Abstract

In the present economic and social context, the pecuniary liability of the employer is an issue of great actuality. The legal nature, the conditions of the pecuniary liability, the situations in which the employer is pecuniary liable towards his employee as well as the characteristics of this type of liability are some of the issues we try to deal with in this research.

Keywords: liability, pecuniary, conditions.

1. Introduction.

The international and European legal provisions in the field of labour law regulate merely incidentally the pecuniary liability of the individual employment contract parties. Certain ILO conventions, European regulations and directives refer to some situations when the guilty party is pecuniary liable towards the other party, but do not accentuate whether there exist also liability for prejudices of a moral nature; whether there exists liability only in case of a certain degree of guilt, etc. Ştefănescu, I.T. 2010, p. 746. The legal provisions regarding pecuniary liability differ from one country to another. Accordingly, in some countries such as France, Germany, Luxembourg, the legislation sanctions a common law reparative liability, while in Hungary, Czech Republic, Republic of Moldova is regulated a reciprocal reparative liability between the employer and the employee as a particular type of liability of the parties to the individual employment contract, different from the common law liability. Ştefănescu, I.T. 2010, p. 746. Over the course of the employment contract it is possible that one of the parties causes damage to the other.

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party, thus appearing the obligation of repairing the caused damage. In Romanian law, the Labour Code regulates the pecuniary liability in articles 253 – 259 providing the situations and conditions when both the employer and the employee can be held pecuniary liable.

The pecuniary liability of the parties, employer and employee, derives from the employment contract, has a reparative nature and is founded upon the civil contractual liability principles. However, it is not exclusively a common law liability. Thus, labour law pecuniary liability represents a variety of the civil contractual liability having certain particularities determined by the specifics of labour law legal relations. Ștefănescu, I.T. 2010, p. 747

2. Characteristics.

Pecuniary liability is a contractual liability founded upon an employment contract and therefore the delimitation of the persons involved in the pecuniary liability relation is very important. Consequently, the persons that can be liable pecuniary are the employees hired on the basis of, as follows: the undetermined period employment contract; the determined period employment contract; the partial time employment contract; the home employment contract; the apprentice contract; and finally the employees detached. According to the legal provisions the following cannot be held pecuniary liable: the pupils and the students in practice; the public servants; those performing volunteer work; the managers with a commission contract; the auditors and the liquidators of a company; those delegated to a different unity that they damage. All the aforementioned categories will be held liable according to the rules of civil liability in case they cause damage. Similarly, the employers also are pecuniary liable. Țiclea, Al., 2011, p. 281

Pecuniary liability is an individual liability. Even though the Labour Code refers in its article 255 to the situation when the damage was caused by several employees we still find ourselves in the presence of a conjunctive legal liability – still a personal liability, represented by a multitude of individual liabilities of persons with concurring guilt in causing a singular damage. Țiclea, Al., 2011, p. 281

Pecuniary liability is an integral liability. According to the rules of civil contractual liability the employee will be held liable only to the measure of damages foreseeable or predictable at the moment the employment contract was signed and not for the unpredictable damages. However, if the employee is held liable only for the pecuniary damages caused to the employer, the later will be held liable both for the pecuniary and moral damages caused to the former. Ștefănescu, I.T. 2010, p. 749

The settlement of pecuniary liability is done either by amicable means or, in case of disagreement, by the intervention of the court.

Pecuniary liability, in terms of enforcement, has a limited nature. Usually, a quota from the salary is pursued (maximum a third from the net income, without the possibility of exceeding together with the other retentions the person might have a half of the monthly income). Ștefănescu, I.T. 2010, p. 749

3. The pecuniary liability of the employer.

If an employee has suffered a material or moral damage from the guilt of the employer, in the course of the individual employment contract, article 253 Labour Code states that the employer is obliged to compensate the employee, according to the rules and principles of civil contractual liability. The pecuniary liability of the employer implies the existence of certain conditions that must be met cumulatively.

- An illicit act of the employer. In order for the human action to represent a condition of liability, it needs to fulfil in its turn conditions such as: to be connected with the performed labour and to be illicit, whether it consists of an action or inaction.

- The employer standing. The illicit deed can directly be attributed to the employer – natural person or in case of employer – legal person, the illicit deed must be carried out by its management
bodies, or by any employee that is a trustee of the legal person in question. Ştefănescu, I.T. 2010, p. 749

• Pecuniary liability is conditioned by the existence of damage. Damage is defined as the diminution of a persons’ patrimony as a result of an illicit deed. The damage must be real and certain; caused by the employer; can be of material or moral nature. Thus, the employee must sustain a moral or material damage in the course of carrying out his professional responsibilities. The employee is bound to amend both the effective damage as well as the unrealized profit. Ştefănescu, I.T. 2010, p. 750. The employers’ liability is cumulative comprising both material and moral damages. The employee can be prejudiced by a disciplinary sanctioning, by the unjustified diminution of income; in case of promotion refusal; dismissal determined by no matter what cause the Civil Decision no. 636R from 20th February 2007, Bucharest C.A., VIIth section - civil, labour conflicts and social insurance; demotion or suspension; job substitution or movement to another work place. The liability of the employer can also intervene in those situations when the employee although not dismissed is prevented from fulfilling his job; the necessary measure for insuring the needed equipment for fulfilling the work attributions are not taken in those cases when the employer has not fulfilled his obligation of informing the employee about the essential clauses in the employment contract. Țiclea, Al, 2011, p. 279. Moreover, the moral prejudice can consist in the damage brought to the employees image, professional prestige, etc.

• A causality relation between the illicit deed and the damage. Between the act and the damage there must a relation, the later must be the consequence of the illicit act.

• Employers’ guilt. Pecuniary liability necessarily implies the guilt of the author of the illicit act that determined the damage. The degree of guilt has no bearing and even for the lightest form of guilt liability can be held. The guilt of the employer represents a relative presumption and the employer has the right to prove that the non-fulfilment of his obligations towards his employee is due to circumstances non-imputable such as force majeure, contingency, state of necessity etc.

4. Establishment procedure of pecuniary liability.

The means of establishing and recovering the damages caused to the employer are, according to Labour Code: agreement of the parties and court intervention. The agreement of the parties must be recorded in a document from which the following must result: the employers’ recognition of the produced damage; a short presentation of the damage; the quantum of the damage and the means of establishing it; the mention of whether the damage will be repaired in one or more performances. The party’s agreement must be signed by both employer and employee and registered by the former.

The notification of the court intervenes when, according to article 253, para. (2) the employer refuses to compensate the employee. The notification term is of maximum 3 years and begins, depending on the situation, from the moment the right to act in court arises (according to article 268, letter c) when the object of the labour conflict consists of payment of unawarded salary rights or compensations to the employee, as far as the liability of the employer towards the employees is concerned; but also regarding the pecuniary liability of the employees towards the employer). The provisions of article 268 letter c) apply in those situations when the pecuniary demands stand upon an act that modifies the employment contract or terminates it. When the recognition of pecuniary demands is conditioned by the previous annulment of an act that modifies the employment contract or terminates it the action in court cannot be admitted unless the act in question was appealed in a period of 30 days according to article 268 letter a) and its disbandment is obtained. If the act is not appealed within 30 days and therefore the employers’ measure remains definitive, the person interested can invoke its illegality only incidentally, in the frame of a damage action pursues in the general term of 3 years. The liability action request for the damage
caused to the employer has to be deposited in double exemplary. The request will contain the name of the sued employer, the object of the case, the reasons that determine the employee to sue the employer, the probation that serve to prove its demands, and to this end there can be requested the following means of probation: witness, acts, expertise, etc. The action is free of taxes. Popa V. V., 2004, p. 281.

According to article 253 paragr. (3), if the employer is not itsself guilty for the damage, after it has compensated the damaged suffered by the employee it can reclaim the amount of money in question from the employee guilty for the caused damage.

The reason for this provision consists in the fact that the employer carries out its activity through its bodies, through employees that have management positions and it is natural that the persons guilty of non-compliance or violation of professional and duty obligations that caused the damage be held liable and cover the damage. The recovery of the damage must be done according to the rules that govern material liability, by elaborating a motivated and comunicated imputation decision against which an enforcement appeal can be formulated at the competent jurisdictional body. Popa V. V., 2004, p. 282

When the damage is not established and repaired by means of agreement of the parties, the retentions for damages caused to the employer cannot be made unless the debt of the employee is due, liquid and demandable and has been determined in a definitive and irrevocable decision. The text is partially contradictory with article 289 of the Code according to which decisions on the substance of labour trials are definitive and enforceable as well as the provisions of articles 376-377 civil procedure code that asserts the enforceable character of judicial decisions.

It is unnatural that by derogation from these provisions the retentions from the income destined to repair the damages caused by the employee to its employee to be made only if the debt of the employer is due, liquid and demandable and has been determined in a not only a definitive but also irrevocable decision. We can discover discrimination in this situation towards the employer, for the employee can recover its debt from the moment the decision is definitive, but not necessarily irrevocable. Ștefănescu, I.T., 2010, p. 751

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