States have various legal regulations and ruling practices due to the different social thinking and concepts. As for Hungarian lawmakers, the codification of the legal institution of compensation has become absolutely necessary. Jurisprudence permanently helps in that it makes the formation of the greatest degree of legal certainty possible.²³ Employees are entitled to request more sanctions in the case of accident or occupational disease. For the violation of personal rights, they can only ask for compensation. As far as I am concerned, the below guiding principle can be set with regards to the institution of compensation. The liability system of compensation is relatively separated from liability for damages. On the one hand, this partial separation can be viewed as its provisions are situated in the beginning of the factual law's normative part, at the part of the rules for personal rights, on the other hand, in its certain elements there is a referral to the provisions of employers' objective liability for damage: in the area of the person obliged to pay compensation, the legal system of conditions of the liability and the degree as well. Violation of interests not protected by law has to be differentiated from the violation of personal rights.²⁴

Hypotheses presented at the beginning of the dissertation can be justified according to the followings:

H1) hypothesis, according to which the functions of compensation in labour law are not identical and do not have the same weight as the functions in civil law, can be justified according to the followings. Functions of compensation in civil law: compensation, private law penalty (repressive) function, next to which special prevention appears as a supplement. The emphasis is on compensation. As far as I am concerned, in labour law not 3 but 4 functions emerge and the emphasis also shifts. The most significant function of damages is compensation. Though advantages provided by compensation cannot be sensed in every single case (for instance in case the victim is in an unconscious state), so a special function, the humane function also emerges. Having regard to that the employer, based on its objective responsibility, is obliged to compensate the violation of personal rights due to its illegal behaviour, so the private law penalty function (retortion, repressive function) does not become significant in every single case. Employers are obliged to pay compensation regardless of their imputability and culpability. However, preventive

²³ AARNIO, Aulis: *Jurisdiktion und Demokratie. Abhandlungen und Aufsätze Rechtslehre*. Vol. 30. Issue 2. 1999. p. 142.

²⁴ PARLAGI, Máttyás: *A sérelemdíj iránti kereset elutasítása és a hátrány kutatása*. *Jogtudományi Közlöny*. 2018/9. p. 378.

function has a more highlighted role than in the function of compensation applied in civil law, also, general prevention also emerges next to special prevention. The reason is that sanction not only affects parties to the proceedings but also to all other employees of the employer, also representative bodies also emerge on the side of employees which represent more employees.

According to hypothesis H2) the legal set of conditions of the compensation in labour law is the employment itself, the illegal behaviour of the employer, the violation of personal rights, the casual relation between them and the lack of circumstances excluding the grounds for exemption. As a result of the analysis, we can state that the precondition of legal set of conditions of the compensation in labour law is (1) employment, which means that the violation of personal rights happens during the course of the employment (2) and in connection with it according to paragraph (1) of 166. § of the Labour Code. Labour law positive legal basis conditions of compensation: (3) the behaviour of those who the employer has responsibility of (4) illegality of the behaviour, (5) violation of personal rights and (6) casual relation between these. The violated employee determines the employer's behaviour of illegal violation of personal rights. The idea is also valid in labour law disputes, according to which the violation of personal rights *de facto* does not necessarily form the basis of being entitled to compensation²⁵. With regards to establishing the legal basis there is no need to prove further disadvantage besides the fact of violation. This means that the violated person has to name the violated personal right, besides he has to assert his claim against the employer as well as prove the above-named circumstances. The labour law negative conditions of compensation are defined by points a) and b) of paragraph (2) of 166. § of the Labour Code. Negative legal basis conditions are: (7) circumstances outside its area of responsibility, (8) which could not be foreseen and (9) was not expected that the circumstance causing the non-material damage could be avoided or averted by the employer, also, (10) the exclusive and unavoidable behaviour of the victim.

According to hypothesis H3, factors affecting the degree of labour law compensation in labour law – besides what is established in civil law – are predictability, contribution of employees and partial exemption by court. Based on the above, this hypothesis can be justified in a way that factors affecting the degree of labour law compensation in labour law – besides what is established in civil law – are predictability, contribution of employees and partial exemption by court. Predictability, expressed in paragraph (1) of 167. § of Labour Code is evaluated individually, at the point when the consequences of the violation of personal rights appear, as a factor of decreasing responsibility. Based on the casual chain those non-material violations can be evaluated at the employer's expense which cannot be predicted with regards to the given employer in advance but can be seen in connection with the illegal behaviour in general. Based on paragraph (2) of 167. § of the Labour Code, no liability shall apply to the portion of the damage resulting from the

²⁵ CSITEL, Béla: Személyiségi jogok az egészségügyben. *Polgári Jog Lap - Polgári Jog* 2017/9. – Study p. 9.

employee's wrongful conduct, however, it influences the degree of compensation. Wrongful conduct of employees can be evaluated here, therefore, the innocent behaviour (recklessness, imprudence, clumsiness, not choosing the best possible method) not. With regards to evaluating whether the given act was wrongful or not, no. 5 of the MK provides assistance. According to their standpoint, intentionality can be determined if the violated employee foresees the harmful consequences of his act (failure) and he wants them (direct intention) or accepts them (conditional intent - *dolus eventualis*). Negligence can be determined when the victim foresees the possible consequences of his act or failure, however, he carelessly believes that they will not occur (reckless negligence) or does not recognise the possible consequences of his act or failure because he misses the attention and care expected of him (negligence). In the case of negligence there is no culpable victim behaviour. Besides the wrongful act, the failure of the victim's duty to mitigate loss also has to be evaluated with regards to the contribution of the victim. In the frame of negligence the legislation does not demand nor culpability neither imputability, however, it has to be accomplished by the victim. With regards to the obligation of damage prevention, damage control and mitigation, labour law only acknowledges compensation as a contributing factor. One of the acceptable reasons could be that the victims find themselves in a situation where their personal rights are violated due to the illegal behaviour of someone else, furthermore, due to the economic powers and risksharing lawmakers wish to determine milder obligations with regards to the victim than in civil law relations. In my research the fourth hypothesis is connected to the relationship between the legal basis and degree of compensation.

According to hypothesis 4), the amount of the legal institution has effect on the legal basis of compensation. Based on the above, the following answer can be given to the hypothesis. In labour law, the main function of damage is compensation, in case of unconscious victim is being human-based. Repressive function (private law punishment, retortion) in itself cannot be a factor, therefore, this function is provided by criminal law. Preventive function (special, general) cannot emerge without compensation, since this function in itself has a role in administrative law. In those cases where the degree of compensation applied as a result of the violation of personal rights is trivial, a small amount, and the violated plaintiff's claim is justified to such a degree, the function of compensation cannot meet the social expectations and the requirements established by the legal institution. Having regard to that in case all legal factors are established the claim – considering the degree of legal consequences – is rejected that is, the amount affects the legal basis. Based on all the above, the following guiding principle can be given with regards to the compensation of employees in labour law. The liability system of compensation is separated from the responsibility for damage in a relative way. This partial separation can be viewed in a way that on the one hand, the provisions take place at the beginning of the subjective law's normative part at the rules of personal rights, on the other hand, there is a referral back to the provisions of employers' objective responsibility of damage in the part of liability for damages, system of legal conditions of

liability, as well as its degree. The harm of interest not protected by law has to be differentiated from the violation of personal rights.²⁶As far as I am concerned, the Labour Code should contain a unified opinion in at least the most important questions (failure to prove disadvantage, inapplicability of the principle of full compensation, incomprehensibility of residuum). After establishing the comprehensive theoretical and practical bases these principles, regulations need to be processed and formulated in legislations as well, which can then be applied in courts as part of their legal development role and not only as part of their legal interpreter and law enforcement role.

In comparison with civil law, in the case of compensation applied in labour law the emphasis is on compensation every single time. I personally believe that with regards to its hierarchical and permanent nature, the objective responsibility of the employer and the obligation of ensuring safe working environment, the special and general preventive function also have a highlighted role besides the function of compensation. If the element of culpability also emerges in the illegal behaviour of the employer, then the repressive and the retaliatory (private law punishment) function also reaches its aim. However, the superiority ensured by the compensation connected to personal validation cannot always be perceived by the conscious of the victim. Taking this into account, I believe that humane function should also be given a role here. If the accident, the occupational disease is to such a degree that the employee is temporarily or permanently in an unconscious state, it cannot result neither in the exemption of the employer (excluding responsibility) nor in the limitation (decreasing) of its responsibility. The precondition of compensation's legal basis adhering to employees in labour relations is a casual relation between the probable labour relation by the employee and the violation of personal rights, its positive conditions are the illegal behaviour of the employer and the wellknown, probable and proven non-material violation of personal rights, as well as the existence of casual relation between them. In case of the absence of any condition victims are not entitled to have compensation.

The connection between the illegal behaviour and the violation of personal rights causing non-material harm is established by law. The negative conditions of compensation are the lack of exemptions proven by the employer. If the causes of the accident or the occupational disease cannot be discovered, then the employer cannot be exempted. Among factors decreasing responsibility, besides examining all circumstances of the given case, the clause of predictability appears individually, without further conditions; the wrongful conduct of the employee and the imputable failure of his duty to mitigate loss; as well as the partial exemption by court appears. With regards to the clause of predictability we must note that based on court practice the peculiarities of the victim's subject (based on the doctrine of thin-skull) cannot result in circumstances limiting liability. Contribution of employees can only be taken into account if the victim

²⁶ PARLAGI, Máttyás: A sérelemdíj iránti kereset elutasítása és a hátrány kutatása. *Jogtudományi Közlöny*. 2018/9. p. 378.

is guilty or blameworthy. Based on court practice judicial fairness can only be practiced if employees are liable in the illegal behaviour. Equity may result in decrease over the degree of the function of compensation, within the frames of preventive function.

The legislation does not state the degree of responsibility with taking the exhaustive listed factors into account. The court allocates the degree of compensation based on the available and obtained evidences, in their discretion and judicial common sense, in its free consideration.²⁷ It also needs to be examined whether the victim marked its claim for compensation in the petition in a trivial amount, also, whether the non-material harm connected to the given violation of personal right is trivial. In these cases, in spite of the existence of the legal bases of the legal institution of compensation, the action is rejected due to the amount. In such cases victims cannot ask for compensation but they have the grounds to ask for the application of other sanctions due to the violation of personal rights.²⁸

As far as I am concerned, with lying down the main principles formed in my dissertation compensation may become decisive both with regards to its legal basis and amount after fulfilling the expectations of legal certainty. We also have to take it into account that the variety of personal rights and the personal circumstances' difference do not make the exact, concrete, unalterable determination of degree possible in advance,²⁹ that is why basic principles and appointed standards play a significant role.³⁰ With regards to applying compensation³¹ – I believe – not just equity but moderation also needs to be taken into account.³² Based on all these, the legal institution is going to be legal and predictable³³ together with the evaluation of legal practice³⁴, and all the dimensions of

²⁷ BURNS, Kylie: Before the High Court Liability for Workplace Psychiatric Injury and Vicarious Trauma: *Kozarov v Victoria* BURNS, Kylie: Before the High Court Liability for Workplace Psychiatric Injury and Vicarious Trauma: *Kozarov v Victoria*. Sydney Law Review, Vol. 43. Issue 4 2021. p. 583

²⁸ HORVÁTHY, István: Kikérem magamnak! A személyiségi jogok megsértéséért járó sérelemdíj. Adó szaklap. 2015/12-13. p. 142.

²⁹ OSZTÓTVITS, András (eds.): A Polgári Törvénykönyvről szóló 2013. évi V. törvény és a kapcsolódó jogszabályok nagykommentárja. I. kötet. Opten Informatikai Kft., Budapest, 2014. p. 343.

³⁰ FERENCZ, Jácint: Jogalkotás a munkaviszonyok szolgálatában. A munkajogi szabályozás gazdasági és társadalmi kihívásai. UNIVERSITAS-GYŐR Nonprofit Kft., Győr, 2018. p. 130.

³¹ A modern polgári jogok személyiségi jogi „értékmérője”. BARCZÓ, Tímea: A sérelemdíjról a jogtudós alkotmánybíró, bírósági és polihisztor szemüvegén át. In: LANDI, Balázs – KOLTAY, András – MENYHÁRD, Attila (eds.) Lábady Tamás emlékkönyv. Wolters Kluwer, Budapest, 2019. p. 146.

³² KRAJECZ, Laura: A munkavállalók személyiségi jogainak védelme, különös tekintettel a sérelemdíjra. Munkajog. 2019/4. p. 63.

³³ ASZALÓS, Dániel: A közigazgatási szerv önálló felróhatósága? A felróhatóság értelmezése a Kaposvári Törvényszék 8.P.21.562/2015/9. számú és a Pécsi Ítéltábla Pf.VI.20.050/2016/5. számú ítélete tükrében. Polgári Jog Lap - Polgári Jog. 2017/6. p. 10

³⁴ GÖRÖG, Márta: Gondolatok a személyiségi jogsérelem csekély volta esetén érvényesítendő sérelemdíj iránti igényről. In: JAKAB, Éva – POZSONYI, Norbert (eds.) Ünnepi kötet Dr. Molnár Imre egyetemi tanár 80. születésnapjára. Szegedi Tudományegyetem Állam- és Jogtudományi Kar, Szeged, 2014. p. 167.

human characteristics protected³⁵, resting on firm bases but at the same time being flexible enough.³⁶

³⁵LÁBADY, Tamás: A nem vagyoni kártérítés metamorfózisa sérelemdíjjá: a bírói gyakorlat kezdeti dilemmái. *Polgári Jog*. 2016/3. p. 5. 36

³⁶VARGA, Dóra: A sérelemdíj fogalmi alapkérdései a munkajogban. In: SISKÁ, Katalin – TALABOS, Dávidné – LUKÁCS, Nikolett (eds.) *Tudományos Diákezt Tanulmánykötet V.* Debreceni Egyetem Állam- és Jogtudományi Kar, Debrecen, 2018. p. 141.