The quantitative issues of the employer's liability for damages

A jurisprudence-analysing working group on the examination of the legal grounds for the employer's liability for damages (hereinafter referred to as the first working group) has already been set up. The first working group is about to publish a summary report on the results of its findings, after which there is a possibility that new departmental opinions will need to be adopted instead of the outdated departmental opinions concerned (departmental opinions no. MK 29, MK 30 and MK 31).

The quantitative issues of the employer's liability for damages (which do not include the quantitative issues of the payment of restitution, because the first working group's examination has not covered the legal grounds for the payment of restitution either) have been interpreted by the judiciary in a well-established and consistent manner since the entry into force of Act no. XXII of 1992 on the Labour Code (hereinafter referred to as the former Labour Code).

The provisions of Act no. I of 2012 on the Labour Code (hereinafter referred to as the Labour Code) have brought about substantive changes to this liability scheme, as the legislator decided to partially incorporate the relevant departmental opinions on these quantitative issues (departmental opinions no. MK 32, MK 93, MK 111 and MK 112) into the Labour Code.

Section 177 of the Labour Code, according to which sections 6:518-6:534 of the Civil Code shall be applied along with the courts' relevant case-law (e.g. civil law uniformity decision no. 1/2014. PJE), entailed significant changes as well.

With regard to the above, the following issues have to be examined by the present jurisprudence-analysing working group (hereinafter referred to as the working group):

I. It has to be assessed how the courts apply the provisions of section 6:528 of the Civil Code (applicable on the basis of section 177 of the Labour Code) on the calculation of the employee's loss of income, having regard to the fact that the definitions of the loss of income provided by the two codes are not completely uniform. Neither section 169 of the Labour Code, nor the Civil Code refers to the term "absentee pay". The courts' case-law therefore follows the Labour Code's explanatory notes according to which absentee pay should be included in the employee's loss of income (a term that is defined neither by the Labour Code nor by the Civil Code).

II. It has to be examined how the courts interpret the jointly applicable section 6:528 of the Civil Code and section 169 of the Labour Code concerning the calculation of income replacement allowances (regularity of income, income gained in or outside an employment relationship, calculation of average income). As an example, section 169, subsection (2) of the Labour Code stipulates that other regular earnings and legitimate income lost may only be taken into consideration, on the other hand, the Civil Code does not include any provisions in that regard.

III. It is appropriate to analyse whether the courts duly deduct the benefits and incomes enumerated in section 172 of the Labour Code from the amount of compensation.

IV. The dependent relative of a deceased employee is entitled to demand compensation in substitution for the lost support in the amount required to ensure his previous living standards.

It can be assumed that, in line with the courts' previous case-law, the allowance to be awarded to the dependent relative by a labour court will not be equal to the deceased employee's full income, but it will be calculated with regard to the courts' family-law related jurisprudence on child and spousal support, e.g. on the order of support obligations, as regulated by section 4:196 of the Civil Code.

V. Both section 6:530 of the Civil Code (amendment or termination of annuity payments) and section 174, subsection (1) of the Labour Code stipulate that the amount of annuity payments may be revised only in the event of material changes in the circumstances subsequent to their award. It can be expected that the labour courts will apply the detailed rules of section 174, subsections (2)-(4) of the Labour Code in that regard, in particular, they will take the reaching of the age of 18 years by and the graduation from vocational training of a young worker (mandatory grounds for the revision of annuity payments) into due consideration.

The working group wishes to extend the scope of its investigation beyond the aforementioned fields, if it detects other significant issues during its examination and deems it necessary to take a position on them as well. The working group comprises Curia justices, first and second instance judges, legal academics and other legal practitioners as well.

Dr. Blanka Tallián
Head of the jurisprudence-analysing working group
Head of Panel at the Administrative and Labour Department of the Curia of Hungary