

Conclusions of the summary report related to the courts' jurisprudence on employers' liability for employees' health damage

Under No. 2016.El.JGY.1., the Labour Section of the Curia's Administrative and Labour Department analysed the courts' jurisprudence on the legal basis of employers' liability for employees' health damage, including definitions and conditions of exemption from liability. In addition to examining the relevant jurisprudence, the jurisprudence-analysing working group also evaluated sections 166 and 167 of Act No. I of 2012 on the Labour Code, and the concepts of the Code.

The jurisprudence-analysis covered final, unchallenged lower-court decisions as well as Supreme Court and Curia decisions either delivered in individual cases or laying down principles related to the examined issues. As to the latter type of decisions (*'decisions of principles'*), the aim of the analysis was to establish whether they were, or were not, to be upheld under the new Labour Code in the light of the changes introduced by the new Labour Code as compared to Act No. XXII of 1992 on the (former) Labour Code. The jurisprudence-analysing working group held several meetings, at which a discussion material covering 174 points, made up of partial reports drafted by Curia judges were discussed. The working group analysed the relevant legal literature, the theoretical arguments of the Commentaries, and the results of the discussions that had been carried out at the lower-level courts. The summary report, which was drafted by the Curia's Administrative and Labour Department on the basis of these documents, was adopted on 5 March 2018.

The working group has held that a legal basis for an employer's damages liability exists where damage has occurred in employment relationship and causal connection exists between the damage-causing conduct and the damage, with the proviso that section 6:521 of Act No. V of 2013 (the new Civil Code) cannot be applied. This conclusion has been reached upon an examination of the relationship between sections 6:518-534 of the new Civil Code – which are applicable under section 177 of the Labour Code – and the special Labour Code rules. The working group has been of the opinion that employers can bear not only full but also partial damages liability, given that damage can partly be caused by circumstances unrelated to employment (e.g. employee illness caught outside employment). The working group has drafted a non-exhaustive list of the conditions upon which the existence of employer 'control' giving rise to damages liability is to be established, and has described situations in which a damage-causing conduct is to be regarded as having been beyond the employer's control. Issues related to the unavoidability of a damage-causing circumstance, the employee's contribution to the damage, and the conditions of the employer's exemption from liability for damage have also been examined by the working group.

Based on the summary report a department opinion is being drafted which, following its adoption, will replace department opinions nos. 29, 30 and 31 MK on the legal basis of employers' damages liability, and will provide guidance for the courts.